

Union Calendar No. 423

110TH CONGRESS
2D SESSION

H. R. 3774

[Report No. 110-672]

To provide for greater diversity within, and to improve policy direction and oversight of, the Senior Executive Service.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2007

Mr. DAVIS of Illinois (for himself, Mr. KUCINICH, Ms. NORTON, Mr. CUMMINGS, Mr. CLAY, Mr. LYNCH, Mr. SARBANES, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MAY 22, 2008

Additional sponsors: Mr. HINOJOSA, Mr. COHEN, Mr. HASTINGS of Florida, Mr. MORAN of Virginia, and Mr. JOHNSON of Georgia

MAY 22, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 9, 2007]

A BILL

To provide for greater diversity within, and to improve policy direction and oversight of, the Senior Executive Service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Senior Executive Service*
3 *Diversity Assurance Act”.*

4 **SEC. 2. FINDINGS.**

5 *Congress finds that—*

6 *(1) according to the Government Accountability*
7 *Office—*

8 *(A) minorities made up 22.5 percent of the*
9 *individuals serving at the GS–15 and GS–14*
10 *levels and 15.8 percent of the Senior Executive*
11 *Service in 2007;*

12 *(B) women made up 34.3 percent of the in-*
13 *dividuals serving at the GS–15 and GS–14 levels*
14 *and 29.1 percent of the Senior Executive Service*
15 *in 2007; and*

16 *(C) although the number of career Senior*
17 *Executive Service members increased from 6,110*
18 *in 2,000 to 6,555 in 2007, the representation of*
19 *African-American men in the career Senior Ex-*
20 *ecutive Service declined during that same period*
21 *from 5.5 percent to 5.0 percent; and*

22 *(2) according to the Office of Personnel Manage-*
23 *ment—*

24 *(A) black employees represented 6.1 percent*
25 *of employees at the Senior Pay levels and 17.8*
26 *percent of the permanent Federal workforce com-*

1 *pared to 10.1 percent in the civilian labor force*
2 *in 2007;*

3 *(B) Hispanic employees represented 4.0 per-*
4 *cent of employees at the Senior Pay levels and*
5 *7.8 percent of the permanent Federal workforce*
6 *compared to 13.3 percent of the civilian labor*
7 *force in 2007; and*

8 *(C) women represented 28.2 percent of em-*
9 *ployees at the Senior Pay levels and 43.9 percent*
10 *of the permanent Federal workforce compared to*
11 *45.7 percent of the civilian labor force in 2007.*

12 **SEC. 3. DEFINITIONS.**

13 *For purposes of this Act—*

14 *(1) the term “Director” means the Director of the*
15 *Office of Personnel Management;*

16 *(2) the term “Senior Executive Service” has the*
17 *meaning given such term by section 2101a of title 5,*
18 *United States Code;*

19 *(3) the terms “agency”, “career appointee”, and*
20 *“career reserved position” have the meanings given*
21 *them by section 3132 of title 5, United States Code;*
22 *and*

23 *(4) the term “SES Resource Office” means the*
24 *Senior Executive Service Resource Office, established*
25 *under section 4.*

1 **SEC. 4. SENIOR EXECUTIVE SERVICE RESOURCE OFFICE.**

2 (a) *ESTABLISHMENT.*—Not later than 180 days after
3 the date of the enactment of this Act, the Director shall es-
4 tablish within the Office of Personnel Management an office
5 to be known as the Senior Executive Service Resource Of-
6 fice. The mission of the SES Resource Office shall be—

7 (1) to improve the efficiency, effectiveness, and
8 productivity of the Senior Executive Service through
9 policy formulation and oversight;

10 (2) to advance the professionalism of the Senior
11 Executive Service; and

12 (3) to ensure that, in seeking to achieve a Senior
13 Executive Service reflective of the Nation's diversity,
14 recruitment is from qualified individuals from appro-
15 priate sources.

16 (b) *FUNCTIONS.*—It shall be the function of the SES
17 Resource Office to make recommendations to the Director
18 with respect to regulations, and to provide guidance to
19 agencies, concerning the structure, management, and di-
20 verse composition of the Senior Executive Service. In order
21 to carry out the purposes of this section, the SES Resource
22 Office shall—

23 (1) take such actions as the SES Resource Office
24 considers necessary to manage and promote an effi-
25 cient, elite, and diverse corps of senior executives by—

1 (A) creating policies for the management
2 and improvement of the Senior Executive Serv-
3 ice;

4 (B) providing oversight of the performance,
5 structure, and composition of the Senior Execu-
6 tive Service; and

7 (C) providing guidance and oversight to
8 agencies in the management of senior executives
9 and candidates for the Senior Executive Service;

10 (2) be responsible for the policy development,
11 management, and oversight of the Senior Executive
12 Service pay system;

13 (3) develop standards for certification of each
14 agency's Senior Executive Service performance man-
15 agement system and evaluate all agency applications
16 for certification;

17 (4) be responsible for developing and monitoring
18 programs for the advancement and training of senior
19 executives, including the Senior Executive Service
20 Federal Candidate Development Program;

21 (5) provide oversight of, and guidance to, agency
22 executive resources boards;

23 (6) be responsible for the administration of the
24 qualifications review board;

1 (7) *establish and maintain annual statistics (in*
2 *a form that renders them useful to appointing au-*
3 *thorities and candidates) on—*

4 (A) *the total number of career reserved posi-*
5 *tions at each agency;*

6 (B) *the total number of vacant career re-*
7 *served positions at each agency;*

8 (C) *of the positions under subparagraph*
9 *(B), the number for which candidates are being*
10 *sought;*

11 (D) *the number of individuals who have*
12 *been certified in accordance with section 3393(c)*
13 *of title 5, United States Code, and the composi-*
14 *tion of that group of individuals with regard to*
15 *race, ethnicity, sex, age, and individuals with*
16 *disabilities;*

17 (E) *the composition of the Senior Executive*
18 *Service with regard to race, ethnicity, sex, age,*
19 *and individuals with disabilities;*

20 (F) *the composition of executive resources*
21 *boards with regard to race, ethnicity, sex, and*
22 *individuals with disabilities; and*

23 (G) *the composition of qualifications review*
24 *boards with regard to race, ethnicity, sex, and*
25 *individuals with disabilities;*

1 (8) make available to the public through the offi-
2 cial public internet site of the Office of Personnel
3 Management, the data collected under paragraph (7);

4 (9) establish mentoring programs for potential
5 candidates for the Senior Executive Service, including
6 candidates who have been certified as having the exec-
7 utive qualifications necessary for initial appointment
8 as a career appointee under a program established
9 pursuant to section 3396(a) of title 5, United States
10 Code;

11 (10) conduct a continuing program for the re-
12 cruitment of women, members of racial and ethnic
13 minority groups, and individuals with disabilities for
14 Senior Executive Service positions, with special ef-
15 forts directed at recruiting from educational institu-
16 tions, professional associations, and other sources;

17 (11) advise agencies on the best practices for an
18 agency in utilizing or consulting with an agency's
19 equal employment or diversity office or official (if the
20 agency has such an office or official) with regard to
21 the agency's Senior Executive Service appointments
22 process; and

23 (12) evaluate and implement strategies to ensure
24 that agencies conduct appropriate outreach to other

1 *agencies to identify candidates for Senior Executive*
2 *Service positions.*

3 *(c) PROTECTION OF INDIVIDUALLY IDENTIFIABLE IN-*
4 *FORMATION.—For purposes of subsection (b)(8), the SES*
5 *Resource Office may combine data for any agency that is*
6 *not named in section 901(b) of chapter 31, United States*
7 *Code, to protect individually identifiable information.*

8 *(d) COOPERATION OF AGENCIES.—The head of each*
9 *agency shall provide the Office of Personnel Management*
10 *with such information as the SES Resource Office may re-*
11 *quire in order to carry out subsection (b)(7).*

12 **SEC. 5. CAREER APPOINTMENTS.**

13 *(a) PROMOTING DIVERSITY IN THE CAREER APPOINT-*
14 *MENTS PROCESS.—Section 3393 of title 5, United States*
15 *Code, is amended—*

16 *(1) in subsection (b), by inserting after the first*
17 *sentence the following: “In establishing an executive*
18 *resources board, the head of the agency shall, to the*
19 *extent practicable, ensure diversity of the board and*
20 *of any subgroup thereof or other evaluation panel re-*
21 *lated to the merit staffing process for career ap-*
22 *pointees, by including members of racial and ethnic*
23 *minority groups, women, and individuals with dis-*
24 *abilities.”; and*

1 (2) *in subsection (c)(1), by adding after the last*
2 *sentence the following: “Consideration should also be*
3 *given to improving diversity by including members of*
4 *racial and ethnic minority groups, women, and indi-*
5 *viduals with disabilities on qualifications review*
6 *boards.”.*

7 (b) *REGULATIONS.—Within 1 year after the date of the*
8 *enactment of this Act, the Director shall promulgate regula-*
9 *tions to implement subsection (a) and to improve diversity*
10 *in executive resources boards and qualifications review*
11 *boards.*

12 (c) *REPORT.—Within 1 year after the date of the en-*
13 *actment of this Act, the Director shall submit to the Com-*
14 *mittee on Oversight and Government Reform of the House*
15 *of Representatives and the Committee on Homeland Secu-*
16 *rity and Governmental Affairs of the Senate a report evalu-*
17 *ating agency efforts to improve diversity in executive re-*
18 *sources boards and of the members designated by agencies*
19 *to serve on qualifications review boards, based on the infor-*
20 *mation collected by the SES Resource Office under subpara-*
21 *graphs (F) and (G) of section 4(b)(7).*

22 **SEC. 6. ENCOURAGING A MORE DIVERSE SENIOR EXECU-**
23 **TIVE SERVICE.**

24 (a) *SENIOR EXECUTIVE SERVICE DIVERSITY PLANS.—*
25 *Within 1 year after the date of the enactment of this Act,*

1 *each agency, in consultation with the Office of Personnel*
2 *Management, shall submit to the Office of Personnel Man-*
3 *agement a plan to enhance and maximize opportunities for*
4 *the advancement and appointment of minorities, women,*
5 *and individuals with disabilities in the agency to the Sen-*
6 *ior Executive Service. Agency plans shall address how the*
7 *agency is identifying and eliminating barriers that impair*
8 *the ability of minorities, women, and individuals with dis-*
9 *abilities to obtain appointments to the Senior Executive*
10 *Service and any actions the agency is taking to provide*
11 *advancement opportunities, including—*

12 (1) *conducting outreach to minorities, women,*
13 *and individuals within the agency and outside the*
14 *agency;*

15 (2) *establishing and maintaining training and*
16 *education programs to foster leadership development;*

17 (3) *identifying career enhancing opportunities*
18 *for agency employees;*

19 (4) *assessing internal availability of candidates*
20 *for Senior Executive Service positions; and*

21 (5) *conducting an inventory of employee skills*
22 *and addressing current and potential gaps in skills*
23 *and the distribution of skills.*

24 *Agency plans shall be updated at least every 2 years during*
25 *the 10 years following enactment of this Act. An agency*

1 *plan shall be reviewed by the Office of Personnel Manage-*
2 *ment and, if determined to provide sufficient assurances,*
3 *procedures, and commitments to provide adequate opportu-*
4 *nities for the advancement and appointment of minorities,*
5 *women, and individuals with disabilities to the Senior Ex-*
6 *ecutive Service, shall be approved by such Office. An agency*
7 *may, in updating its plan, submit to the Office of Personnel*
8 *Management an assessment of the impacts of the plan.*

9 **(b) SUMMARY AND EVALUATION.**—*Within 180 days*
10 *after the deadline for the submission of any report or update*
11 *under subsection (a), the Director shall transmit to the*
12 *Committee on Oversight and Government Reform of the*
13 *House of Representatives and the Committee on Homeland*
14 *Security and Governmental Affairs of the Senate a report*
15 *summarizing and evaluating the agency plans or updates*
16 *(as the case may be) so submitted.*

17 **(c) COORDINATION.**—*The Office of Personnel Manage-*
18 *ment shall, in carrying out subsection (a), evaluate existing*
19 *requirements under section 717 of the Civil Rights Act of*
20 *1964 (42 U.S.C. 2000e-16) and section 501 of the Rehabili-*
21 *tation Act of 1973 (29 U.S.C. 791) and determine how*
22 *agency reporting can be performed so as to be consistent*
23 *with, but not duplicative of, such sections and any other*
24 *similar requirements.*

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