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2D SESSION

# H. R. 3774

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IN THE SENATE OF THE UNITED STATES

JUNE 4, 2008

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

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 Serv-  
3 ice 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  
13 individuals serving at the GS–15 and GS–14  
14 levels and 29.1 percent of the Senior Executive  
15 Service in 2007; and

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

23           (2) according to the Office of Personnel Man-  
24 agement—

25               (A) black employees represented 6.1 per-  
26 cent of employees at the Senior Pay levels and

1           17.8 percent of the permanent Federal work-  
2           force compared to 10.1 percent in the civilian  
3           labor force in 2007;

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

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

14 **SEC. 3. DEFINITIONS.**

15       For purposes of this Act—

16           (1) the term “Director” means the Director of  
17       the Office of Personnel Management;

18           (2) the term “Senior Executive Service” has the  
19       meaning given such term by section 2101a of title  
20       5, United States Code;

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

1           (4) the term “SES Resource Office” means the  
2       Senior Executive Service Resource Office, estab-  
3       lished under section 4.

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

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

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

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

16           (3) to ensure that, in seeking to achieve a Sen-  
17       ior Executive Service reflective of the Nation’s diver-  
18       sity, recruitment is from qualified individuals from  
19       appropriate sources.

20       (b) FUNCTIONS.—It shall be the function of the SES  
21       Resource Office to make recommendations to the Director  
22       with respect to regulations, and to provide guidance to  
23       agencies, concerning the structure, management, and di-  
24       verse composition of the Senior Executive Service. In

1 order to carry out the purposes of this section, the SES  
2 Resource Office shall—

3 (1) take such actions as the SES Resource Of-  
4 fice considers necessary to manage and promote an  
5 efficient, elite, and diverse corps of senior executives  
6 by—

7 (A) creating policies for the management  
8 and improvement of the Senior Executive Serv-  
9 ice;

10 (B) providing oversight of the perform-  
11 ance, structure, and composition of the Senior  
12 Executive Service; and

13 (C) providing guidance and oversight to  
14 agencies in the management of senior executives  
15 and candidates for the Senior Executive Serv-  
16 ice;

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

20 (3) develop standards for certification of each  
21 agency's Senior Executive Service performance man-  
22 agement system and evaluate all agency applications  
23 for certification;

24 (4) be responsible for developing and moni-  
25 toring programs for the advancement and training of

1 senior executives, including the Senior Executive  
2 Service Federal Candidate Development Program;

3 (5) provide oversight of, and guidance to, agen-  
4 cy executive resources boards;

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

7 (7) establish and maintain annual statistics (in  
8 a form that renders them useful to appointing au-  
9 thorities and candidates) on—

10 (A) the total number of career reserved po-  
11 sitions at each agency;

12 (B) the total number of vacant career re-  
13 served positions at each agency;

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

17 (D) the number of individuals who have  
18 been certified in accordance with section  
19 3393(c) of title 5, United States Code, and the  
20 composition of that group of individuals with  
21 regard to race, ethnicity, sex, age, and individ-  
22 uals with disabilities;

23 (E) the composition of the Senior Execu-  
24 tive Service with regard to race, ethnicity, sex,  
25 age, and individuals with disabilities;

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

4 (G) the composition of qualifications re-  
5 view boards with regard to race, ethnicity, sex,  
6 and individuals with disabilities;

7 (8) make available to the public through the of-  
8 ficial public internet site of the Office of Personnel  
9 Management, the data collected under paragraph  
10 (7);

11 (9) establish mentoring programs for potential  
12 candidates for the Senior Executive Service, includ-  
13 ing candidates who have been certified as having the  
14 executive qualifications necessary for initial appoint-  
15 ment as a career appointee under a program estab-  
16 lished pursuant to section 3396(a) of title 5, United  
17 States Code;

18 (10) conduct a continuing program for the re-  
19 cruitment of women, members of racial and ethnic  
20 minority groups, and individuals with disabilities for  
21 Senior Executive Service positions, with special ef-  
22 forts directed at recruiting from educational institu-  
23 tions, professional associations, and other sources;

24 (11) advise agencies on the best practices for  
25 an agency in utilizing or consulting with an agency's

1 equal employment or diversity office or official (if  
2 the agency has such an office or official) with regard  
3 to the agency's Senior Executive Service appoint-  
4 ments process; and

5 (12) evaluate and implement strategies to en-  
6 sure that agencies conduct appropriate outreach to  
7 other agencies to identify candidates for Senior Ex-  
8 ecutive Service positions.

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

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

19 **SEC. 5. CAREER APPOINTMENTS.**

20 (a) PROMOTING DIVERSITY IN THE CAREER AP-  
21 POINTMENTS PROCESS.—Section 3393 of title 5, United  
22 States Code, is amended—

23 (1) in subsection (b), by inserting after the first  
24 sentence the following: “In establishing an executive  
25 resources board, the head of the agency shall, to the



1 extent practicable, ensure diversity of the board and  
2 of any subgroup thereof or other evaluation panel re-  
3 lated to the merit staffing process for career ap-  
4 pointees, by including members of racial and ethnic  
5 minority groups, women, and individuals with dis-  
6 abilities.”; and

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

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

18 (c) REPORT.—Within 1 year after the date of the en-  
19 actment of this Act, the Director shall submit to the Com-  
20 mittee on Oversight and Government Reform of the House  
21 of Representatives and the Committee on Homeland Secu-  
22 rity and Governmental Affairs of the Senate a report eval-  
23 uating agency efforts to improve diversity in executive re-  
24 sources boards and of the members designated by agencies  
25 to serve on qualifications review boards, based on the in-

1 formation collected by the SES Resource Office under sub-  
2 paragraphs (F) and (G) of section 4(b)(7).

3 **SEC. 6. ENCOURAGING A MORE DIVERSE SENIOR EXECU-**  
4 **TIVE SERVICE.**

5 (a) SENIOR EXECUTIVE SERVICE DIVERSITY  
6 PLANS.—Within 1 year after the date of the enactment  
7 of this Act, each agency, in consultation with the Office  
8 of Personnel Management, shall submit to the Office of  
9 Personnel Management a plan to enhance and maximize  
10 opportunities for the advancement and appointment of mi-  
11 norities, women, and individuals with disabilities in the  
12 agency to the Senior Executive Service. Agency plans shall  
13 address how the agency is identifying and eliminating bar-  
14 riers that impair the ability of minorities, women, and in-  
15 dividuals with disabilities to obtain appointments to the  
16 Senior Executive Service and any actions the agency is  
17 taking to provide advancement opportunities, including—

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

21 (2) establishing and maintaining training and  
22 education programs to foster leadership develop-  
23 ment;

24 (3) identifying career enhancing opportunities  
25 for agency employees;

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

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

6 Agency plans shall be updated at least every 2 years dur-  
7 ing the 10 years following enactment of this Act. An agen-  
8 cy plan shall be reviewed by the Office of Personnel Man-  
9 agement and, if determined to provide sufficient assur-  
10 ances, procedures, and commitments to provide adequate  
11 opportunities for the advancement and appointment of mi-  
12 norities, women, and individuals with disabilities to the  
13 Senior Executive Service, shall be approved by such Office.  
14 An agency may, in updating its plan, submit to the Office  
15 of Personnel Management an assessment of the impacts  
16 of the plan.

17       (b) SUMMARY AND EVALUATION.—Within 180 days  
18 after the deadline for the submission of any report or up-  
19 date under subsection (a), the Director shall transmit to  
20 the Committee on Oversight and Government Reform of  
21 the House of Representatives and the Committee on  
22 Homeland Security and Governmental Affairs of the Sen-  
23 ate a report summarizing and evaluating the agency plans  
24 or updates (as the case may be) so submitted.

Attest: **LORRAINE C. MILLER,**  
*Clerk.*