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TESTIMONY

of

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President

SENIOR EXECUTIVE ASSOCIATION

Before the

HOUSE SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE
DISTRICT OF COLUMBIA

FEBRUARY 12, 2008

Chairman Davis and Distinguished Members of the Subcommittee:

I am Carol Bonosaro, President of the Senior Executives Association (SEA), the professional association that for the past 28 years has represented the interests of career federal executives in the Senior Executive Service (SES) and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. SEA appreciates your invitation to testify before this subcommittee regarding our experiences with the new SES pay for performance system.

The successful mission accomplishment of the federal government depends on the expertise and skills of current and future highly qualified, experienced and able career Senior Executives. While this is true each and every day, it is especially important during a transition from one Administration to another. Therefore, fostering an SES pay and performance management system that is guided by the public interest in maintaining the best career corps possible is vital.

Unfortunately, the history of SES pay has not always advanced this public interest. For more than a decade before the new SES pay and performance management system became effective, Senior Executives in the federal government had been the great losers when it came to pay. Both the percent and actual dollar gap between the top earning potential as a Senior Executive and the top earning potential of a General Schedule employee had shrunk considerably, and 70% of all Senior Executives were capped and earning the same salary, regardless of rank.

Under the new pay system this phenomenon is only more pronounced. At this point, there appears little incentive beyond prestige and the opportunity to make a greater contribution to government for moving from a General Schedule (GS) position to one in the SES. In fact, we have even received reports of Senior Executives who have requested to return to the General Schedule because of the vagaries of the SES pay system.

The SES pay for performance system has resulted in a host of problems, ranging from lowered morale to a hastening of the retirement wave. Without a change that makes the SES system more predictable – and therefore, more attractive - there will remain a powerful disincentive for highly qualified employees to compete for SES positions. Such a situation could ultimately affect the efficiency of the federal government altogether, given the critical role Senior Executives play in program and policy implementation.

Since the new pay system has been adopted, SEA has had a clear interest in ensuring the success of this new system, with its higher pay caps even though these higher pay caps still are not available for those agencies that have not sought or obtained certification. Our efforts have been directed towards ensuring that the system would be fair and effective and seen as such by the executives subjected to it.

Nonetheless, over the past several years SEA has received complaints regarding the system's implementation. In 2006, when concerns about the new pay system

persisted, we decided to conduct a survey to obtain information from the executives themselves regarding their experiences with and views of the new system.

Our survey showed that while over 96 percent of respondents believed they should be held accountable for performance, 86 percent said the new system had no effect on performance, and 56 percent said it had no effect on their motivation. Meanwhile, 40 percent saw the system as having a negative effect on morale. The results of the survey clearly identified three major issues that must be addressed: (1) Many Senior Executives believed that performance ratings were being affected by the existence of de facto quotas; (2) Senior Executives saw no clear, consistent correlation between ratings and pay adjustments or how bonuses were distributed; and (3) Senior Executives receiving a fully successful or higher level rating often received no salary adjustment.

One of the most important set of findings affecting the impact of the SES pay system on the future were: (1) with 31 percent of SES then eligible for retirement, and 90 percent projected to be eligible over the next ten years, 16 percent of respondents indicated that they were accelerating their plans to separate from the government due to the pay system; and (2) 47 percent indicated the new system had had a negative effect on interest in the SES by GS-14s and GS-15s.

More recently we have heard of a Senior Executive with a fully successful rating who received a salary adjustment of only \$323. Such a number amounts to about \$12 a pay period. Even worse is the example of a Senior Executive with an outstanding rating this past year who received no salary adjustment or performance award.

A new concern that has recently surfaced is the creation of pay tiers to distinguish among Senior Executives. The SES at DoD will be on these tiers. Our concern is to make sure that those in the SES understand what needs to be done to attain the next higher tier and that the tiers not be used a basis for holding down SES pay levels.

In the three years of experience under the current pay for performance system, OPM has made some improvements to the SES pay system such as its requirements to agencies to share information about pay adjustments, performance awards and compensation policies with their Senior Executives. Despite these improvements, many of the problems reported in our 2006 survey remain.

It is imperative for Congress to take a hard look at the risk, pay and incentives in the current SES pay for performance system. This system is not attractive and will continue to dissuade many of the best employees from aspiring to the highest ranks of the career civil service.

One area that should be examined is the certification process conducted by OPM. One byproduct of this process is enormous cost related to the preparation of reports for OPM and the extra staff, training and money spent on consultants just to prepare for OPM's certification review. Some smaller agencies have not even applied for certification, and thus cannot pay higher salaries, because the process is so onerous.

Many other pay systems rival the SES corps for pay and provide greater benefits without the inherent risk of being in the SES. When addressing groups of Senior Executives and candidates for the SES, I regularly hear reports of talented, experienced GS-15's who have no interest in competing for promotion to the Senior Executive Service, to earn salaries of as little as \$120,000 a year in high-cost areas, work long hours, receive no locality pay or yearly automatic cost-of-living pay adjustments, earn no compensatory time, and have no assurance that they will not be moved to a new geographical area at the discretion of their agencies. Further, there is no uniform requirement for a specific pay increase upon entry to the SES. I have received these reports, as well, from staff of the Federal Executive Institute, with regard to the GS-14's and 15's who attend courses there. With 90% of the SES eligible for retirement over the next 9 years, Congress must immediately address the risk-reward ratio in the SES corps.

Critics point to the respectable salary cap of \$172,200 for Senior Executives in agencies with certified performance management systems and say this should suffice. Although most executives would earn much more in the private sector, they have been willing to accept pay that was not comparable because of their desire to do the most important work in the nation. The fact is, however, that most Senior Executives do not earn the maximum available pay. Further, the current pay for performance system is structured in such a way that many of those who work at levels below the Senior Executive Service are reaching well into the SES pay band.

Under its partially implemented National Security Personnel System (NSPS), the Department of Defense has increased the ceiling for prior GS-15 step 10 managers by 5 percent. When combined with locality pay, the top GS pay overlaps SES pay. Also under NSPS, GS employees can now receive substantial bonuses, formerly a unique feature of the SES. In response to the GS-15 pay cap, other departments and agencies have also taken steps to increase GS-15 managers' pay even though these managers have fewer responsibilities and more rights than members of the Senior Executive Service. According to the February 4, 2008 edition of the Federal Times, the average raise for NSPS-covered employees was 7.6 percent, more than twice the 3.5 percent average raise that most other federal employees received, and more than three times the 2.5 percent allowable increase in rate range afforded to the Senior Executive Service in 2008.

Other major observations about the SES pay system is the increased potential for politicization that results from a pay system where so much unreviewable discretion is given to those who make salary decisions and the tremendous inconsistency among federal agencies on how the SES pay system is implemented. These concerns also make Congressional oversight of the SES and the SES pay system more difficult.

Before addressing several recommendations, it is worth noting the degree to which the pay for the Executive Schedule (which sets the caps for SES pay) has fallen behind in comparison to the General Schedule. The SES pay ceiling has not kept pace with General Schedule pay adjustments, that is, adjustments for the pay of employees that these executives supervise. If the Executive Schedule had kept pace with the national

comparability increases provided by the General Schedule since 1994, EL II (the 2008 cap for SES pay in certified agencies) would be \$ 226,859, not \$ 172,200.

These are the caps. The actual salary adjustments received are far below the increase for the general schedule for those Senior Executives at the fully successful level. In 2006, the latest year with data released by OPM, Senior Executives at the fully successful level received an average salary increase of only 2%. Those at the "exceeds expectations" level were awarded a 3% increase, while the best performers, those at the outstanding level, came away with 3.7%. These results are disappointing and are certainly less than the levels that should be seen in a pay for performance system that is fair and that is expected to appropriately reward those who are covered by it.

Our final concern about the SES pay system seems more applicable to smaller agencies, but could apply to larger agencies as well. SES salary increases are not required to be made. Agencies could make salary adjustment decisions for its Senior Executives based on budget considerations. General schedule salary increases must be paid by law. We believe some similar requirement should apply to the SES.

The legislative remedies we propose are common sense solutions. For example, a Senior Executive who receives a rating of fully successful or higher should receive a salary increase sufficient to keep pace with the rest of the civil service.

We also believe that the SES pay system should be reformed to recognize the reality that performance awards are part of SES pay. These awards should count toward retirement, and our legislative proposal suggests a way to do this. Another remedy we propose would require that an agency inform an executive of his or her final rating and the reasons for it within a reasonable period of time, namely, 60 days. Our 2006 survey reported that seventeen percent of respondents reported not having their rating discussed with them at all the prior year, while 37 percent received only a minimal discussion. Others reported that their ratings had been changed by higher level supervisor without explanation.

Attached to this testimony is a draft bill and narrative explanation that includes the above points and other recommendations that we think would greatly improve the SES pay system and increasing its acceptance by Senior Executives as a fair and viable system. We also believe that these suggested reforms will make the SES more attractive to quality GS-14's and 15's.

A full examination of the SES pay system is necessary to attract and retain the finest candidates for executive positions necessary for the day to day operation of our government, namely, those who provide continuity and institutional memory and are especially critical during the transition from one administration to another. Compensation should be reformed to attract, retain and appropriately award the best leaders who take on this task.

Members of the Subcommittee, I thank you for your time and look forward to working with you on the solutions necessary to ensure the Senior Executive pay and performance management system operates fairly and effectively.



Legislative Narrative

The Senior Executive Service Pay and Performance Management Improvement Act

The following is an explanation of the SEA’s legislative proposal, the Senior Executive Service Pay and Performance Management Improvement Act.

Section 1, Findings & Table of Contents – This section provides the congressional findings on which the legislation is based and the table of contents for the legislation.

Section 2, Mandatory Minimum Market Adjustment for Senior Executives Rated at the Fully Successful or Higher Level – This section provides that all Senior Executives who receive a rating of ‘fully successful’ or higher are to receive a mandatory market-based adjustment to their salary. This adjustment will be a formula-based percentage of their salary equal to the increase in the Executive Schedule plus any increase in locality pay in the region the Senior Executive is stationed. It will also ensure that this adjustment is applied when providing lump-sum payment for accumulated and accrued leave on separation.

Section 3, Inclusion of Executive Performance Awards in High-3 Average Salary Calculations This section requires that performance awards and retention allowances given to career Senior Executives be included in High-3 average salary calculations for retirement. Performance awards and retention allowances have been shown to be provided to high performers consistently, accounting for a significant amount of the high-performing Senior Executive’s salary over the course of his or her career. By excluding these awards and allowances from credit for retirement annuities, we deprive good Senior Executives of a retirement package that reflects their true earned compensation salaries.

Section 4, Calendar Year Amendment and Certification Extension – This section would change the way agencies’ performance systems for Senior Executives are now certified by OPM. Agency certification currently lasts one or two calendar years in duration and can be rescinded at any time. Agencies find this process of continuous re-applying wasteful and time consuming. It is also inelegant as the calendar year aspect generally lends itself to a gap between acceptance and implementation of certification. This section would make all certifications last for 60 months (5 years) from the date of approval,

while maintaining the ability for OPM to rescind certification. This section also requires OPM to provide the agency “clear and consistent advice” on how to comply with requirements of certification for six months before recertification or decertifying an agency.

Section 5, Transparency of Ratings for SES Officials – This section ensures that SES receive notification and feedback regarding their individual rating level and specific reasons for the rating level in a reasonable period of time (within 90 days). It also ensures that overall data is supplied on how an agency’s SES are rated, and the range of salary adjustments they receive for each rating level and the amount and percentages of performance awards. Finally, this section requires that all documents related to the SES pay and performance rating system and compensation determination be made public via agency websites.

Section 6, Transparency of SES Rankings and Pay – This section provides for a biennial survey administered by the Merit Systems Protection Board, with consultation from the organization representing the largest number of Senior Executives. The survey should track the experience and views of career Senior Executives on the Senior Executive pay and performance system. The survey must ask opinions regarding performance awards transparency, perceived use of quotas or forced distribution and other irregularities, as well as other questions perceived as necessary by the Merit Systems Protection Board.

Section 7, Assured Increase for New Senior Executives – This section assures a minimum salary increase over his or her current General Schedule salary of at least 5 percent for any person who joins the career SES.

Section 8, Prohibiting Quotas and Forced Distribution – This section explicitly writes in statute the illegality of utilizing quotas or forced distribution in rating Senior Executives.

Section 9, Assured Funding of SES Pay – This ensures that Senior Executives’ pay is funded in such a manner to ensure reasonable salary adjustments occurs.

Section 10, Reasons for rating reductions - This section requires agencies to provide a Senior Executive with reason why a rating is lowered from the rating originally recommended by a higher level supervisor. Thus, the Senior Executive will have the opportunity to understand his or her rating and in turn, gain new insight and clarity into his or her job functions and responsibilities as well as the supervisor's expectations. This encourages increased professional self-understanding within the senior executive as well as providing insight into the kind of development activities that are of value by clarifying organizational goals so they can be more readily accepted and executed. This also serves as a check against lowering ratings simply to force a defacto quota.

Section 11, Requirements related to Pay Tiers of Senior Executives - . This section is only applicable if an agency decides to implement a tier or rank system for Senior

Executive positions. It provides a justification and an explanation of the boundaries of each tier. Consequently, this section makes certain that Senior Executives understand the criteria used to place SES positions in tiers, what their respective agencies mandate for upward mobility and clearly delineates the path which a senior executive needs to follow in order to advance in the defined tiers.

A proposal of the Senior Executives Association

Updated: February 7, 2008

A BILL

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

SECTION 1. TITLE; TABLE OF CONTENTS AND FINDINGS

(a) TITLE – This Act shall be known as the "Senior Executive Service Pay and Performance Management Improvement Act."

(b) HAVING FOUND-

- (1) That 90 percent of career SES are eligible for retirement in the next decade, leading to the threat of a leadership vacuum at the top of the civil service if steps are not taken to reform the current SES system, make it more appealing to highly successful General Schedule employees and applicants from outside the Federal Service.
- (2) The Senior Executive Service performance management and pay system has been applied inconsistently and without full adherence to rules concerning quotas, transparency and performance feedback.
- (3) That the lack of assured pay adjustments including increases related to differences in local job markets, and the prevailing practice of consistently awarding annual salary increases to many members of the career SES that are lower than increases received by other federal employees, demoralize the current ranks and deter capable General Schedule employees from seeking to join the Senior Executive Service.
- (4) That performance awards and retention allowances provided to the SES constitute a significant portion of their compensation and should be included in retirement calculations.
- (5) That members of the public, Executive Branch officials and Congress have insufficient information on certification standards and methodology surrounding the SES pay for performance system.

(c) TABLE OF CONTENTS. – The table of contents for this Act is as follows:

- Sec. 1. Title; Findings; Table of Contents.
- Sec. 2. Mandatory Market Adjustment for career SES rated Fully Successful or Higher.
- Sec. 3. Inclusion of Executive Performance Awards and Retention Allowances in High-3 Average Salary Calculations.
- Sec. 4. SES Calendar Year Amendment and Certification Extension.
- Sec. 5. Transparency of Ratings and Methodology for the SES System.
- Sec. 6. Transparency of SES Rankings and Pay.
- Sec. 7. Assured Increase for New Senior Executives.
- Sec. 8. Prohibiting Quotas and Forced Distribution.
- Sec. 9. Assured Funding of SES Pay.
- Sec. 10. Reasons for Rating Reductions.
- Sec. 11. Requirements related to Pay Tiers of Senior Executives.
- Sec. 12. Effective Dates.

SECTION 2. MANDATORY MARKET ADJUSTMENT FOR SENIOR EXECUTIVES AND OTHER SENIOR EMPLOYEES AT THE FULLY SUCCESSFUL LEVEL OR HIGHER.

(a) In Chapter 53 of Title 5

(1) With consideration of amendments made by section 12 of this Act, amend section 5376 by adding after subsection (b),

"(c) Every employee in a position whose last performance appraisal rating is the equivalent of 'fully successful' or higher will receive an annual increase in base pay that is no less than the rate of increase, if any, for the Executive Schedule and the increase in the locality-based comparability payments for the area in which the employee's official duty station is located, if any, as authorized by the President under section 5304 of this title. This increase will be awarded the first pay period of January each year and is in addition to any increase awarded under subsection (b) of this section. This subsection will conform to salary requirements established under section 5376(b) (1) of this title."

(2) adding after Section 5383(d),

"(e) Notwithstanding the requirements of subsection (c) of this section, every career appointee whose last performance appraisal rating is the equivalent of 'fully successful' or higher will receive an annual increase in base pay that is no less than the rate of increase, if any, for the Executive Schedule and the increase in the locality-based comparability payments for the area in which the employee's official duty station is located, if any, as authorized by the President under section 5304 of this title. This increase will be awarded the first pay period of

January each year and is in addition to any increase awarded under subsection (a) of this section. This subsection will conform to all salary requirements established under section 5382 of this title."

and redesignate subsection (e) and as (f).

(b) In Chapter 55 of Title 5, amend Section 5551 by adding,

"(d) Any lump-sum payment made under this section must take into account any pay adjustment under to section 5376 or 5383 of this title."

SECTION 3. INCLUSION OF EXECUTIVE PERFORMANCE AWARDS IN HIGH-3 AVERAGE SALARY

(a) Amend Title V, Section 8331 by inserting after Sec. 8331(3) (H) the following:

(I) with respect to a member of the Senior Executive Service, performance awards under section 5384 of this title;

(J) with respect to a senior career employee (classified above GS-15 pursuant to section 5108 of this title), agency awards under section 4503, and performance-based cashed awards under section 4505a;

(K) with respect to a career appointee as defined in section 3132 (a) of this title and a senior career employee (classified above GS-15 pursuant to section 5108 of this title) agency allowances under section 5754 of this title.

SECTION 4. CALENDAR YEAR AMENDMENT AND CERTIFICATION EXTENTION

(a) In Title 5, section 5307, subsection (d) (3) (B), strike all through "either or both of," and insert:

"An agency's certification under this subsection shall be for a period of 60 months beginning on the date of certification, unless extended by the Office of Personnel Management for up to 6 additional months, except that such certification may be terminated at any time;"

(b) In Title 5, section 5307; amend subsection (d) (3) by adding,

"(D) The termination of certification or the failure to recertify an agency shall be preceded by,

(i) clear and consistent advice from the Office of Personnel Management to an agency about what the agency must do to continue its certification or to renew existing certification; and,

(ii) a period of at least six months following the clear and consistent advice referred to in paragraph (i) from the Office of Personnel Management."

SECTION 5. TRANSPARENCY OF RATINGS FOR SES OFFICIALS

"(a) Add after Title 5, Section 4314(c) (3),

(4) Each agency shall provide members of the Senior Executive Service with notification of their individual rating level and comments of record supporting the rating level determination within 60 days of the final determination of the rating."

and redesignating subsections (4) and (5) as (5) and (6), respectively; and

(b) amend 4314(c), as redesignated, by adding,

"(7) Each agency shall annually publish the overall number of ratings awarded to members of the Senior Executive Service at each performance rating level, and shall include the average overall salary adjustment at each level, the minimum and maximum adjustment at each level, the percentage of senior executives at each rating level who received the minimum and maximum salary adjustment and the number of senior executives who received performance awards under § 5384, as well as the average amount of those awards. Rating levels and salary adjustment information shall be provided separately for career and non-career Senior Executives. The agency shall also publish its Senior Executive Service Performance Management Plan and any other internal plan which describes a system for determining Senior Executive Service salary and bonus amounts. The information required by this subsection shall be published on an agency's internet website within 90 days of the final decision by the head of the agency concerning SES rating levels and pay adjustments for an annual rating cycle, except that the performance management and other internal plans shall be published as soon as those plans are effective."

SECTION 6. TRANSPARENCY OF SES RANKINGS AND PAY

In Title 5, Chapter 43, Subchapter II, insert after section 4314, § 4315. Transparency of Senior Executive Service Rankings and Pay.

"In consultation with the organization representing the largest number of senior executives (as defined by section 3132 of this title), the Merit Systems Protection Board shall biennially conduct and publish the results of a survey of career senior executives regarding

(a) the level of transparency and availability of agency performance management plans and compensation policies to career SES;

(b) the use or perceived use of quotas or forced distribution in the application of the agency's performance appraisal system;

(c) any actual or perceived irregularities with the administration of the SES performance management system; and,

(d) such other factors as the Merit Systems Protection Board shall determine are necessary and appropriate."

and redesignate section 4315 as section 4316.

SECTION 7. ASSURED INCREASE FOR NEW SENIOR EXECUTIVES

In Title 5, Chapter 53, Subchapter VIII, amend 5383 subpart (e) (2) (A), by striking after "may not be less than," and inserting

"five percent greater than the combined rate of basic pay and other payment provided to that individual under section 5304 last payable to that individual immediately before being so appointed."

SECTION 8. PROHIBITING QUOTAS AND FORCED DISTRIBUTION

In Title 5, Chapter 53, Subchapter VIII, amend 5383 subpart (a), by adding

"Any such determination will be made without the use of quotas or forced distribution of ratings."

SECTION 9. ASSURED FUNDING OF SENIOR EXECUTIVE SERVICE PAY

In Title 5, Chapter 53, Subchapter VIII, amend 5383 subpart (c), by adding

"In making such adjustments, the average percentage adjustment received by members of the Senior Executive Service may not be less than the average salary adjustment in the General Schedule under section 5303."

SECTION 10. REASONS FOR RATING REDUCTIONS

In Title 5, Chapter 43, Subchapter II, amend section 4313 (c), by adding (4) –

In the event that the initial rating by HR supervisory official of a senior executive is lowered, the senior executive shall be provided with a written explanation of why the rating was lowered.

SECTION 11. REQUIREMENTS RELATED TO PAY TIERS OF SENIOR EXECUTIVES

In Title 5, Chapter 53, Subchapter VIII amend section 5382 by adding –

(d) An Agency has the discretion to place its senior executive in different tiers or levels based upon level of responsibility and such other factors as the Agency deems appropriate. If an agency adopts a tier or level classification for its senior executives, it must also provide information explaining why a position is in a specified tier or level and what an executive must do to attain a higher tier or level. No Senior Executive Service tier or level may have a pay ceiling of less than Level III of the Executive Schedule. Notwithstanding the foregoing, no senior executive may be denied the increase required by subsection (e) of section 5383 of this section, merely because of that senior executive's placement in a designated tier or level.

SECTION 12. EFFECTIVE DATES

(a) Sections 4 shall take effect on the date of enactment of this Act.

(b) Sections 2 and 3 and 5 through 11, shall take effect 180 days or the following pay period after the date of enactment of this Act, whichever is greater.