



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

June 8, 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 entitled the "Senior Professional Performance Act of 2007." We request that it be referred to the appropriate committee for prompt and favorable consideration.

The draft bill would amend current law to provide to senior professionals in the Federal Government the same opportunity for higher pay that is available to members of the Senior Executive Service (SES) and would impose the same qualifications and pay-for-performance requirements for access to that higher level of compensation.

In 2003, the pay system for senior executives was altered in several significant ways. First, the fixed steps in the pay range were eliminated and an open range was created. Then, the extension of locality-based comparability payments to senior executives was ended and the range was broadened to offer the possibility of greater basic pay increases in the absence of the virtually automatic geographic component. The ceiling on the range was extended from level III of the Executive Schedule to level II. In exchange for the possibility of a larger basic pay adjustment each year, a new linkage to performance was incorporated. In order to have access for its senior executives to the portion of the pay range above level III, an agency now must be certified as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance. Thus, the annual pay adjustments that previously were extended to all employees in particular steps in the pay range and in particular locations were converted into a single performance-based adjustment.

The draft bill would extend similar treatment to senior-level and senior technical and professional employees generally, as well as to highly qualified experts under the National Security Personnel System. In so doing, the bill would apply to additional groups of employees the fundamental principle of linking pay increases to performance.

The Honorable Richard B. Cheney

2

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

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

Sincerely,



Linda M. Springer
Director

Enclosures



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

June 8, 2007

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

Dear Madame Speaker:

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The draft bill would amend current law to provide to senior professionals in the Federal Government the same opportunity for higher pay that is available to members of the Senior Executive Service (SES) and would impose the same qualifications and pay-for-performance requirements for access to that higher level of compensation.

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The draft bill would extend similar treatment to senior-level and senior technical and professional employees generally, as well as to highly qualified experts under the National Security Personnel System. In so doing, the bill would apply to additional groups of employees the fundamental principle of linking pay increases to performance.

The Honorable Nancy Pelosi

2

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Sincerely,



Linda M. Springer
Director

Enclosures

A BILL

To amend title 5, United States Code, to link access to higher levels of pay to senior professional employees to their performance, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Senior Professional Performance Act of 2007.”

SEC. 2. PAY FOR PERFORMANCE FOR SENIOR LEVEL AND SCIENTIFIC AND PROFESSIONAL PERSONNEL.

(a) Chapter 53 of title 5, United States Code, is amended—

(1) in section 5304—

(A) in subsection (g) by amending paragraph (2) to read as follows:

“(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

“(A) positions under subparagraphs (A) and (B) of subsection (h)(1);

and

“(B) any positions under subsection (h)(1)(C) as the President may determine.”; and

(B) in subsection (h)—

(i) in paragraph (1)—

(I) by striking subparagraph (A);

(II) by redesignating subparagraphs (B), (C), and (D)

as subparagraphs (A), (B), and (C), respectively;

(III) in clause (v) by striking “or” at the end;

(IV) in clause (vi) by striking the period at the end and inserting “; or”; and

(V) by adding at the end the following new clause:

“(vii) a position to which section 5376 applies (relating to certain senior-level and scientific and professional positions).”; and

(ii) in paragraph (2)(B)—

(I) in clause (i)—

(aa) by striking “subparagraphs (A) through (C)” and inserting “subparagraphs (A) and (B)”; and

(bb) by striking “or (vi)” and inserting “(vi), or (vii)”; and

(II) in clause (ii)—

(aa) by striking “paragraph (1)(D)” and inserting “paragraph (1)(C)”; and

(bb) by striking “or (vi)” and inserting “(vi), or (vii)”; and

(2) in section 5376(b)—

(A) in paragraph (1) by amending subparagraph (B) to read as follows:

“(B) subject to paragraph (3), not greater than the rate of basic pay payable for level III of the Executive Schedule.”; and

(B) by adding at the end the following new paragraphs:

“(3) In the case of an agency which, under section 5307(d), has a performance appraisal system certified as making meaningful distinctions (as designed and applied) based on relative performance, paragraph (1)(B) shall apply as if the reference to ‘level III’ were a reference to ‘level II’.

“(4) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under paragraph (3) to an agency with an applicable maximum rate of pay prescribed under paragraph (1)(B).”.

(b) Section 9903(b)(2) of title 5, United States Code, is amended by striking “maximum rate of basic pay authorized for senior-level positions under section 5376, as increased by locality-based comparability payments under section 5304” and inserting “rate for level III of the Executive Schedule (or, if the Secretary certifies that the employees are covered by a performance appraisal system meeting requirements established by the Director of the Office of Personnel Management, level II of the Executive Schedule)”.

(c) Section 404 of the Federal Employees Pay Comparability Act of 1990, as contained in the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101-509; 104 Stat. 1427), is repealed.

SEC. 3. STANDARDS AND PROCEDURES FOR APPOINTMENTS TO CERTAIN POSITIONS.

Title 5, United States Code, is amended—

(1) in section 3104(a), in the second sentence, by striking “Office prescribes” and inserting “Director prescribes and publishes in such form as the Director may determine”;

(2) in subchapter I of chapter 33—

(A) in section 3324—

(1) in subsection (a) by striking “the Office of Personnel Management” and inserting the following: “the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director”; and

(2) by amending subsection (b) to read as follows:

“(b) The Director may prescribe such regulations as may be necessary to carry out the purpose of this section.”; and

(B) in section 3325—

(i) in subsection (a), in the second sentence, by striking “Office of Personnel Management or its designee for this purpose” and inserting the following: “Director of the Office of Personnel Management on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director”; and

(ii) by adding at the end the following new subsection:

“(c) The Director may prescribe such regulations as may be necessary to carry out the purpose of this section.”; and

(3) in section 5108—

(A) in subsection (a)—

(i) by striking “The Office” and inserting “The Director of the Office”; and

(ii) by amending paragraph (2) to read as follows:

“(2) establish standards and procedures published by the Director in such form as the Director may determine (including requiring agencies, when necessary in the judgment of the Director, to obtain the prior approval of the Director) in accordance with which positions may be classified above GS-15.”; and

(B) in subsection (b) by striking “Office” and inserting “Director”.

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill

“To link access to higher levels of pay for senior professional employees to their performance, and for other purposes.”

SECTION 1. SHORT TITLE.

The first section of the draft bill titles the bill as the “Senior Professional Performance Act of 2007.”

SECTION 2. PAY FOR PERFORMANCE FOR SENIOR LEVEL AND SCIENTIFIC AND PROFESSIONAL PERSONNEL.

Section 2 of the draft bill would amend title 5, United States Code, and a provision of the Federal Employees Pay Comparability Act of 1990, to provide access to level II of the Executive Schedule as a ceiling on pay for those senior level and scientific and professional personnel whose performance is evaluated under a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance. This would put such personnel on a comparable footing with members of the Senior Executive Service (SES) whose pay system was changed in 2003 to offer that possibility.

Subsection (a) would amend chapter 53 of title 5.

Paragraph (1)(A) of that section would amend section 5304 of title 5, relating to locality-based comparability payments. Paragraph (1)(A) would make necessary changes to 5 U.S.C. 5304(g)(2) and (h) to conform these provisions to amendments made elsewhere in the bill affecting senior-level (“SL”) employees and employees in scientific and professional positions (“ST”). The amendments made by paragraph (1)(A) would, in effect, remove these SL/ST employees from provisions entitling them to locality-based comparability payments under section 5304. The provisions of current law that entitle these employees to locality-based comparability payments also have the effect of limiting their basic pay, including those locality-based payments, to the rate for level III of the Executive Schedule. Under this amendment, they, like members of the SES, will potentially have access to a higher limit on basic pay (level II of the Executive Schedule) See also the amendment to section 5376 that would be made by paragraph (2).

Paragraph (2) of that section would amend section 5376 of title 5, under which pay is fixed for SL and ST employees. Since the amendments to section 5304 made in paragraph would remove these employees from the reach of the locality pay provisions, the available pay range for these employees would be extended, as it was for senior executives, by increasing the ceiling on the rate of basic pay for such employees from level IV to level III of the Executive Schedule. Notwithstanding this new limit, the amendment would also provide that, for senior-level and scientific and professional positions who are covered by a

performance appraisal system that has been certified under section 5307 of title 5 as making meaningful distinctions based on relative performance, the cap on basic pay would be level II of the Executive Schedule. Again, these provisions would parallel those enacted by Public Law 108-136 with respect to members of the SES.

Subsection (b) would amend section 9903(b)(2) of title 5, relating to highly qualified experts employed under the National Security Personnel System, by striking the language fixing the ceiling on pay for such employees at the maximum rate of basic pay for senior-level positions under section 5376 of that title as increased by locality-based comparability payments, and inserting language providing a new ceiling of level III of the Executive Schedule or, if the Secretary of Defense certifies that such employees are covered by a performance appraisal system meeting the requirements established by the Director of the Office of Personnel Management, level II of the Executive Schedule. This would provide consistency with the treatment of individuals at a similar level who are covered by other pay systems.

Subsection (c) would repeal section 404 of the Federal Employees Pay Comparability Act of 1990. That section was designed to provide geographically-based pay adjustments for law enforcement officers. Since locality pay has surpassed those geographic adjustments in all locations, repealing that section is appropriate since the new rates for senior-level and senior technical employees incorporate locality pay.

SECTION 3. STANDARDS AND PROCEDURES FOR APPOINTMENTS TO CERTAIN POSITIONS.

Section 3 of the draft bill would address the standards and procedures relating to the appointment and employment of senior professional personnel.

Paragraph (1) of that section would amend section 3104 of title 5, United States Code, to broaden the current authority of the Director of the Office of Personnel Management relating to the establishment and revision of the maximum number of positions for carrying out research and development functions by specially qualified scientific and professional “(ST)” personnel by authorizing the Director to publish such standards and procedures in such form as the Director may determine.

Paragraph (2)(A) would amend section 3324(a) of title 5 by making an appointment to a position classified above the GS-15 level of the General Schedule contingent on the approval of the qualifications of the proposed appointee by the Director of the Office of Personnel Management and by having that approval based upon qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director. Under the Director’s authority established in 5 U.S.C. 1104, the Director could and should delegate this determination to agency heads, where appropriate. Also, subsection (b) would be amended to make the Director’s authority to regulate consistent with other sections.

Paragraph (2)(B) would amend section 3325(a) of title 5 to make an appointment to a scientific or professional position established under section 3104 of that title, if made without competitive examination, contingent on the approval of the qualifications of the proposed appointee by the Director of the Office of Personnel Management, again on the basis of standards developed by the agency in question in accordance with criteria specified in regulations prescribed by the Director. It would also add a new subsection (c) requiring the Director to prescribe regulations to carry out the purpose of section 3325.

Paragraph (3) would amend section 5108 of title 5, to appropriately designate the Director of the Office of Personnel Management, rather than the Office, as responsible for establishing the maximum number of positions which may be classified above GS-15, and for establishing, in such form as the Director may determine, the standards and procedures in accordance with which such positions may be so classified.