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TESTIMONY

of

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President

SENIOR EXECUTIVES ASSOCIATION

Before the

SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

“IMPROVING PERFORMANCE: A REVIEW OF PAY-FOR-PERFORMANCE
SYSTEMS IN THE FEDERAL GOVERNMENT.”

July 22, 2008

Chairman Akaka and Distinguished Members of the Subcommittee:

The Senior Executives Association (SEA) is pleased to testify before this Subcommittee concerning the state of the Senior Executive Service pay and performance management system, the only pay for performance system with government-wide applicability. SEA is a professional association that for the past 28 years has represented the interests of career federal executives in government, including those in Senior Executive Service (SES) and equivalent positions, such as Senior Level (SL) and Scientific and Professional (ST) positions.

The current SES pay and performance management system has been in place for three full years of performance ratings and pay adjustments, with the fourth to be completed this fall. There has now been sufficient time and experience to examine how well the system works. Congress now has the opportunity to review the SES system, identify problems and implement solutions. We believe the system needs to be fine tuned and modified to ensure that quality applicants will aspire to the SES and that those who are in the SES will want to stay. The large number of Senior Executives eligible to retire makes a review of the SES system even more imperative. Such a review will also yield valuable lessons learned which should inform your consideration of other pay for performance systems which are proliferating in the Federal government.

The Next Generation of Senior Executives

SEA and its members are strong stakeholders in the long-term viability of the SES. Our goal is to ensure that the SES is a premier corps composed of highly qualified individuals able to provide the career leadership necessary to the effective operation of our government. Given concerns that were reported to SEA when the current pay system was first implemented, many of which remain today, there is a perception among an increasing number of federal managers that the SES is not a particularly desirable career goal.

This is not just an issue of pay. Senior Executives are not motivated primarily by pay, but willingly take on their responsibilities to fulfill a call to public service. Nonetheless, Senior Executives take on more duties and work longer hours, yet they receive no compensatory time, no locality pay, and no guaranteed annual comparability pay raises, all of which are a part of the compensation system for General Schedule (GS) employees. They also have far fewer job rights than GS employees. Thus, many qualified potential SES candidates do not perceive the benefits of joining the SES, in spite of the fact that it represents the pinnacle of the Federal career service and an opportunity to make a significant contribution to their agencies' missions. Those who do join the ranks find that the pay and performance management system does not work as intended. What is clear after three cycles is that a system that was meant to relieve pay compression, to be transparent and flexible, and to reward performance, has instead become a disincentive for many of the best employees who might otherwise desire to serve in the highest ranks of the career civil service.

In May 2008, OPM released the results of its SES pay survey, a survey that had been completed by 65% of the Senior Executive corps. The OPM survey was preceded by an SEA survey in 2006 that also covered concerns and opinions about the SES pay system, albeit in far greater detail. In a number of ways the two surveys complement each other and show that Senior

Executives feel good about their jobs, but the results are more mixed when addressing the pay system.

When SEA surveyed Senior Executives in 2006, one of the most telling findings was that 47% of those that responded believed that GS-14 and GS-15 employees were losing interest in aspiring to SES positions. The 2008 OPM survey reported that only 50% of Senior Executives believed that the current SES pay and performance management system was helpful in recruiting qualified applicants for SES positions. This OPM finding reinforces the earlier SEA finding about GS-14 and 15's losing interest in aspiring to SES positions. This is a disturbing trend that is regularly reported to SEA and confirmed now by two survey results.

The Impact of SES Pay Rates

In our opinion, there are several reasons for this unfortunate situation. First, SES annual pay increases have not kept up with GS increases over the past several years. Second, in addition to the lack of locality-based pay adjustments, SES annual pay increases are entirely discretionary, creating the accurate perception that a new Senior Executive cannot rely on the receipt of annual comparability increases upon entry to the SES. Third, GS and alternate pay systems have become more generous with the result that today many GS-15 or equivalent employees make more than the Senior Executives they work for, particularly if the Senior Executive is new.

For example, 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. 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.

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 Senior 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.

A comparison of General Schedule pay versus Executive Level pay is instructive. General Schedule pay is increasingly overlapping SES pay and, in fact, pay levels for political appointees. For example, in the Washington, D.C. locality area, pay for GS-15, step 10 now equals Executive Schedule IV (\$149,000), which is the pay rate for Assistant Secretaries, as well as the presidentially-appointed members of such agencies as the National Labor Relations Board

and other commissions; this alone is a disincentive for potential political appointees, much less Senior Executives.

Further, the SES pay ceiling has not kept pace with General Schedule pay adjustments, that is, adjustments for the pay of employees these executives supervise. If the Executive Schedule had kept pace with the national comparability increases provided the General Schedule since 1994, EL II (the cap for SES pay in certified agencies) would be \$ 226,859, not \$172,200.

Finally, following the abolition of the six pay ranks in the earlier system and in an apparent desire to create a surrogate for those ranks, some departments (including notably, Defense and Veterans Affairs) have created and placed Senior Executives into pay tiers. These tiers, at worst, threaten to create pay compression anew as executives reach the caps for their tiers, and, at best, require clarity and transparency with regard to the criteria for placement within a tier and for “promotion” to the next tier.

Quotas

Another problem highlighted by SEA’s 2006 survey was the perception that quotas played a role in lowering SES performance ratings. While the OPM survey unfortunately did not include any questions regarding quotas, it appears that the problem of quotas may still exist.

SEA continues to receive anecdotal evidence of quotas from its members. For example, in 2007, a Senior Executive at HHS was recommended for the highest rating by her supervisor, but a higher level of review downgraded her without either her knowledge or that of her supervisor. This is not unusual, and, because frequently no explanation is given, the impression is left that there is a de facto quota system followed by higher-level reviewers. The supervisor of a Senior Executive at the Department of Energy informed the executive that he was told by his supervisor to lower the executive’s evaluation from “outstanding” to “meets expectations” because of an implied quota. In this connection, and in all likelihood a causative factor, Energy Deputy Secretary Sell had circulated a memorandum on September 28, 2006 stating that demonstrations of “exemplary leadership and management skills, personal integrity, and a commitment to the highest ideals of public service” are deserving of only a “meets expectation” rating; an “exceeds expectations” rating was reserved for the top performers of the Department. When this is coupled with an unexplained down-grade in a higher level rating, the appearance of a quota is inevitable.

Inconsistent Implementation of the Pay System

SEA has also been concerned with the consistency by which the SES pay system is being implemented. The OPM survey also found significant inconsistency in implementation among federal agencies. For example, OPM reported that the executives’ responses by agency differed by more than 30 points on the questions of whether executives were provided a summary of overall results and whether they received training or a briefing on the performance management system. Communication of this information varied greatly from agency to agency, ranging from 88.5 percent of Nuclear Regulatory Commission executives and 87.3 percent of Air Force executives saying they had received the summaries, to 79.6 percent of Homeland Security executives and 80 percent of Small Business Administration executives saying they had not. Inadequate communication is of particular concern because of the recent emphasis by OPM, as

part of the recertification process, on the need for agencies to communicate such information to Senior Executives.

For the most part, however, inconsistency arises from the inherent total discretion that agencies have in managing their SES pay systems. Since SEA testified in 2006 in the Senate on this issue, we have had reports of the following actions by agencies in exercising discretion in the administration of the SES system. Each of these adds to the perception of arbitrariness that also fuels the views of GS-14 and 15's concerning their interest in aspiring to the SES.

On October 16, 2006, the Office of the Secretary of Defense lowered the pool for SES raises and performance awards from 15% to 10% of payroll, ostensibly because the prior year "a significant portion of the performance budget was not spent." It is likely, however, that the unspent portion of the budget occurred because the Defense Department failed to receive OPM certification of its executive pay and performance management system in time for that round of awards.

On the other side of that coin, some of the inconsistency can be caused by budgetary constraints, particularly since all pay adjustments and performance awards are discretionary. On November 14, 2007 the Department of Energy announced that it would defer "performance based awards and discretionary pay adjustments" because of the "terms of the Continuing Resolution...and the uncertain funding situation for Fiscal Year 2007. (Secretary Bodman discontinued that policy in February of this year.)

USAID's Administrator failed to finalize the agency's 2006 performance appraisal determinations during calendar year 2006, and, as a consequence, OPM would not permit AID to make pay adjustments above the old cap in January 2007, based on the 2006 appraisal determinations. Similarly, NLRB's Senior Executives expressed the realization in 2008 that "this year, of course, we expect no bonus program," because of budget considerations.

In January 2008, Treasury in its discretion declined to raise any of its SES to the higher Executive Schedule levels authorized for 2008 because it said their ratings were based on their 2007 performance. This is at odds with the government's treatment of GS employees who are automatically raised to the following year's cap, based on their grade and step, and also appears at odds with how other agencies deal with SES pay adjustments.

Relationship between Performance and Pay

Many Senior Executives also express concerns about a distinct disconnect between ratings, pay adjustments and performance awards. The SEA survey found that many executives believe the connection between their performance ratings and pay adjustments were based on administrative decisions and budgetary constraints, not actual performance. Further, there was no connection between increased responsibilities and pay; of the 233 executives reporting increased responsibilities since the implementation of the new pay system, 191 (82%) received no salary increase. We have been informally advised by OPM that F.Y. 2007 data for SES pay adjustments and performance awards, while not yet released, will show great variations among agencies in compensation and ratings results.

Over the past few years, SEA has heard the following from its members:

A Senior Executive in the Department of the Treasury received an “Exceeds Expectations” rating at the end of 2006, but no pay adjustment increase based on that rating. Similarly, an executive at the Department of Commerce was rated “Commendable” (above “Fully Successful”) in 2006, but received no pay adjustment. When he tried to obtain an explanation, none was forthcoming.

One SES at Energy has received no pay increase for several years, despite receiving “Fully Successful” ratings. Largely because of this, he has voluntarily resigned his position in the SES to enter Energy’s “EJ” Excepted service. As a result, he has received the 4.49% pay increase given to GS employees, which includes the locality adjustment which SES members no longer receive.

Perhaps one of the most arbitrary actions we have heard concerns a Department of Justice Senior Executive who was told by an agency official that he was going to receive a raise and a performance award based on his high performance rating. However, the same official later called the executive back to say that neither the raise nor the award was approved because the executive planned to retire. When we reported this to an official at OPM, he said this was bad practice, but he thought OPM would not take action because the agency has delegated administration of the SES performance system to agencies – except that it was required that “agencies follow their own procedures.” This is another example of a problem caused by the completely discretionary nature of all SES members’ compensation, and either the inability or unwillingness of OPM to interfere in individual cases.

OPM Certification

Another issue that compounds pay and performance management concerns is the OPM certification process. Due to the burden of the process, many small agencies do not even apply for certification and therefore cannot pay higher salaries. Further, should an agency neglect to apply for certification on time, SES salary increases and performance awards will be held back until the process is complete. Many Senior Executives are unfairly punished due to the lack of standardization across agencies or a streamlined process, while GS employees face no such barriers.

* * * * *

Given the concerns addressed above, it is no wonder that there is a lack of confidence in the Senior Executive Service pay and performance management system. Frequently, the rewards far outweigh the risks for federal employees who might otherwise aspire to join the SES. Currently, the risk to reward ratio is tipping in the wrong direction. Almost lost among the issues surrounding the system is the ostensible reason for having adopted it in the first place. Only 43% of the executives responding to the OPM survey believed pay for performance promoted better organizational performance in their agencies. There was significant variation among agencies on that issue, from a low of 11% among OMB executives responding to a high of 68% for OPM.

Congress must examine this system if we are to ensure that the SES remains the highly qualified and effective career leadership corps it was meant to be.

Proposals for Reform

To that end, SEA has several legislative remedies to propose. These are common sense solutions that directly address the concerns of Senior Executives and potential SES members.

When the Senior Executive Service was created by the Civil Service Reform Act of 1978, the corps was designed to provide a careful balance of increased risk and increased rewards to the GS 16's, 17's and 18's who were to be asked to convert to the Service. Over time, that balance has been eroded. The centerpiece of our proposal consists of two provisions that would restore the balance of risk and reward so that the SES will be attractive to potential Senior Executives.

First, we recommend that all Senior Executives at the "Fully Successful" or better performance level receive at least some annual increase. In an October 31, 2006 memorandum regarding Certification of Performance Appraisal Systems for Senior Employees for Calendar Year 2007, OPM Director Linda Springer expressed OPM's expectation that "senior employees who are at a pay level consistent with their current level of responsibilities and who receive an acceptable ("fully successful" or better) rating should receive a pay increase." Agency discretion (as noted above), however, interferes with this outcome. In January 2007, Senior Executives rated "Fully Successful" in F.Y. 2006 received an average 2.0% pay increase; contrast this with a GS employee in the Washington DC locality pay area, who received a 2.64% adjustment without regard to his or her performance rating. An annual guaranteed increase for executives who have performed successfully should be at least as much as the increase in the Executive Schedule plus the increase in locality pay for the geographic area in which the executive works. That would still most years be below what GS employees get.

Second, performance awards should be included in a Senior Executive's "high three" in calculating his or her retirement annuity. We believe that this second provision would make the SES an attractive career goal for the best applicants and will help assure a high quality future SES. Also, it recognizes the reality that performance awards have become an integral part of the SES compensation system.

Attached to this testimony is a draft bill with explanation that outlines SEA's full set of recommendations to improve the pay system. These recommendations also include reforming the OPM certification process, increasing transparency of ratings, rankings and pay for the SES, and prohibiting quotas. Each of these will make the SES more attractive to potential Senior Executives and improve both the morale and retention of existing SES employees.

The Senior Executive Service is a critical component in ensuring the daily operational success of the federal government. Congressional action will guarantee that it fulfills its original intent and adequately meets the needs of SES members.

We look forward to working with the Subcommittee to develop legislative reforms to assure that the future career leadership of the civil service is the best it can be.



Updated: July 17, 2008

Legislative Narrative

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 mandatory market-based adjustments to their salaries. This adjustment will be a formula-based percentage of the executive’s salary equal to the increase in the Executive Schedule plus any increase in locality pay in the geographic area in which the Senior Executive is stationed. It will also ensure that this adjustment is applied when providing lump-sum payment for accumulated and accrued annual 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 are provided consistently to high performers, 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 retirement packages that reflect their true earned compensation.

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 recertifying or decertifying an agency.

Section 5, Transparency of Ratings for SES Officials – This section ensures that a Senior Executive receive notification and feedback regarding his or her individual performance 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 Senior Executives are rated, 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 management system. The survey must ask opinions regarding 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 is promoted to the career SES.

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

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

Section 10, Reasons for Rating Reductions - This section requires agencies to provide a Senior Executive with a reason when a rating is lowered from that 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. Apart from providing a greater understanding to the executive, the requirement will also provide insight into the type of development activities that are of value by clarifying organizational goals so they can be more readily accepted and executed. Finally, the section also serves as a check against lowering ratings simply to force a de facto 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 requires provision of 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 the path which must be followed in order to advance in the defined tiers.

A proposal of the Senior Executives Association

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.