AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
110–672

SENIOR EXECUTIVE SERVICE DIVERSITY ASSURANCE ACT

MAY 22, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3774]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 3774) to provide for greater diversity within, and to improve policy direction and oversight of, the Senior Executive Service, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

Purpose and Summary 6
Background and Need for Legislation 6
Legislative History 8
Section-By-Section 8
Explanation of Amendments 11
Committee Consideration 11
Roll Call Votes 12
Application of Law to the Legislative Branch 12
Statement of Oversight Findings and Recommendations of the Committee 12
Statement of General Performance Goals and Objectives 12
Constitutional Authority Statement 12
Federal Advisory Committee Act 12
Unfunded Mandates Statement 12
Earmark Identification 12
Committee Estimate 13
Budget Authority and Congressional Budget Office Cost Estimate 13
Changes in Existing Law Made by the Bill, as Reported 14
Additional Views 16

69–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Executive Service Diversity Assurance Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) according to the Government Accountability Office—

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

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

(C) although the number of career Senior Executive Service members increased from 6,110 in 2,000 to 6,555 in 2007, the representation of African American men in the career Senior Executive Service declined during that same period from 5.5 percent to 5.0 percent; and

(2) according to the Office of Personnel Management—

(A) black employees represented 6.1 percent of employees at the Senior Pay levels and 17.8 percent of the permanent Federal workforce compared to 10.1 percent in the civilian labor force in 2007;

(B) Hispanic employees represented 4.0 percent of employees at the Senior Pay levels and 7.8 percent of the permanent Federal workforce compared to 13.3 percent of the civilian labor force in 2007; and

(C) women represented 28.2 percent of employees at the Senior Pay levels and 43.9 percent of the permanent Federal workforce compared to 45.7 percent of the civilian labor force in 2007.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Director" means the Director of the Office of Personnel Management;

(2) the term "Senior Executive Service" has the meaning given such term by section 2101a of title 5, United States Code;

(3) the terms "agency", "career appointee", and "career reserved position" have the meanings given them by section 3132 of title 5, United States Code; and

(4) the term "SES Resource Office" means the Senior Executive Service Resource Office, established under section 4.

SEC. 4. SENIOR EXECUTIVE SERVICE RESOURCE OFFICE.

(a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall establish within the Office of Personnel Management an office to be known as the Senior Executive Service Resource Office. The mission of the SES Resource Office shall be—

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

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

(3) to ensure that, in seeking to achieve a Senior Executive Service reflective of the Nation's diversity, recruitment is from qualified individuals from appropriate sources.

(b) FUNCTIONS.—It shall be the function of the SES Resource Office to make recommendations to the Director with respect to regulations, and to provide guidance to agencies, concerning the structure, management, and diverse composition of the Senior Executive Service. In order to carry out the purposes of this section, the SES Resource Office shall—

(1) take such actions as the SES Resource Office considers necessary to manage and promote an efficient, elite, and diverse corps of senior executives by—

(A) creating policies for the management and improvement of the Senior Executive Service;

(B) providing oversight of the performance, structure, and composition of the Senior Executive Service; and

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

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

(3) develop standards for certification of each agency's Senior Executive Service performance management system and evaluate all agency applications for certification;

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

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

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

(7) establish and maintain annual statistics (in a form that renders them useful to appointing authorities and candidates) on—

(A) the total number of career reserved positions at each agency;

(B) the total number of vacant career reserved positions at each agency;

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

(D) the number of individuals who have been certified in accordance with section 3393(c) of title 5, United States Code, and the composition of that group of individuals with regard to race, ethnicity, sex, age, and individuals with disabilities;

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

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

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

(8) make available to the public through the official public internet site of the Office of Personnel Management, the data collected under paragraph (7);

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

(10) conduct a continuing program for the recruitment of women, members of racial and ethnic minority groups, and individuals with disabilities for Senior Executive Service positions, with special efforts directed at recruiting from educational institutions, professional associations, and other sources;

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

(12) evaluate and implement strategies to ensure that agencies conduct appropriate outreach to other agencies to identify candidates for Senior Executive Service positions.

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

(d) COOPERATION OF AGENCIES.—The head of each agency shall provide the Office of Personnel Management with such information as the SES Resource Office may require in order to carry out subsection (b)(7).

SEC. 5. CAREER APPOINTMENTS.

(a) PROMOTING DIVERSITY IN THE CAREER APPOINTMENTS PROCESS.—Section 3393 of title 5, United States Code, is amended—

(1) in subsection (b), by inserting after the first sentence the following: "In establishing an executive resources board, the head of the agency shall, to the extent practicable, ensure diversity of the board and of any subgroup thereof or other evaluation panel related to the merit staffing process for career appointees, by including members of racial and ethnic minority groups, women, and individuals with disabilities."; and

(2) in subsection (c)(1), by adding after the last sentence the following: "Consideration should also be given to improving diversity by including members of racial and ethnic minority groups, women, and individuals with disabilities on qualifications review boards.".

(b) REGULATIONS.—Within 1 year after the date of the enactment of this Act, the Director shall promulgate regulations to implement subsection (a) and to improve diversity in executive resources boards and qualifications review boards.

(c) REPORT.—Within 1 year after the date of the enactment of this Act, the Director shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report evaluating agency efforts to improve diversity in executive resources boards and of the members designated by agencies to serve on qualifications review boards, based on the information collected by the SES Resource Office under subparagraphs (F) and (G) of section 4(b)(7).

SEC. 6. ENCOURAGING A MORE DIVERSE SENIOR EXECUTIVE SERVICE.

(a) SENIOR EXECUTIVE SERVICE DIVERSITY PLANS.—Within 1 year after the date of the enactment of this Act, each agency, in consultation with the Office of Personnel Management, shall submit to the Office of Personnel Management a plan to enhance and maximize opportunities for the advancement and appointment of minorities, women, and individuals with disabilities in the agency to the Senior Executive Service. Agency plans shall address how the agency is identifying and eliminating barriers that impair the ability of minorities, women, and individuals with disabilities to obtain appointments to the Senior Executive Service and any actions the agency is taking to provide advancement opportunities, including—

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

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

(3) identifying career enhancing opportunities for agency employees;

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

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

Agency plans shall be updated at least every 2 years during the 10 years following enactment of this Act. An agency plan shall be reviewed by the Office of Personnel Management and, if determined to provide sufficient assurances, procedures, and commitments to provide adequate opportunities for the advancement and appointment of minorities, women, and individuals with disabilities to the Senior Executive Service, shall be approved by such Office. An agency may, in updating its plan, submit to the Office of Personnel Management an assessment of the impacts of the plan.

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

(c) COORDINATION.—The Office of Personnel Management shall, in carrying out subsection (a), evaluate existing requirements under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) and section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and determine how agency reporting can be performed so as

to be consistent with, but not duplicative of, such sections and any other similar requirements.

PURPOSE AND SUMMARY

H.R. 3774, the Senior Executive Service Diversity Assurance Act, was introduced by Rep. Danny K. Davis on October 9, 2007. The purpose of H.R. 3774 is to promote diversity in the Senior Executive Service (SES).

H.R. 3774 requires the Office of Personnel Management (OPM) to establish an office to oversee the SES, requires agencies and OPM to consider diversity when designating members of SES candidate evaluation panels, and requires each agency to submit a plan to OPM on how the agency will enhance and maximize opportunities for the advancement and appointment of minorities, women, and individuals with disabilities to the SES. OPM must review the agency plans and report to Congress with a summary and an evaluation of the agency plans.

BACKGROUND AND NEED FOR LEGISLATION

The SES was established by Title IV of the Civil Service Reform Act of 1978, P.L. 95–454, and encompasses managerial, supervisory, and policy positions above the GS–15 level that are not filled by presidential appointment with Senate confirmation. The SES includes nearly 7,000 federal employees.[1] Of those, approximately 6,000 are career appointed executives.[2] SES career appointments do not have time limitations and provide certain job protections and benefits.

Career appointees are selected for the SES on the basis of leadership qualifications. Candidates are initially evaluated by an internal agency executive resources board (ERB) made up of senior executives. The candidates are ranked by the ERB and written recommendations are made to OPM. OPM is required to establish qualifications review boards (QRBs) to certify candidate qualifications. The appointing authority in an agency makes the final determination of which candidate will be hired. Noncareer appointees do not have to meet the same competitive selection requirements as career SES candidates and do not receive the same entitlements as career senior executives.

The percentage of minorities and women at senior pay levels in the federal government, including the SES, is lower than in the civilian workforce and the federal workforce as a whole. The senior leadership of the federal government should serve as a model and should be as strong and effective as possible. Improving the diversity of the SES is an essential part of achieving that goal. As the Government Accountability Office (GAO) testified at an April 3, 2008, hearing of the Subcommittee on Federal Workforce, Postal Service and the District of Columbia, "[h]aving a diverse SES corps, which generally represents the most experienced segment of the federal workforce, can be an organizational strength that can bring a wider variety of perspectives and approaches to bear on

[1] U.S. Office of Personnel Management, *Senior Executive Service Survey Results* (May 2008).

[2] House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Testimony of Katherine Siggerud and George H. Stalcup, *Managing Diversity of Senior Leadership in the Federal Workforce and Postal Service,* 110th Cong. (Apr. 3, 2008) (GAO–08–609T).

policy development and implementation, strategic planning, problem solving, and decision making."[3]

Effective oversight of the SES is essential to ensuring that SES recruitment efforts adequately address diversity. H.R. 3774 requires OPM to re-establish the Senior Executive Service Resource Office (SESRO) at OPM. The SESRO will serve as a central resource for agencies and will provide oversight of agency recruitment and candidate development efforts. OPM previously had such an office but dissolved the office when the agency was reorganized in 2003. Concerns have been raised that OPM's management of the SES is less effective without a central office to handle SES-related policy development and implementation. According to the Senior Executives Association:

> We are especially delighted that the bills require effective oversight of the Senior Executive Service by the Office of Personnel Management. In the past OPM has had such an office and it worked effectively to monitor and manage the SES, government-wide. Currently, different offices within OPM share the responsibility for managing the SES with policy in one office and implementation of that policy in another office. In our opinion, the effect has been a diminishment in the effectiveness of the management of the government-wide SES corps. With respect to diversity, this means that agencies use different systems and standards for recruiting into the SES with varying outcomes on diversity resulting in different agencies. With one office to manage the SES greater diversity is more likely to become a reality sooner than later.[4]

One problem that has been identified is that there are lower numbers of minorities and women in the SES compared to the numbers of minorities and women employed in the GS–15 and GS–14 levels, the feeder pools for the SES. GAO reports that, in 2007, minorities made up 22.5% of the employees in the SES development pool but only made up 16% of career employees in the SES. GAO reports that women made up 34% of the employees serving at the GS–15 and GS–14 levels but only 29% of the career SES in 2007.

H.R. 3774 requires the new SESRO to develop and monitor programs for the advancement and training of senior executives, including the Senior Executive Service Federal Candidate Development Program. The bill also requires each agency to submit a plan to OPM on how the agency is identifying and eliminating barriers to minorities, women, and individuals with disabilities to obtain appointments to the SES.

Involving individuals with a variety of experiences and perspectives in the consideration of SES candidates helps ensure the selection of a strong and diverse SES workforce. H.R. 3774 requires agencies, to the extent possible, to include minorities, women, and individuals with disabilities on their ERBs as well as any other panels that evaluate SES candidates and provides that agencies

---

[3] *Id.*

[4] House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Testimony of William Bransford, *Managing Diversity of Senior Leadership in the Federal Workforce and Postal Service,* 110th Cong. (Apr. 3, 2008).

should consider diversity in selecting members to serve on OPM's QRBs.

LEGISLATIVE HISTORY

H.R. 3774, the Senior Executive Service Diversity Assurance Act, was introduced by Rep. Danny K. Davis on October 9, 2007, and referred to the Committee on Oversight and Government Reform. Senator Daniel K. Akaka introduced a companion bill, S. 2148, on October 4, 2007.

On April 3, 2008, the Subcommittee on Federal Workforce, Postal Service and the District of Columbia held a hearing on the Senior Executive Service Diversity Assurance Act. The witnesses were Nancy Kichak, Associate Director, OPM; George Stalcup, Director, Strategic Issues, GAO; Katherine Siggerud, Director, Physical Infrastructure Issues, GAO; William Bransford, General Counsel, Senior Executives Association; William Brown, President African American Federal Executives Association; Rhonda Trent, President, Federally Employed Women; Carson Eoyang, Executive Director, Asian American Government Executives Network; Jose Osegueda, President, National Association of Hispanic Federal Executives; and Darlene Young, President, Blacks in Government.

On April 15, 2008, the Subcommittee held a business meeting to consider H.R. 3774 and forwarded the bill to the full Committee by a voice vote.

The full Committee held a business meeting to consider H.R. 3774 on May 1, 2008, and ordered the bill to be favorably reported, as amended, by a voice vote.

SECTION-BY-SECTION

Section 1. Short Title

This section provides that the short title of the bill is the "Senior Executive Service Diversity Assurance Act."

Section 2. Findings

This section provides findings, including statistics from GAO and OPM that demonstrate the need for this legislation. According to GAO, minorities made up 22.5% of the individuals serving at the GS–15 and GS–14 levels and 15.8% of the career SES in 2007; women made up 34.3% of the individuals at the GS–15 and GS–14 levels and 29.1% of the career SES in 2007; and despite an increase in the number of SES members from 6,110 in 2000 to 6,555 in 2007, the representation of African-American men in the career SES declined from 5.5% to 5%. According to OPM, in 2007: black employees represented 6.1% of employees at senior pay levels and 17.8% of the federal workforce compared to 10.1% in the civilian workforce; Hispanic employees represented 4% of employees at the senior pay levels and 7.8% of the permanent federal workforce compared to 13.3% of the civilian labor force; and women represented 28.2% of employees at the senior pay levels and 43.9% of the permanent federal workforce compared to 45.7% of the civilian labor force.

Section 3. Definitions

This section includes the following definitions:

The term "director" means the Director of OPM.

The term "Senior Executive Service" means Senior Executive Service positions, which include any position in an agency which is classified above GS–15 or in level IV or V of the Executive Schedule, or an equivalent position which fits certain criteria and does not require a Senate confirmed presidential appointment.

The term "agency" has the meaning provided in 5 U.S.C. § 3132 which is an executive agency, except a government corporation and GAO, and excluding some agencies identified in section 3132 such as the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Central Intelligence Agency.

The term "career appointee" means an individual in an SES position whose appointment to the position or previous appointment to another SES position was based on approval by OPM of the individual's executive qualifications.

The term "career reserved position" means a position which is required to be filled by a career appointee and which is designated as a career reserved position by the head of the agency.

The term "SES Resource Office" refers to the Senior Executive Service Resource Office established by section four of the bill.

Section 4. Senior Executive Service Resource Office

This section reestablishes the Senior Executive Service Resource Office (SESRO), within OPM.

Subsection (a) requires the director of OPM to establish the SESRO within six months of enactment. This subsection provides the mission of the new office is to improve the efficiency, effectiveness, and productivity of the SES; to advance the professionalism of the SES; and to ensure that in seeking to achieve an SES that is reflective of the nation's diversity, recruitment is from qualified individuals.

Subsection (b) describes the functions of the SESRO, including recommending regulations to the director of OPM and providing guidance to agencies on the structure, management, and diverse composition of the SES. This subsection provides a number of ways that the SESRO must carry out its responsibilities, including: creating policies for the management and improvement of the SES; providing oversight of the performance, structure, and composition of the SES; managing the SES pay system; developing standards for certification of each agency's SES performance management system; and developing programs for the advancement and training of senior executives. OPM is currently required by 5 U.S.C. § 3393(c) to establish qualifications review boards (QRBs) to certify the qualifications of SES candidates. Under subsection (b), the SESRO will be responsible for administering QRBs.

This subsection requires the SESRO to compile and maintain annual statistics related to the composition of the SES and requires OPM to make those statistics publicly available on its website. The SESRO must collect information such as the number of career reserve positions at each agency; the number of vacant career reserve positions at each agency; the number of individuals who have been certified as having the qualifications necessary to be appointed to the SES and the make-up of that group with regard to race, ethnicity, sex, age, and individuals with disabilities; and the make-up of the SES with regard to race, ethnicity, sex, age, and individuals

with disabilities. The SESRO must also collect data on the make-up of executive resources boards (ERBs) and QRBs with regard to race, ethnicity, sex, and individuals with disabilities. OPM does not currently collect data on the composition of these boards.

Subsection (b) also requires the SESRO to establish mentoring programs for potential SES candidates, conduct a continuing program to recruit women, minorities, and individuals with disabilities for SES positions, advise agencies on how an agency's equal employment or diversity office could be helpful in the SES appointments process, and evaluate and implement strategies to ensure that agencies conduct outreach to identify SES candidates in other agencies.

Subsection (c) provides that, in making the annual statistics publicly available, the SESRO may combine data for smaller agencies to protect individually identifiable information.

Subsection (d) requires the head of each agency to provide OPM with the information needed for the SESRO to compile its annual statistics.

Section 5. Career Appointments

Subsection (a) requires the head of an agency, where possible, to ensure diversity of the agency's ERBs by including minorities, women, and individuals with disabilities on these boards. This subsection provides that consideration should also be given, in appointing members to a QRB, to improving diversity by including minorities, women, and individuals with disabilities. OPM is responsible for establishing QRBs but OPM relies on agencies to designate agency employees to serve on QRBs. This subsection is intended to encourage OPM and agencies to consider diversity when identifying potential panel members who have professional knowledge of public management and knowledge of the appropriate occupational fields of the appointee.

Subsection (b) requires OPM to issue regulations to implement subsection (a).

Subsection (c) requires OPM to report to the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs within one year of enactment with an evaluation of agency efforts to improve the diversity of ERBs and QRBs based on the annual statistics maintained by the SESRO.

Section 6. Encouraging a More Diverse Senior Executive Service

Subsection (a) requires each agency, in consultation with OPM, to submit to OPM a plan to improve opportunities for the advancement and appointment of minorities, women, and individuals with disabilities to the SES. Each agency plan must address how the agency will identify and eliminate barriers that impair the ability of minorities, women, and individuals with disabilities to obtain SES appointments and any actions the agency is taking to provide opportunities for advancement. Subsection (a) provides examples of ways agencies can help employees advance, including conducting outreach, providing training programs to foster leadership development, identifying opportunities for employees to enhance their careers, assessing internal availability of candidates for SES posi-

tions, and taking inventory of employee skills and addressing any gaps in skills identified.

Under subsection (a), agency plans are required to be updated at least every two years during the ten years following enactment. OPM is required to evaluate whether each agency plan sufficiently demonstrates the agency's commitment to providing opportunities for SES appointments of minorities, women, and individuals with disabilities and determine whether to approve the plan.

Subsection (b) requires OPM, within six months after the deadline for agencies to submit a report or update, to submit a summary and evaluation of agency plans to the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs.

Subsection (c) requires OPM to evaluate existing reporting requirements such as section 717 of the Civil Rights Act of 1964 and determine how agency reporting can be done in a way that is consistent with similar reporting requirements but does not duplicate those requirements. The intent of this section is for agencies and OPM to carefully evaluate how diversity in the SES can be improved through new actions aimed at eliminating barriers to advancement. The intent is not for the reports required by this section to become rote exercises that duplicate existing agency reports.

EXPLANATION OF AMENDMENTS

At the full Committee business meeting on May 1, 2008, Rep. Waxman offered an amendment in the nature of a substitute, which passed by voice vote. The Waxman amendment maintains the requirement in the bill as introduced that OPM reestablish the SESRO, but adds new requirements for the office. The new requirements include collecting diversity data on the makeup of ERBs and QRBs. The bill as introduced requires each agency to establish a three-person SES evaluation panel within each agency that must include at least one woman and one member of a racial or ethnic group. The Waxman amendment replaces this section with several provisions aimed at promoting diversity in the SES. The amendment requires agencies, to the extent practicable, to include minorities, women, and individuals with disabilities in ERBs and any subgroups of those panels and to consider diversity in designating members for QRBs. The amendment requires OPM to issue regulations and report to Congress on agency efforts to improve diversity of ERBs and QRBs. Under the Waxman amendment, agencies must submit plans to OPM on efforts to improve opportunities for advancement to the SES for minorities, women, and individuals with disabilities. The amendment requires OPM to summarize and evaluate agency plans and report to the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs.

COMMITTEE CONSIDERATION

On Thursday, May 1, 2008, the Committee met in open session and ordered H.R. 3774, as amended, to be reported to the House by a voice vote.

ROLL CALL VOTES

No roll call votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 3774 creates an office in OPM and requires executive branch agencies to take actions aimed at improving diversity in the Senior Executive Service and therefore does not apply to the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of Rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need for a more diverse Senior Executive Service.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including encouraging the appointment and advancement of minorities, women, and individuals with disabilities to the Senior Executive Service.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 3774. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 3774 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 3774. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3774 from the Director of the Congressional Budget Office:

MAY 22, 2008.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3774, the Senior Executive Service Diversity Assurance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3774—Senior Executive Service Diversity Assurance Act

Summary: H.R. 3774 would establish a Senior Executive Service Resource Office within the Office of Personnel Management (OPM) to oversee executive agencies' efforts to improve the management of the Senior Executive Service (SES). The bill also would require agencies to prepare plans to increase diversity within the SES.

CBO estimates that implementing H.R. 3774 would cost $2 million in 2009 and $22 million over the 2009–2013 period, assuming appropriation of the necessary amounts. Enacting the legislation would not affect direct spending or revenues. H.R. 3774 contains no intergovernmental or private-sector mandates as defined in Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 3774 is shown in the following table. The costs of this legislation fall primarily within budget function 800 (general government).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009-2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	2	5	5	5	5	22
Estimated Outlays	2	5	5	5	5	22

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2009 and that spending would follow historical patterns for similar programs.

The SES was created in 1979 to provide a systematic program to recruit, retain, develop, and manage senior executives in the federal government. They generally represent the most experienced segment of the federal workforce and operate and oversee approximately 75 federal agencies. OPM manages the overall program and assists agencies as they select, develop, and manage federal executives. According to the Government Accountability Office (GAO), there are currently about 6,500 SES employees.

According to OPM, GAO, and selected agencies with SES employees, most of the provisions of H.R. 3774 would expand the current SES-related duties of OPM and affected agencies. The legislation would establish a new office within OPM to provide additional oversight of executive agencies' efforts to recruit and develop candidates for SES positions. In addition, the legislation would require individual agencies to develop and implement plans to enhance the diversity of their SES employees and to report on those efforts.

Based on information from OPM and other affected agencies, CBO estimates that implementing H.R. 3774 would cost $2 million in 2009 and $22 million over the 2009–2013 period, assuming appropriation of the necessary amounts. Those costs would cover additional staff and expenses related to the new office in OPM, which CBO expects would be fully operational in 2010. Our estimate also includes increased costs for other agencies to comply with new reporting requirements.

Intergovernmental and private-sector impact: H.R. 3774 contains no intergovernmental or private-sector impact as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

* * * * * * *

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

* * * * * * *

§ 3393. Career appointments

(a) * * *

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. *In establishing an executive resources board, the head of the agency shall, to the extent practicable, ensure diversity of the board and of any subgroup thereof or other evaluation panel related to the merit staffing process for career appointees, by including members of racial and ethnic minority groups, women, and individuals with disabilities.* The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) * * *

* * * * * * *

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee. *Consideration should also be given to improving diversity by including members of racial and ethnic minority groups, women, and individuals with disabilities on qualifications review boards.*

* * * * * * *

ADDITIONAL VIEWS OF RANKING MEMBER TOM DAVIS

The purpose of this legislation is to promote diversity within the ranks of the Senior Executive Service (SES). This proposal would establish within the Office of Personnel Management a Senior Executive Service Resource Office to identify ways to improve the professionalism and diversity of the SES. It would also require each agency to ensure, to the extent practicable, the diversity of any new Executive Resource Board or any subgroup of an Executive Resource Board. In addition, this legislation would require each agency to create a plan to enhance and maximize opportunities for the advancement and appointment of minorities, women, and individuals with disabilities in the agency to the Senior Executive Service.

Promoting diversity within the Senior Executive Service is a laudable goal and it is clear that agencies—working hand in hand with the Office of Personnel Management—are taking steps to improve diversity in the SES. However, although the GAO recently found that percentages of women and minorities in the SES have increased since 2000, the overall number of women and minorities in the SES remains low.

The reforms listed above will likely have some effect on improving diverse hiring practices within the SES. But creating a large, talented, purposefully trained pool of applicants would have a much greater and more positive effect on diversity within the SES. This bill does very little to actually ensure that candidates from every sector of American society are appropriately trained with the high level leadership and executive skills the SES was designed to harness.

Furthermore, the reforms in H.R. 3774 only address one area of weakness in the SES system The Senior Executive Service was created to be an elite cadre of federal employees and managers specially equipped with skills and experience in the areas of leadership, management, vision, and creativity. SES employees must demonstrate a unique understanding of the challenges agencies face and be equipped to respond with excellent executive leadership.

Congress should be trying to create an environment within SES which fosters excellence. Congress should look at the pay compression issues facing the Senior Executive Service, expand SES employees' access to training, and take steps to make the SES a more coveted career path for young federal employees. Congress must identify other ways to improve the SES while promote diversity at the same time.

TOM DAVIS.

○