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TESTIMONY
of

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SENIOR EXECUTIVES ASSOCIATION

Before the

SENATE GOVERNMENTAL AFFAIRS COMMITTEE,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

and the

HOUSE GOVERNMENT REFORM COMMITTEE,
SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION

April 8, 2003

The Senior Executives Association (SEA) appreciates the invitation of the Subcommittees to testify at this hearing and commends the Subcommittees' interest in and concern for Federal human capital management. It is especially important to focus on government-wide reform, rather than continuing to have the piecemeal reform which the Volcker Commission called disjointed "tinkering around the edges" which has contributed "to many of the problems we must now correct." This tinkering doesn't save money, but probably costs more as exceptions continue to proliferate, with the result a crazy quilt instead of coherent reform with flexibility within uniform principles.

You requested that we provide an assessment of the current workplace environment, particularly as it impacts Senior Executives. Regrettably, that environment is not entirely positive. There is no question that career executives are dedicated to public service, are committed to the important work they do, care deeply about their jobs, and do not shrink from the challenges of leadership. However, the downsizing of the past decade, the sometimes insufficiently funded program changes, efforts to reinvent government and improve customer service and management - all have taken their toll. Too many executives report being stretched thin and having no "bench strength" in their agencies.

But, more important, the focus by the Administration over the past two years on what are apparently viewed as inflated performance ratings, taken with the reluctance - until now - to address pay compression, has contributed to substantial demoralization. Given the difficulty of entry into the SES, it would be surprising if these executives were not high performing. Nonetheless, the issue of performance management is one which is best handled within the confines, for example, of the President's Management Council, where appointees could be told clearly that the President expects accountability to permeate the performance system.

However, the conversation was held publicly, and handled in a way that some executives have asked whether the Administration thinks they are all incompetent. And these include executives who have been working long hours, for example, to support military operations.

Finally, because pay compression was not caused by poor performance, but, rather, by Congressional pay freezes, and because the Senior Executive Service is a model pay for performance system, Senior Executives are now perplexed, at best, by the proposal to raise pay caps, but to provide no assurance of pay relief to them individually. And they suspect that such a system will not have the necessary resources for implementation. That is not an unfounded concern; they know that there is, annually, a great debate over the adjustment in General Schedule salaries, but that the issue of executive pay compression draws little, if any, attention.

One week ago, the Senior Executives Association (SEA) testified on executive pay issues at the House Civil Service and Agency Organization Subcommittee hearing on compensation reform for federal employees. The focus of our testimony was on Senator Voinovich's draft bill on SES reform, a version of which since has been introduced as S. 768, the Senior Executive Service Reform Act of 2003.

Therefore, my testimony will respond first to the parts of S. 768 that address SES pay and the efforts to relieve pay compression.

Pay Compression Concerns

These are the regrettable facts: SEA was founded in large part due to the severe pay compression which existed in 1980, we have had to return to this issue over and over during the last 23 years, and, today, we find ourselves in an even worse position with regard to pay. Indeed, pay compression has reached such critical proportions that, unless corrected, it threatens to destroy the Senior Executive Service.

After being frozen five of the last ten years, **the pay cap has filtered down through the ranks of the SES and approximately 70% of all career executives now receive the same pay.** In 1994, total pay at the ES-6 level was capped in one locality. This year, however, ES-4, ES-5, and ES-6 (the top three ranks) are all capped at Executive Level III (the statutory maximum for SES base plus locality pay) in all 32 localities. Likewise, ES-3 is now capped in 15 localities. In Houston and San Francisco, even ES-2 is capped at the same pay as the top rank of the SES. (See 2003 Pay Chart, Attachment I.)

If the Executive Schedule (which sets the statutory maximums for the SES) had mirrored the General Schedule national comparability raise since 1994, EL-II (the pay rate for Members of Congress) would be \$171,000 this year instead of \$154,700.

This situation is unfair and would be unthinkable in any private sector corporation, yet both the Administration and Congress have tolerated it. The Administration, finally, has proposed some relief, and Senator Voinovich has introduced legislation in the Senate that will help. SEA welcomes the Administration's proposal and the action in the Senate but does have concerns about the Administration's proposal, which we will address.

We believe it is instructive to consider the underlying concerns and attitudes, which form the arguments that have hindered resolution of the pay problem and may continue to prove troublesome, even with the Administration's changed position.

First, **the pay problem is viewed (incorrectly) by some as overblown because career executives are not retiring in record numbers.** While executives may not be retiring in record numbers, many are prepared to retire as soon as they are eligible.

- Many will retire because they are demoralized by the failure to solve the pay problem - which signals they are not valued - while they continue to face extraordinary managerial and program demands at their agencies.
- Many will retire because they are unable to continue resisting very attractive offers from private industry (and to justify doing so to their families).
- Many will retire because they know that, in retirement, they will see greater increases in their annuities than they have seen in their pay. From 1994 to 2002, the average annual COLA adjustment on retirement annuities was 2.5%, which was higher than the average pay increase for Senior Executives at the ES-4, ES-5 and ES-6 levels during the same time period.

- Those who have stayed on after September 11, feeling a sense of responsibility to their agencies and their country, cannot be expected to do so indefinitely.

And it is worth noting that, as more and more executives are covered by FERS, and not the "golden handcuffs" of CSRS, there will be even less incentive to remain in such conditions as exist at present.

With the number of executives projected to be eligible to retire by fiscal year 2005 (fully 70% of the corps) and with the critical challenges facing the Federal government, the question which must be asked is - can we afford to wait until the ranks of the career corps are depleted before resolving the pay problem? This is a dangerous game to play.

It is particularly dangerous because of the impact it is having on the "feeder" groups of GS-14's and 15's who could be expected to take the place of these executives.

To understand the human impact of this problem, we point to one Justice Department executive's words to SEA that summed up the problem:

"I love and believe in the mission of government and the importance of having bright, caring and responsible people serving that mission. As an executive nearing retirement eligibility and feeling very burned out by pay stagnation and the compromises it has forced on those I love, I am trying desperately to do the succession planning my office will need to manage in the years to come. I never thought that I would be considering leaving on (my retirement) eligibility (date), but now I project I will. I feel I have no choice if I am to provide adequately for my family. I have never been so disheartened at the possibilities - my best and brightest repeatedly advise me that they see no future for themselves in government despite their love for it and commitment to it."

Second, **some view (incorrectly) the cost of resolving executive pay compression as inhibiting**. The fact is that in 2002 the Congressional Budget Office stated the first year cost of implementing new pay caps (under the current statute) as \$24 million, hardly a prohibitive price to pay to keep the talent in government that we need.

Third, **some view (incorrectly) resolution of pay compression as an effort to provide comparability with private industry and view data indicating a government/private industry pay gap as flawed**. SEA has never argued for - and neither would career executives expect - comparability with private industry. However, the cost of public service has become too high and represents an unreasonable sacrifice. Rather, there should be a reasonable relationship between the two sectors.

To understand how government executives compare with their private sector peers, SEA contracted with the Hay Group from 1993 to 1996 to conduct annual studies comparing compensation of SES positions with that of comparable positions in private industry. A representative sample of SES positions was selected (across a range of agencies, SES pay rates, and functions) from Hay's data bases of SES evaluated positions. Using Hay's job content evaluation points, SES positions were compared to their precise counterparts which Hay had

evaluated in a wide variety of industrial organizations and service industries, as well as in some nonprofit organizations and local governments.

These precise comparisons of government executives' pay to that of their exact counterparts in private industry provide data which is not open to the criticisms directed at other, more general pay studies.

Results from the 1996 study, "Comparative Analysis of SES Base Salary, Total Annual Cash Compensation, Benefits and Total Remuneration," were as follows:

- Average SES total cash compensation (including bonuses) ranged from 42% to 68% of that of average industry total cash compensation for jobs of the same difficulty.
- Put another way, SES total compensation for these positions would have to be increased by a range of 46% to 137% to attain comparability with private industry.

SEA discontinued supporting these studies because the four that were conducted showed a gap that was steadily increasing each year and that was not expected to be reversed.

Fourth, **a resolution of pay compression is viewed as providing inappropriate across-the-board increases, as contrasted to providing "pay for performance."** We are compelled to note that pay compression did not build because of poor performance by the executive corps; it built because of the unwillingness of Congress to either abide by the annual pay adjustment provisions of the Ethics Reform Act or to exempt just itself from annual adjustments and permit them to be applied to the rest of the Executive Schedule.

Even more important, **the Senior Executive Service is a pay for performance system as currently constituted.** In fact, it can be viewed as a model pay for performance system. The current performance management system gives agencies the flexibility and discretion they need to ensure that they can use performance information to adjust pay and to reward (or penalize) executives, as appropriate. This system already has a high level of subjectivity, which almost every other federal employees group which testified at the April 1, 2003, Civil Service Subcommittee hearing would find objectionable. Yet, Senior Executives have learned to accept this subjectivity as part of the risks and rewards of being in the SES.

An executive's pay rank can be increased to reward his or her performance, and that performance can also be recognized by payment of an annual bonus, as well as by awarding a Presidential Rank of Distinguished or Meritorious Executive. The bonuses are totally at the discretion of the agency head, are granted or denied totally on the basis of performance, and do not constitute pay increases, but rather recognize the accomplishments of an executive in a given year. At present, there is suspicion that the bonus system is being used as a pay supplement in some agencies. While the Senior Executives Association strongly prefers to resolve pay compression head on, rather than relying on bonuses, the use of bonuses as a pay surrogate is not unexpected or unreasonable under the circumstances.

Apart from the ability to reward performance, however, agencies are free to reduce an executive by one pay rank each year and are only required to provide a reason for doing so. In

the small percentage of cases when an agency must deal with a poor or non-performer, the agency need only be willing to take the performance appraisal process seriously.

In fairness, that requires that the executive be given 1) performance standards which reflect the agency's goals and the superior's expectations, 2) an opportunity to meet those standards and 3) feedback during a progress review. Indeed, the current performance management system provides for precisely this process; however, a 1999 survey of Senior Executives conducted by the Office of Personnel Management in cooperation with SEA found that 8% of all career executives did not have a performance plan and 14% had a performance plan developed 2 or more years ago.

Further, the current system gives agencies virtually unfettered and unreviewable discretion to remove non-performing Senior Executives from the SES. That is so because the statute allows, and in some cases requires, removal of an executive who receives an unsatisfactory performance appraisal. An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the SES but also may be removed; an agency **MUST** remove from the SES an executive who receives two unsatisfactory annual ratings in any 5 year period. Underlying the agency's authority to deal with non-performers is the fact that performance appraisals and ratings are not appealable.

To the degree that these tools have not been used to fully realize the "pay for performance" nature of the SES, then only one conclusion is possible - political appointees and other superiors who supervise Senior Executives do not have the disposition, or are unwilling to invest the time and energy, to use the tools at their disposal. And no amount of process or structure changes will magically cause them to do so.

Fifth, some view (incorrectly) the tie with congressional pay as presenting an insurmountable barrier to resolving pay compression. Resolving compression should not relate to congressional pay. This is the finding of the Volcker Commission Report. Further, if SEA's proposals, which we discuss today, are adopted, the cap on Senior Executive base pay will still be less than Congressional pay, and reasonable and certain provisions for future pay cap increases will assure this problem is not revisited again any time soon.

Sixth, some believe (incorrectly) that pay compression is best resolved by providing special pay schemes on an agency or occupational basis. As a result, for example, the Internal Revenue Service has authority to pay 40 employees (who must come from outside the agency or the government) up to the salary of the Vice President, and the Securities and Exchange Commission has recently been given authority for a separate pay system.

SEA opposes such solutions. The proliferation of such special authorities continues a piecemeal attack which does nothing to address a pay problem which is most severe in the SES ranks government-wide. To the contrary, it removes any impetus that does exist for addressing pay compression.

Special authorities are sometimes justified by the need to bring higher priced talent in from outside government, as in the IRS. Thus, we are apparently content, on the one hand, to continue to drive experienced, talented executives out of government by our refusal to address pay compression and, on the other hand, to recruit higher paid executives from outside

government. The message we send to federally "grown" executives is that they are worth less than those hired from outside government, that they have erred in devoting their careers to public service. We fail to see the wisdom of this solution and urge, instead, addressing the overall executive pay problem.

There is a paradox here upon which we are compelled to comment. Ever since the establishment of the Senior Executive Service by the Civil Service Reform Act of 1978, OPM and others have regularly bemoaned the failure of the SES to produce a corps of generalist executives - and have regularly suggested the removal of executives with technical or professional skills and competencies from the SES. Yet special pay authorities often would reward exactly such executives, provided they are recruited from the private sector.

The Administration's Proposal and S. 768

We note that S. 768 and the Administration's recent proposal to lift the cap on executive pay are virtually identical. They both propose raising the base pay cap to Executive Schedule Level III and the locality pay cap from Executive Schedule Level III to Executive Schedule Level II. In essence, this would raise the locality pay cap from \$142,500 to \$154,700. Also, the new bill and the Administration both would eliminate the current Senior Executive Service ES 1 to 6 pay level system, replacing it with one band of pay for the SES.

According to comments from OPM, the increased payments that would be allowed by raising the two pay caps would be available only to those agencies which have a certified performance appraisal system that makes meaningful distinctions based on relative performance. This would be done through OPM regulations that would implement a similar provision imposed last year by the Homeland Security Act that lifts the cap on annual overall compensation (including bonuses, awards and allowances) only for Senior Executives in those agencies which have a certified performance appraisal system.

The lowest base pay of the planned band would be \$102,000, with the highest base pay being Executive Level III or \$154,700. Increases in pay, including annual comparability increases, would be at the discretion of a supervisor. S. 768 and the Administration proposal are both silent with regard to decreases in pay, except that the Administration has said that there will be no decreases during the first year. However, there is nothing in S. 768 itself that prohibits decreases in pay after the first year of the plan, and other provisions of law fail to provide appeal rights to Senior Executives whose pay is reduced. This differs from all other Federal employees who do have rights of review if they suffer a pay reduction.

SEA's Recommendations on Executive Pay

The Administration's proposal and S. 768 would make fundamental changes to the structure of the Senior Executive Service, as well as to the manner in which SES pay is set. Both would, at a minimum, eliminate executive ranks, set new caps on pay, and remove from the President his authority to set pay for the SES ranks, delegating that authority to agencies to utilize in setting the pay of individual executives. Because these changes are far-reaching, the Senior Executives Association believes that safeguards are necessary and appropriate to meet the following objectives: a) preserve the SES as a non-partisan, non-political corps; b) fairly reward those who do a good job; c) provide financial incentives to those who truly do outstanding

work; and d) demote or remove those who do unsatisfactory work. Therefore, the Senior Executives Association proposes a series of amendments to the Administration's plan and to S. 768.

Even with these amendments, however, we are compelled to note one overriding concern; that is, that if agencies have total flexibility to set base pay, pay rates may inevitably be influenced by budgetary considerations, namely, insufficient funds for appropriate raises. Executives in FAA have already experienced the situation that, in tight budget times, a performance based award system has the appearance of being inappropriate to fund, even while annual increases and awards remain funded for lower level employees.

Our recommendations for amendments are as follows:

1. The SES (Senior Executive Service) cap for base pay should be raised to Level III, as proposed. The cap on locality pay, however, should be eliminated, ensuring that executives receive full locality pay adjustments. Eliminating a cap on locality pay is consistent with the Volcker Commission Report and would prevent further pay compression based on the new locality pay cap.
2. The language at 5 U.S.C. section 5307 (concerning the cap for overall annual compensation that includes bonuses and awards) introduced as part of the Homeland Security Act and calling for certified performance appraisal systems should be reformed so that: (1) only OPM – and not OMB – promulgates the implementing regulations; (2) once certified, the certification cannot be removed for a four year certification period; and (3) the certified system cannot use a forced distribution of performance ratings. OMB should be excluded from participating in the process for certifying a performance system for career executives based on danger of partisan politicization of the system.

While S. 768 does not contain an explicit provision requiring a certified performance appraisal system before implementing a salary increase based on the new pay caps, OPM has announced an intention to impose these types of requirements before an agency could pay higher salaries, as stated above. SEA will support certified performance appraisal systems as a condition for implementing an increase in salary caps so long as: (1) all bonuses and awards for executives are included in the pay computation for computing retirement annuities (this would institute a true pay for performance compensation system); (2) the regulations implementing the process come only from OPM and not OMB; (3) forced distributions of performance ratings are prohibited; (4) once certified, the certification cannot be revoked until the end of the 4 year certification period; (5) if an agency loses its certification, pay that was set while its system was certified will not be reduced; and (6) upon losing certification, no executive experiences a reduction in salary.

3. Senior Executives and all equivalent executives (including SL, ST, and BCAJ) should automatically receive the same annual increase to base pay that the General Schedule receives each year, regardless of the base pay cap (e.g., the 3.1% or 4.1% for this year and the 2% plus scheduled for next year). Such annual increases should not be at the discretion of supervisors.

4. The pay cap for base pay should be raised each year by the amount of the annual comparability increases (projected in the President's budget at 2% in 2004). This would be without regard to what Congress does for its own pay or the pay of the Executive Schedule.
5. The wide range of \$102,000 to \$154,700 proposed in S. 768 for SES pay should be abandoned and replaced with three overlapping pay bands. The lowest base pay within pay band 1 (the lowest level) would be at the current minimum rate for ES-1, \$116,500, an amount that is at least sufficient to give a reasonable pay raise to a GS-15/10 who is promoted into the SES.
Senior Executives would receive promotions to pay bands 2 and 3 based on standards in OPM regulations that reward executives for demonstrated capabilities, attained executive experience, and level of assumed responsibility. The ranges of pay for band 2 would overlap band 1 at the bottom and band 3 at the top. Pay band 3 would be set so that its highest base salary is Executive Schedule Level III. Executives would receive full locality pay on top of base pay. Upon implementation, current executives will go into a pay band that is the highest of (a) the lowest band that has a salary range that would allow the payment of their current salary OR (b) Band 1 for ES 1s and 2s, Band 2 for ES 3s and 4s, and Band 3 for ES 5s and 6s.
6. The following safeguards on SES pay should be implemented:
 - a. A minimum pay increase of at least 5% would be established for each executive promoted from the General Schedule or equivalent personnel system upon entry into the SES. This then would become the executive's salary floor, and his or her salary could not be reduced to an amount less than that salary floor as adjusted by future comparability increases.
 - b. An executive who is denied a salary increase for performance reasons in any calendar year will have the opportunity to appeal to the agency's Performance Review Board under the same process that is used for appealing performance appraisals. The Performance Review Board would continue to be required to have a majority of career SES members.
 - c. Any reduction in pay within a pay band will be only for reasons related to conduct or performance and will be limited to an amount of not more than 3% of base pay in any calendar year. If pay is to be reduced for performance, the executive will have the opportunity to appeal to the agency's Performance Review Board under the process that is used for appealing performance appraisals. If it is for conduct, the executive will have full MSPB appeal rights.
 - d. An executive who is demoted to a lower pay band shall have a right to an MSPB appeal with a final decision issued by MSPB based upon a substantial evidence standard of review. If the reduction is based on conduct, the executive may appeal to the MSPB under the normal criteria currently in place.

Limited Appointments

S. 768 also contains a provision reforming the law as it pertains to limited appointments. We also state our partial opposition to the expansion of the authority for limited appointments to the Senior Executive Service. Current law allows for noncompetitive SES limited term or limited emergency appointments. These appointments are limited to three years for limited term and 18 months for limited emergency appointments, and the total number of limited appointments may not exceed 5% of executive positions. At present, appointments may only be made to general SES positions.

The SES reform bill will allow for these appointments to be made for up to seven years with no limit on the number of appointees, no requirement for competition, and no requirement for approval by OPM of basic executive qualifications as is now the practice. These appointments would also be allowed to be made to SES career reserved positions.

We propose allowing the expanded authority for limited appointments but with limitations in numbers and requirements for OPM oversight of the qualifications of the appointees. We seek to limit the number of limited appointees to 1% of the total number of filled Senior Executive positions and to limit the number of limited appointees to career reserved positions to 1% of the filled career reserved positions. We also urge the requirement of a Qualifications Review Board process to be performed by OPM, much like the current process for career appointees.

Our proposal will allow for a reasonable use of limited appointment authority consistent with what we believe to have been the historical demand for such exceptions to the normal competitive process. Considering the expansion of the term of these appointments as proposed in the new bill, we believe it is imperative to have an OPM review of executive qualifications. This is a process that currently exists for career appointees, and one which data demonstrate has not delayed SES appointments. Our limitations on limited appointments will allow for agency flexibility, but, at the same time, will prevent the SES from becoming a temporary employment service filled with political favorites.

Annual Leave Enhancement

We support the provision in S. 129 and S. 768 for leave accrual at 8 hours per pay period for anyone entering the SES. We believe this will assist in recruiting and is a practice consistent with executive recruitment in the private sector.

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The following provisions are not in found any proposed legislation. We believe they are needed and should be considered. We propose the following:

Managers' Rights in the EEO Process

Federal managers and supervisors can expect to be named as the responsible management official (RMO) or the principal agency witness (PAW) in discrimination complaints one or more times in their federal careers. The overwhelming majority of discrimination cases in the federal

government are found to have no merit or result in a finding of no discrimination. More than 27,000 discrimination cases under the jurisdiction of the Equal Employment Opportunity Commission (EEOC) were closed in 2000 but only one percent (1%) resulted in a finding of discrimination, and 23 percent (23%) of cases were settled. The EEOC recently estimated that only 2½ percent of EEO complaints filed have merit. This means that 97½ percent of the time that an EEO complaint is filed, the manager has to endure and respond to frivolous charges.

Federal managers and supervisors are sometimes accused of discrimination in retaliation for having made an unpopular managerial decision. The fear of such complaints is often a barrier to effective managerial action, especially against problem employees.

Federal managers and supervisors are often denied promotions, bonuses and awards during the pendency of discrimination complaint for which they are named as the RMO or a PAW or because of unfounded allegations raised by disgruntled employees with an agency Inspector General's Office or the U.S. Office of Special Counsel. Simply being named as an RMO or PAW in a discrimination complaint unfairly brands the manager or supervisor as a discriminator, even when there has been no wrongdoing on the part of the manager or supervisor. Such allegations can also affect performance appraisals.

Managers and supervisors are subjected to the federal EEO process, but are not guaranteed a right to full participation and input. Federal agencies cannot be run effectively when the current state of the federal EEO system subjects its supervisors and managers to a process in which they lack basic rights but experience deleterious effects

The enactment of a managers' rights provision is necessary to enable managers to obtain full and fair information to allow them to respond to EEO complaints filed by subordinates. In addition, it is not unusual for a management official or supervisor to be denied bonuses, awards and/or promotions because of a pending IG or Office of Special Counsel investigation, or because of an EEO allegation or complaint in which the management official or supervisor is named as the responsible official. Therefore, we seek legislation to require the employing agency to retroactively grant such bonuses, awards, and promotions to the management official or supervisor in the cases where such investigations or complaints are found to have no merit. We also seek provisions allowing managers access to information and the right to participate in the EEO process so that they can defend their actions. This includes the right to be notified of a prospective settlement and to be advised when an EEO complaint has been concluded.

Professional Liability Reimbursement

In this same vein, we support proposed legislation requiring agencies to reimburse a minimum of 50 percent of the costs incurred by supervisors, management officials and law enforcement officers for purchase of professional liability insurance and allowing agencies to reimburse up to 100 percent of the costs, if the agency chooses.

Currently, 5 U.S.C. prec. 5941 note states that agencies may reimburse supervisors, management officials and law enforcement officers "for not to exceed one-half of the costs incurred by such employee[s] for professional liability insurance." A special provision applicable only to the CIA allows reimbursement up to 100 percent.

Professional liability insurance for managers and supervisors is a very important component to providing the peace of mind and protection from IG, whistleblower or EEO complaints from disgruntled subordinate employees. The presence of professional liability insurance encourages supervisors to deal appropriately with workplace problems and issues. Federal managers need the reassurance offered by having this insurance in order to make difficult management decisions in the workplace that could result in the filing of frivolous claims by employees who disagree with those decisions. Since most of these claims arise as a result of an executive or a manager simply doing his or her job, it makes sense for the federal employer to pay at least part of the cost of professional liability insurance. With this insurance, managers and supervisors are provided legal counsel if questions and legal action arise as a result of their exercise of professional judgment.

Currently, some agencies reimburse less than 50 percent of the premium, which now is less than \$300.00 annually for the individual policyholder. We propose to require reimbursement of a minimum of 50 percent, and to allow a larger reimbursement, up to 100 percent, if the agency head deems it appropriate.

Awards and Bonuses Included in Retirement Computation

As recommended above, we seek to include performance and rank awards for SES members and SL/ST employees, as well as those in other equivalent systems (including specific statutory reference to those other equivalent systems), in the definition of “Basic Pay” for purposes of computing retirement benefits. Currently, bonuses and awards earned by executives are not counted toward retirement benefits under Title 5 (only basic pay and locality pay count toward benefits).

“Pay for performance” is now becoming the standard model for SES compensation as the Bush Administration focuses on Senior Executive performance and accountability. Senior Executives who receive bonuses and awards for outstanding performance will not be adequately compensated for exceeding expectations unless the bonuses and awards count toward the calculation of their retirement annuities.

The estimated cost of this proposal is \$2.408 million government-wide. This is based on fiscal year 2000 data, when agencies spent a total of \$34.4 million on awards and bonuses (\$7.8 million on Presidential Rank Awards and \$26.6 million on performance bonuses). The maximum estimated cost is 7% of this amount, or the agency’s contribution toward CSRS retirement.

Phased Retirement

To help agencies cope with the expected massive retirements over the next several years, we propose to give agencies the authority to re-employ on a part-time basis after retirement career members of the SES and SL/ST personnel with no reduction in retirement annuities to those individuals. Currently, agencies are granted authority by OPM to re-employ without reduction in annuities only under very limited circumstances.

“Phased retirement” for career members of the Senior Executive Service (SES) and for Senior Level and Senior Technical personnel would allow agencies the flexibility to re-employ

on a part-time basis senior managers and technical personnel, who would experience no reduction in annuity, to ensure an adequate transition period between the employee's retirement and the hiring of his or her permanent replacement.

Members of the SES and SLs and STs are highly experienced executives and technical experts who possess historical knowledge of their agencies' operations and procedures, and have demonstrated the ability to lead their agencies' programs. Current projections show that more than two-thirds of Senior Executives will be eligible to retire over the next five years. The loss of such a significant number of the government's career leadership is a serious problem for many agencies, since they rely on the experience, knowledge and expertise of these individuals to satisfy their mission requirements.

Concern about the loss of such employees prompted the IRS to seek relief from the Office of Personnel Management by requesting a waiver from the retirement offset restrictions so that the IRS could re-employ annuitants with unusually high technical qualifications to support critical mission requirements. In addition, the Department of Defense sought and received statutory relief to the retirement offset for the re-employment of regular military officers to the civil service. After 9/11, the Office of Personnel Management relaxed application of these restrictions. We propose to allow agencies to make this decision but with limits, especially in light of the impending retirement boom.

SES Credit Hours

We propose that legislation be enacted to allow members of the SES the same right as other federal employees to accumulate and use credit hours.

The current provision, 5 U.S.C. Section 6126, allows employees on flexible schedules to accumulate and use credit hours, but the Office of Personnel Management has promulgated a rule that prohibits members of the SES from accumulating credit hours. Previously, agencies were free to make their own decisions regarding this matter.

There is no question that executives at many agencies, particularly those that operate 24 hours a day (such as VA hospitals and IRS service centers), put in long hours. This is part of the job of a Senior Executive. The problem arises when executives are called back to the office during the night or weekends, or whenever their responsibilities keep them working extremely long hours. Sometimes these executives will work through the night, go home to get some sleep, and arrive in the office later than their usual start hour to begin their next work day. Because of the credit hour restriction, these executives can and have become the subject of IG investigations because someone has claimed that they have not worked a full day or their required hours and have not taken annual leave. SEA believes that investigating these executives who are performing their jobs is a waste of agency resources and that removing the credit hour restriction for SESers and those in equivalent pay systems makes sense.

OPM offered some advice on this subject in a letter dated May 23, 2002 from Director Kay Coles James. However, the flexibilities detailed in the letter are inadequate and do not appropriately deal with the problems faced by Senior Executives who work long hours and who may need time off during the day to tend to personal matters that they have been unable to tend to earlier because of their busy schedules.

OPM Headhunter Program

To encourage greater executive mobility between federal agencies, we propose authorizing a centralized headhunter program which agencies can use to recruit the best in government for their senior level needs.

The focus of a centralized headhunter program would be on recruiting Senior Executives already in government for other positions at different agencies, as well as for new or different positions within their own agency. The program would be administered by OPM and would introduce more competition into filling SES vacancies and increase the prestige and value of the best executives in government. It would also encourage career executive employees to excel, so that they would be recruited. The program would not replace the competitive announcement process, but would be used to expand the pool of eligible applicants. Agencies should be encouraged to use the existing authority to provide recruitment, relocation and retention bonuses in recruiting the best in executive talent.

Because of negative perceptions over the years, mobility in the Senior Executive Service has had limited success. An SES member who volunteers to be considered for transfers to other agencies or reassignments within his or her own agency may be viewed as having problems in the current job. Sometimes, mobility has become a euphemism for being sent to the “turkey farm.”

One way to solve this dilemma is to totally change the paradigm. The procedure to fill an SES position has always been the announcement of vacancies and the application of employees to fill those vacancies. It is presumed that enough good applicants will seek the position, and that the selecting official will be able to identify and select a good candidate. However, many times the best applicants do not apply.

A different paradigm based on the private sector practice of “headhunting” could solve these dilemmas. The Office of Personnel Management could establish a “headhunter program” that would require some startup costs, but could become self-sustaining if properly handled. By encouraging the recruitment of the best possible individuals for open SES positions, the headhunter program would benefit agencies, individual candidates (from inside the government and from the private sector), and the government as a whole. Some agencies already have active headhunter programs, but these often focus on external candidates rather than on internal career executives. The primary focus of this new headhunter program would be to find and promote candidates who already are government Senior Executives or GS-15s eligible for noncompetitive appointments to the SES, and then, secondly, to recruit from the private sector.

Retention Allowance Carryover

Under current OPM regulations, a number of Senior Executives who are so valuable to their agencies that they have been granted retention allowances frequently may not receive all of the allowance because of the statutory cap on aggregate pay in a calendar year. This will occur if, as is highly possible, the very valuable executive is also granted a bonus or Presidential Rank award.

While the law and regulations provide that any amount of a bonus, rank award or other compensation that exceeds the aggregate SES pay cap (Executive Level I) shall be carried over and given as a lump sum at the beginning of the next calendar year, they provide to the contrary for retention allowances. Excess amounts of the retention allowance cannot be rolled over to the following year. Instead, the agency must first, once additional compensation is authorized, project the total compensation the executive is scheduled to receive by the end of the year. The agency must then adjust the amount of the retention allowance downward to the extent necessary to prevent any excess (above the Executive Level I pay cap) being received by the end of the year.

By statute and regulation, a retention allowance may be given only when two qualifications are met: (1) the employee possesses unusually high or unique qualifications, or the agency has special need for the employee's service, that makes it essential the agency retain the employee, and (2) the agency determines that without the allowance the employee would be likely to leave the Federal government. Because the Executive Schedule has been frozen for five of the last nine years, and because the Executive Schedule has never received locality pay, the Executive Schedule is artificially low, and more and more amounts of retention allowances that agencies wish to grant to their best executives cannot, in fact, be received.

Retention allowances are the only forms of compensation that may not be rolled over and paid the next year. Recruitment bonuses, for example, are treated like Rank awards or ordinary bonuses and may be rolled over. This is the result of OPM regulations at 5 CFR §530.203 (c) and 575.307 (a) which implement 5 U.S.C. § 5754 and do not permit the rollover of retention bonuses.

We propose repeal of the prohibition against rolling over SES retention bonuses from one year to the next when the compensation cap is exceeded and recommend that Section 5754 of Title 5 be amended to clarify that retention bonus amounts will not be lost in rollover years and may be recovered by the executive or the executive's estate.

Applicability of One Year No Contact Rule to Career SES

One of the difficulties with S. 768 is that currently 18 U.S.C. §207 imposes a one-year post-employment no contact rule that applies to those paid at the ES-5 and higher rank. The elimination of SES ranks or pay levels and the imposition of one pay band (as in the current version of the bill) or three pay bands (as SEA proposes) will require reform of this ethics requirement.

Section 207 of Title 10, United States Code, contains a number of post employment restrictions applicable to federal employees who depart their federal employment, including the the one-year no contact rule which prohibits certain communication with or appearances at the executive's old agency for one year after leaving employment. This rule was originally intended to cover executives with the rank of ES-5 or higher. However, it is written in the context of pay at the ES-5 or higher level, and with the onset of pay compression, many executives are now covered by the restriction who were not originally intended to be covered. Also, because of the serious pay compression problem, the distinction of imposing the restriction at the ES-5 level has become meaningless.

We recommend amending 18 U.S.C. §207 to provide that the one-year no contact rule apply only to Senior Executives who are in the third band, assuming the bill is amended consistent with SEA's proposal. In the alternative, or in the event only one broad pay band is adopted, we propose amending 18 U.S.C. §207 to eliminate the applicability of the one-year no contact rule to career Senior Executives.

Demonstration Projects

S. 129 has a provision containing sweeping reform of the current demonstration project statute. The new provision would eliminate restrictions on the size and number of projects and would reduce the role of OPM in approving and monitoring these projects.

SEA opposes such broad authority to circumvent current statutory provisions and supports reasonable restrictions on the use of demonstration projects so that deviation from the law that is the centerpiece of any demonstration project remains the exception rather than the rule.

* * * * *

Over the next several months we hope to work with the Subcommittees and the Administration in particular to implement the amendments to S. 768 we have discussed above. SEA surveyed its members about the Administration's proposal, and we provide the Subcommittees with a compilation of those comments (see Attachment II). We believe these observations from the Federal government's highest ranking career employees support an end to pay compression, but also express substantial concerns with regard to the Administration's proposal, concerns which can be addressed with the reasonable changes we recommend.

We also hope to work with the Subcommittees for full consideration of our other proposals which we believe will enhance the effective operation of government and provide needed reform to the career Senior Executive Service.

2003 LOCALITY RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE
EFFECTIVE JANUARY 2003

SALARY TABLE 2003-ES (LOC)

LOCALITY PAY AREA	ES-1	ES-2	ES-3	ES-4	ES-5	ES-6
Atlanta, GA	\$ 127,847	\$ 133,883	\$ 139,919	\$ 142,500 *	\$ 142,500 *	\$ 142,500 *
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	132,309	138,555	142,500 *	142,500 *	142,500 *	142,500 *
Chicago-Gary-Kenosha, IL-IN-WI	133,486	139,788	142,500 *	142,500 *	142,500 *	142,500 *
Cincinnati-Hamilton, OH-KY-IN	130,585	136,750	142,500 *	142,500 *	142,500 *	142,500 *
Cleveland-Akron, OH	128,534	134,603	140,671	142,500 *	142,500 *	142,500 *
Columbus, OH	128,966	135,054	141,143	142,500 *	142,500 *	142,500 *
Dallas-Fort Worth, TX	129,199	135,298	141,398	142,500 *	142,500 *	142,500 *
Dayton-Springfield, OH	127,707	133,736	139,766	142,500 *	142,500 *	142,500 *
Denver-Boulder-Greeley, CO	132,041	138,275	142,500 *	142,500 *	142,500 *	142,500 *
Detroit-Ann Arbor-Flint, MI	133,637	139,946	142,500 *	142,500 *	142,500 *	142,500 *
Hartford, CT	132,938	139,214	142,500 *	142,500 *	142,500 *	142,500 *
Houston-Galveston-Brazoria, TX	138,181	142,500 *	142,500 *	142,500 *	142,500 *	142,500 *
Huntsville, AL	127,078	133,078	139,077	142,500 *	142,500 *	142,500 *
Indianapolis, IN	126,810	132,797	138,784	142,500 *	142,500 *	142,500 *
Kansas City, MO-KS	127,311	133,322	139,332	142,500 *	142,500 *	142,500 *
Los Angeles-Riverside-Orange County, CA	135,198	141,581	142,500 *	142,500 *	142,500 *	142,500 *
Miami-Fort Lauderdale, FL	131,004	137,189	142,500 *	142,500 *	142,500 *	142,500 *
Milwaukee-Racine, WI	128,208	134,261	140,314	142,500 *	142,500 *	142,500 *
Minneapolis-St. Paul, MN-WI	129,967	136,103	142,239	142,500 *	142,500 *	142,500 *
New York-N. New Jersey-Long Island, NY-NJ-CT-PA	134,243	140,581	142,500 *	142,500 *	142,500 *	142,500 *
Orlando, FL	126,601	132,577	138,554	142,500 *	142,500 *	142,500 *
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	130,608	136,774	142,500 *	142,500 *	142,500 *	142,500 *
Pittsburgh, PA	127,591	133,614	139,638	142,500 *	142,500 *	142,500 *
Portland-Salem, OR-WA	130,061	136,201	142,341	142,500 *	142,500 *	142,500 *
Richmond-Petersburg, VA	127,766	133,797	139,829	142,500 *	142,500 *	142,500 *
Sacramento-Yolo, CA	130,468	136,628	142,500 *	142,500 *	142,500 *	142,500 *
St. Louis, MO-IL	126,962	132,956	138,950	142,500 *	142,500 *	142,500 *
San Diego, CA	131,296	137,494	142,500 *	142,500 *	142,500 *	142,500 *
San Francisco-Oakland-San Jose, CA	138,682	142,500 *	142,500 *	142,500 *	142,500 *	142,500 *
Seattle-Tacoma-Bremerton, WA	130,212	136,359	142,500 *	142,500 *	142,500 *	142,500 *
Washington-Baltimore, DC-MD-VA-WV	129,874	136,006	142,137	142,500 *	142,500 *	142,500 *
Rest of U.S	126,566	132,541	138,516	142,500 *	142,500 *	142,500 *

* Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

NOTE: Law enforcement officers in the Boston and New York CMSAs are entitled to the rates on salary table 2003-ES (LEO). Locality rates of pay are basic pay only for certain purposes--see "2003 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.



Attachment II

SENIOR EXECUTIVES ASSOCIATION
MEMBER SURVEY
REGARDING THE ADMINISTRATION'S
2004 BUDGET PROPOSAL FOR EXECUTIVE PAY

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I. Unanswered Questions

A. Would there be minimum and/or maximum amount by which pay could be increased or decreased?

1. ... A limit on the dollar decrease in salary for alleged poor performance per rating cycle would be an appropriate safeguard.
2. It might be useful **to consider not only the maximum that pay may be decreased at any one time, but also to define a path so that significant reductions can only take place over an extended period.**

B. Would the current regulations requiring written notice for pay decreases remain in place?

1. Currently, a reduction in SES grade is a rare act, and must be justified by substantial appraisal documentation. Most SES jobs are pegged at one or two SES levels and there is some security in the absence of substantial pay flexibility. **That security will evaporate if there is no burden to be met in order to reduce compensation**, and the floor in that eventuality is unacceptably low.... Under the new proposal, if you cannot justify removal, because performance is clearly satisfactory, the Agency can reduce pay. Budgetary concerns, or other problems related to political concerns, could easily result in a substantial salary reduction. Moreover, **SES applicants should know what they can expect to earn, rather than accept an initial salary that may change substantially. An SES promotion should not resemble a lottery ticket, and you take your chances after the first year.**
2. ... Decreases in pay should require written documentation. A safeguard here would be to have any decrease reviewed and approved by an ERB [sic: PRB?].

C. Would bonuses, in addition to pay adjustments, also be granted for high performance?

1. ... why can't pay for performance be measured by bonuses instead of base pay? Fewer but substantially bigger bonuses should produce the same results the Administration seeks without the problems inherent in their current proposal
2. I'm in favor of retaining both bonuses (one-time) and salary adjustments. This too should be at the Agency's discretion.

D. How will this proposal affect SES-equivalent executives, such as Boards of Contract Appeals Judges?

(1) BCAJ

1. As a board of contract appeals judge who was directly involved in the negotiation and establishment of the "CA" pay system, I hope we will not be left behind. Our system was designed to take into consideration the **inappropriateness of bonuses for judges**....As you know, chairmen are CA I (exec. level 4), vice chairmen are CA II (97% of exec. level 4) and judges are CA III (94% of exec. level 4). **If that changes to the above percentages of exec. level III, I think most BCA judges would be happy.**
2. **In my view, the CDA should be amended to tie BCA Judges' salaries to Level III of the Executive Schedule in lieu of the present Level IV, with the overall cap at Level II of the Executive Schedule in lieu of the present Level III cap.** This proposal should ensure that BCA Judges' salaries are on par with the proposed new SES pay structure. Thank you for the opportunity to comment.
3. The CDA should be amended to **tie the BCA Judges salaries to level III of the executive schedule (in place of level IV in the existing legislation) with an overall cap at level II of the executive schedule (in place of the current level III).** Such a change will assure that the BCA Judges salaries keep pace with the SES salaries as proposed by the administration.

(2) SLs and STs

(No comments received.)

(3) FAA

1. In the FAA, pay disparity for SES is a bigger problem than anything else especially in the Air Traffic organization. Currently my deputy makes \$21,000 a year more than I do. I'm an SES ; he's not. This year he received a 5.8% pay raise and I received 3.1%. The gap widens. **I'm not sure that this proposal matters to FAA SES'ers since DOT and FAA appear to be able to do whatever they want.** We've not received promised bonuses in two years and are not eligible for Presidential awards. I guess all of the above is to ask **how do the proposed rules apply to FAA?????**
2. Pay for performance is desirable, but being an executive at FAA leaves the advantages of that in doubt. We have been asked to commit to higher performance standards here, but **the payoffs don't materialize if we reach our stretch goals and successfully support strategic initiatives.** Given my choice, I would relinquish my executive status and drop down to the L band, if I could do so at my current pay and keep my current position. I intend to explore this possibility. I believe I have more pay, retirement, and credit time advantages as

a non-executive in FAA than I have currently. Thanks for all your hard work. The Association does a great job.

3. ... **taking away the "annual" increase and making it more of a "reward/bonus" approach has had the downside in FAA of holding it (in a similar current issue) hostage to budget reductions.** I know they talked about a government wide set-aside to fund this (I am still unclear on how that would work) - but those of us in FAA have already experienced the perception in tight budget times that even a performance based award system has the appearance of being "too much to fund" - even while employee annual increases and employee awards remain funded. I also think **there should be some grandfathering clause on existing pay** if they transition into this approach.

(4) ALJs

1. Some of my judges were told by OPM representatives at an ALJ summit on capitol hill this week that the new pay bands will apply to ALJs, i.e, the proposed \$102,000 to \$154,700 figures. However, I am concerned about the fact that ALJs ... are exempt from the performance appraisal system established by Title 5, USC Sec 4301 (2)(D). There are currently no performance standards of any kind for ALJs. Perhaps there should be some. **Do you have any idea how the proposal could be applied to ALJs?**

II. Core principles set forth by SEA Board

A. Setting a cap high enough to enable receipt of the full locality pay adjustment

1. Several executives in Hawaii, Alaska, etc. asked that a provision be added to SEA's agenda proposing that overseas COLA's be included in high-three retirement calculations, as are locality payments for others.]
2. Any SES pay for performance plan must take into account the fact that federal **salaries are much less competitive in many urban areas than in other parts of the country.** Executives who work in these areas receive disproportionately less pay (the pay comparability act never was fully implemented) and generally have a much weaker and inexperienced workforce. To compare the performance of executives who manage these offices with others in lower cost areas is unfair and will make it even more difficult to attract executives for the toughest assignments in government. Hence, **any pay for performance plan has to take these inherent difficulties into account when paying senior executives.**
3. **The locality pay issue should be exempt from a salary cap.** Our senior executives working in San Francisco make the same as the senior executives in Vicksburg, Mississippi. ...this is grossly unfair.

B. Requiring that any basic cost of living adjustment received by GS employees be received by executives

1. "Cost of living is cost of living ..."
2. **Suggests holding COLAs in abeyance until cap is raised.**
3. ... the absence of a provision for annual raises, based upon cost of living, creates another nonappealable avenue for political other irrelevant considerations to result in a pay freeze, perhaps for many years, which quickly, because of inflation, **becomes a de facto pay cut.** Employees at the GS 1-15 level are virtually assured of annual pay increases, more or less pegged to inflation, (mostly less) and SES members who perform satisfactorily should be entitled to no less assurance.
4. **...It is bad enough that in many years GS employees receive wage increases in greater percentages than those received by SES'ers. To deprive SES of any regular wage increases is an insult.**
5. **Why have to give up COLAs to enter SES?**

Contra

1. I'm not sure we have to insist that every year SES'ers must as a minimum receive the same COLA as the GS ranks.

C. Prohibiting forced distributions (quotas) of executives' performance ratings by agencies

1. My basic reaction to your email below is one of great concern. Already **at Interior, there is a 45% cap on the proportion of SESers who can be nominated for and receive awards.**
2. It is certainly possible, and perhaps even likely that a very substantial number of SES members, each performing in their respective areas of responsibility, are all performing very commendably or outstandingly. If an Agency has, for example, 10 law offices or litigation centers, each headed by an SES attorney, and they are all successful in winning 95 percent or more of their cases, **why is in necessary to curve their performance.** It should only happen again next year!. And the same can be said of other areas of responsibility led by other SESers. **We should rejoice in the success of SES members rather than find ways to make irrelevant distinctions.** Stated otherwise, I am not comfortable being rated outstanding if I know that my colleagues, who have performed very similarly, given their challenges, are rated lower in order to justify an OPM requirement. The proposal will force Agency evaluators to make teensy weensy distinctions among very similar performers in order to present a satisfactory grid. **Admittedly, there are distinctions among performers, and that should be recognized at the upper end by rank awards and on the lower end by**

lower appraisal ratings, but the vast middle are performing very well and should be recognized rather than penalized for it.

3. ... the proposal could have extremely divisive consequences. For example, in my Agency, there are well defined goals in each SES performance plan that are used to measure and rate our individual performances. They're not easy goals. What if, as one would presume is desirable from a public service point of view, most of us meet the goals and thereby effectuate public policy? Does that mean that the system does not make "meaningful distinctions"? If the system does not make "meaningful distinctions" because most executives are good at what they do, does this mean minimal or no pay raises? **Does someone have to fail so that someone else can get a pay raise?**
4. The "meaningful distinctions" standard, to be judged by OPM alone, can act only to deprive deserving executives of pay raises or recognition. Few, if any, SES'ers obtain their positions unless they truly are the cream of the crop. This provision alone is reason to reject OPM's proposal out of hand.
5. The proposal can only be read (particularly the aspect of the appraisal system needing to be "certified") to mean that there will be forced lower ratings (quotas) and that would result in gross unfairness to the many who perform at the highest levels of performance but who would not get the commensurate pay. Clearly the proposal would force those persons to unfairly get lower pay. As a result, **including language in the proposal that the Agency would have "total flexibility" appears disingenuous when in the full context, the Agencies would have to force varied ratings regardless of real performance in order to be certified.** Undoubtedly that would result in forced pay scale determinations.

D. Providing appeal rights to Performance Review Boards for executives denied an annual pay adjustment

1. One potential system for preventing abuse, which I agree could be a problem, is to require reviews by the Executive Resources Board (ERB). [sic: PRBs?] I've lost touch with the requirements for ERBs, but the composition might be regulated.
2. At the Railway Retirement Board, **political appointees don't pay any attention to PRB recommendations.**
3. **Should be reviewed by outside board.** (Also 186)
4. ...to a "board." A single manager should not have sole authority.

Contra

1. Leave PRB appeals off the table.

E. Defining the bottom of the pay band to prevent any overlap with GS-15

Note: Virtually every executive responding made this point.

1. I cannot understand the rationale for pegging the bottom of the SES scale to a little more than the beginning of the GS-15 pay range, except to provide an avenue to reduce SES members in order to force them to resign by paying them less than their GS 15 subordinates. Most SES members entered the service from at least the middle of the GS-15 pay range, and probably higher, so the new floor would constitute a substantial pay cut for any SES member reduced to that level.
2. ... Under no circumstances should the LOWEST level of SES pay be less than \$10,000 greater than the HIGHEST level of GS-15 pay. The idea of any SES executive earning less than a GS-15 is unacceptable.
3. Your position about keeping a distinction between pay for the top of the GS-15 level and entry level SES is also good, ...

F. Determining whether establishing pay bands within the SES rank system might not accomplish the same objective

1. Go with 5 or 10-year renewable contracts. If there will be pay bands, these should be set government-wide, so stingy CEOs couldn't make his mark by showing his "toughness."

[See also VIII, below]

III. Likes SEA's Approach. No Further Comments

Of the 186 comments received, many express agreement with the questions raised by SEA and the Board, with little or no further comment. Almost all thanked SEA profusely for continuing to look after their interests.

IV. Likes Administration's Proposals

1. ... "While it's not the greatest approach, it's the only one that has a possibility of approval...."
2. [W-P A.F.] says "I think this sounds like a pretty good proposal."

3. [Corp. for National & Community Service] I support this new direction for pay for senior executives. Six 'levels' of senior management simply don't make a lot of sense. **Agencies need more authority to manage, and this is one vehicle for doing it.**
4. [Ag – Reg. Forester] ...thanks for the heads-up and request for feedback on the Administration's new pay proposal for SES'ers. **I strongly support it and urge our association to be as cooperative as we can** be with the Administration and do everything we can to quickly get it enacted. I was troubled to see us so confrontational with the Administration over the Dept of Homeland Security personnel issues. I disagreed with our stand on that one.

On this **proposal I encourage you to graciously acknowledge thanks to the Administration for finally moving forward positively to address executive pay compression, work proactively and quickly with them to finalize their proposals, and then help support the congressional sponsors.** I strongly support pay for performance and making meaningful distinctions between SES performance. Departments and agencies which refuse to make meaningful distinctions between SES performance should not be supported. Your position about keeping a distinction between pay for the top of the GS-15 level and entry level SES is also good, although I'm not sure we have to insist that every year SESers must as a minimum receive the same COLA as the GS ranks.

So in summary, do everything you can to make this happen quickly, **don't pick fights with the Administration**, and continue to do the good job that you are in keeping us informed. Resolution of the pay compression problem and the recognition we need significant extra financial help with locality pay in high-cost locations like the San Francisco area where I work, are the primary drivers in keeping me serving our government. I am retirement eligible, but have no interest in quitting working. The pay compression problem was weighing heavily on me.

5. Though agreeing with most of the issues raised in CAB's e-mail, suggests **"I would be careful about fighting it too hard.** ...On the positive side it would eliminate the rank vs. position problem, ... would also get the pay cap up, which is something I did not think I would work long enough to see."
6. **Must be basically supportive to remain a player** ... while raising only those few, key issues that are important to members.
7. Though agreeing that the e-mail "asks some very good questions," "am generally not opposed to the Administration's proposal ..."
8. [OMB] I believe **this is the best shot we have at lifting the cap** and the SEA should endorse the Pay Proposal.

More significantly, **the image and reputation of the Federal workforce will not be improved until pay is more closely tied to performance** and pay banding is an integral part

of that. Pay banding is also desirable to enable us as managers to manage our workforces better. We should embrace it for ourselves as well.

The exact rules and conditions for implementation are important **but we should avoid getting into** protracted negotiations over every detail as this makes us look more like a labor union and is precisely the kind of problem that plagues agency relationships with Federal employee unions. We should be supportive of efforts to give management greater flexibility. In return, we can rightly justify higher pay. **Opposition to forced distributions of performance ratings contributes to the "management versus labor" image. In any event, requirements for such forced distributions are unlikely once a true pay for performance system is in place.**

9. (Assuming bonus money will not be folded into the new pay band) ... I have no objection to the concept outlined below.

V. Not Enough Information to Assess

Several responders said they did not have enough information to assess the situation.

VI. Possible Politicization of the Rating Process

1. Having worked as a career SES in several agencies for the past 22 years and witnessed the games that some politicals play with the SES, **I would insist upon sufficient safeguards.** For example, agency head A wants to free up some SES slots for his or her "supporters" by encouraging current career SES staff to retire. An arbitrary salary cut of lets say \$20,000 per year in salary for alleged poor performance, impacting the person's high-3 retirement annuity calculation, would drive many retirement-eligible SES out the door.
2. I see this as another trap. **I have not had an assignment since January 2002**, which lasted until April 1st. Since then my shop was abolished, my S&E budget taken away and I am awaiting reassignment to be a senior advisor to a division director, with no supervisory or money management authority. I received a pass rating in June. **Nothing since in the way of work. I am a Charter member SES 6 with three presidential rank awards since 1981. You cannot receive a performance award when there is nothing to perform.** What protection do those of us have, who served whomever was in charge over the years, to continue to serve with dignity and integrity? It makes one suspicious of intent, I don't want anything done for me, but it does provide **an example of how the lowering or raising of an executive's pay becomes a political ploy.**
3. Many SES people have their performance evaluated by political appointees. This proposal by the Administration **seems to present a new way for such appointees to downgrade**, and ultimately force out, people whose political loyalty is questioned. It might be useful to consider not only the maximum that pay may be decreased at any one time, but also to define a path so that significant reductions can only take place over an extended period.

4. ... **allowing such flexibility over the pay range allows political a much greater leverage over SESers by allow pay increases to be potentially more greatly influenced by political considerations.** Why is this important? The current administration has taken many folks who became SESers under the Clinton Administration, myself included, and **dumped us into dead end positions, no staff, no responsibilities even remotely approaching our previous positions. Under these circumstances, many of us have no chance at all to succeed under such a new pay regime and all the talent and experience we represent, ... are now at risk.** In the most strenuous way, I strongly, strongly urge you to look into this abusive situation and to consider that this pay plan may just be another method the current administration will use to weed out "incorrectly thinking" individuals from the past administration. Please consider this point in any position you take on pay regimen changes for SESers. **There are a lot of us that have been unfairly treated and this new pay scheme may just be a case of the screwing we get for the screwing we just got.**

5. I'm reminded of the late Claude Pepper's comments about proposals to reform Social Security: **"When your boss calls you into his office and tells you he's going to 'reform' your salary, do you think you're getting a raise?"** I've worked directly for a large number (and variety) of **political appointees, more than a few of whom responded to career executives on a purely visceral level. If they liked you, your errors were a reflection of desirable risk-taking. If they didn't like you your less than total successes were a reflection of your lack of initiative.** In other words, I find pay compression under the current system to be more desirable than a **wild card system**, which is what the proposal looks like to me.

6. **Having the agency set the basic pay would always be "political" whether stated or not.** Those on the "right side" or politically connected will be the ones to benefit and those on the "other side" (depending on what party is running the Administration) will not benefit regardless of performance.

7. **none of the four politicals that I have reported to in the last six years have had any relevant industry or even management experience** required for the job, while my entry into the SES ranks, even with over 20 years of industry management experience, required 7 interviews and a lengthy 14 page essay outlining my qualifications for certification.

8. ... a politicization of the SES appraisal process, or its distortion, will do far more harm than the increased compensation will do good.... A related issue concerns the identity of the performance rater and reviewer, who have been, up until now, career SES members. Although I do not trust every SES careerist, just because they have that status, the system has worked fairly well. I would want to be sure that the appraisal power does not shift to political appointees or their appointees. The power to appraise is the power to destroy, or to at least inflict substantial harm. We should oppose any delegation or transfer of the appraisal power to the political arena, for the good of the SES and the nation. [A number of NLRB Regional Directors expressed their agreement with all of these comments (See, e.g., 77)]

9. ...**Giving agency heads -- political appointees -- authority to set basic pay is a dangerous step away from the fundamental concept of SES -- having a core group of unbiased, non-partisan career executives.**
10. I know human nature and have many years of experience in this political system and know that such expectations, clearly laid out, are an exception and not the rule. My fear is that **this new approach would reward those who blow with the political winds** regardless of what is in the best interests of the people of the U.S. and punish those who might disagree or object to ill-considered decisions.

Contra

1. I support pay for performance. We already have it in OSD via the SES bonus process. Although subject to review by a career performance board, **OSD political appointees pretty much decide** which SES members get bonuses and how much of a bonus they get. As far as I can tell, **this system has been fairly implemented over the years and the bonuses reflect merit and pay for performance.**

VII. Pay for Performance is a Slippery Slope

1. The statement that the agencies have total flexibility sounds like we've regressed to the 'spoils' system!!! It will be interesting as to what is actually presented as an acceptable performance system that makes "distinctions" among ratings. I read the GAO report on this and it had an example of stratifying bonuses – it was rather flaky and still involved a **great deal of subjectivity, arbitrary boundaries and 'point' assigning – it appears objective, but it's a facade.**
2. Regarding "pay for performance," I concur as long as standards for excellence can be defined in definitive terms and those benchmarks can be a part of the evaluation/measurement process. **Caution must be exercised to ensure expectations can be accommodated in a public sector environment.** While some may be quick to say federal agencies must become more business-like in achieving efficiencies, and I agree, I also offer **that public sector leaders and managers are much more constrained in their ability to operate with the same degree of latitude exercised by private sector entrepreneurs.** Accordingly, a pay for performance ethos must be complemented with modifications in operational procedures that permit an entrepreneurial spirit to prevail. Establishing the former without the latter ends the race before it begins.
3. With regard to basing increases on performance, the sound of the concept is nice, however, the demon is in the details, which I believe explains why **this scorecard approach is unheard of in private industry. Without even a revenue basis to depend on, the public sector searches aimlessly for a performance indicator. It is very hard, if not impossible, to construct reliable, sufficiently concrete and objectively measurable performance measures for executives, whose work is abstract, complex, and multi-factoral. In addition, particularly in public service, accomplishments are dependent largely on**

external forces, such as appropriations, abrupt changes in political leadership and agendas, and socioeconomic conditions. The SES corps is the first cadre of employees to come under scrutiny every time there is a change in Administrations, and to that end, we serve as the buffer for the GS employees from political manipulation. We know that, as laudable as "mobility" sounds, that is one strong mechanism for political leadership to use in order to remove incumbents and put in place either cronies or toadies. If we add "pay" to that toolbox, the picture will be bleak indeed for our most accomplished civil servants, as demonstrated over time, the SES corps. The fact remains that in order for a civil servant to achieve career SES status, he or she must have risen through the ranks over many years, and likely, across parties. The person must have demonstrated a strong work ethic and many achievements over many years, across supervisors, across programs, and usually across party lines. **To have basic SES pay affected now by performance measures that would be inherently highly subjective and vulnerable to manipulation would be devastating to career professionals** who, by and large, have as their overriding interest not partisanship, but good government. I am highly suspect of this proposal as summarized below, and I am pessimistic about the end result. **With the pay compression that has occurred over the years, Levels 1 through VI are effectively already just one pay band. Widening the "band" by a mere \$12k at the top end, as the proposal indicates, is very revealing of little interest in basing salaries on performance.** By measure of central tendency alone, salaries of "average" high achievers would start to drop immediately, and the very best performers, could only look forward to an after tax increase of \$8k at most.

4. While pay-for-performance is an admirable concept, making it reality can be a challenge. The key is a objective set of relative measures. The USPTO has a great set of performance measures for certain executives (those in the Patent organization), others have less rigorous measures (those in some of the support organizations). Without some level objective measures, evaluations become too subjective to qualify as true "pay-for-performance".
5. ... In VA I've seen quite a few performance measures not fully developed yet put into place. I've also seen perf. measures dropped out and dropped in mid way through cycles causing some confusion. I'm **also concerned lest so many measures are put into place that achievement across the board becomes impossible.**
6. A great deal of **subjectivity**
7. Problem is coming up with measures that are usable and appropriate.
8. Pay for performance is an illusive concept... Need prior agreement on performance appraisal system.
9. Most organizations have no real cost accounting functionality to accurately measure performance.
10. **Scorecard approach is unheard of in private industry.**

Contra

1. I strongly support pay for performance and making meaningful distinctions between SES performance. Departments and agencies which refuse to make meaningful distinctions between SES performance should not be supported.

VIII. Keep SES Ranks

1. **Abandoning all SES ranks is nonsensical. The level of responsibility of the director of my agency, NOAA Fisheries, is certainly an order of magnitude greater than my own as one of his field directors.** That this difference in scope and magnitude of responsibilities exists ought to be recognized in an SES performance-based system. It certainly was in the general workforce system that NOAA adopted which collapsed the 15 GS levels into 4 bands. **An SES performance-based system might reasonably be collapsed into 2 or 3 bands, but not one.**
2. SES ranks would be abolished, and a pay range established in its place. **Ranks don't seem to make much financial difference now, so I suspect this is something we could 'give up' if we get something in return.** The only problem is compensation for SESers will be solely monetary. There is something in Maslo's hierarchy that says things like **prestige, ego, etc.. become very meaningful once the pay is adequate.** I suspect one of the things that keeps the ES-5 and ES-6's going (since we all get the same pay) is the **psychic award of rank. I would not give it up without some way to provide non monetary recognition for those in the very difficult and most senior levels.**
3. I have no problem with pay banding, particularly within the "band" of ES-1 thru ES-4. Combine them if you want. However, I believe that there is great meaning in **retaining ES-5 and ES-6 as distinct "grades."** Pay band within them if you want, but these "grades," particularly within the career service, are important. I won't waste your time with all of the arguments I am sure you are familiar with, but I believe **the "grade" system of the SES has caused many of the senior political appointees to have second thoughts about appointing/promoting their non career folks to the highest pay levels. I don't hear of any move to eliminate the "grade" structure of the military.** Some years ago China did away with its "structure" by having every officer wear the same uniform. As I recall, it didn't work out very well.
4. The FBI has a very limited performance appraisal system. In fact, it's abysmal. There are only 3 rating levels: Fully Successful; Minimally Satisfactory; and, Unsatisfactory. Virtually everyone is Fully Successful. It will take years for the FBI to reconfigure its performance appraisal system. **How about a compromise position, say, the agency could use the new pay levels, but retain the existing 6 SES Levels for not more than 3 years. At the end of the three years, they had to have a new performance plan in place and be conducting meaningful appraisals.**

5. Establishing a payband alone won't work. Even tying movement to performance won't necessarily work. As long as agencies can use other factors such as protocol code, some semi-classification system, or organizational alignment, agencies will simply administratively institutionalize the current set up. See what OSD did to the ST/SL pay band for example. **OSD policy mirrors the SES policy including quota-controlling the pay equivalent to ES-5 and ES-6.** Look at how Army actually controlled ES-5 and ES-6's. So much for person-in-the-job concept of SES. OSD and the Services continued to quota-control them even though the OPM guidance on distributing pay levels had been cancelled years ago. While I was at AMC, we proposed that in lieu of quotas, the top pay levels (ES-5 and ES-6 which were quota-controlled for career execs) be automatically received by those awarded Presidential Rank Awards, ES-5 for Meritorious, ES-6 for Distinguished. **SES's in HQ positions wanted most of the ES-5 and ES-6 quotas tied to their positions, irrespective of performance record. They felt it was necessary in order to attract individuals to their jobs.**
6. Second, eliminating the ES pay ranges seems to mean de facto that every job is the SES is potentially as important as any other job. Does SEA agree with that? Clearly, **some SES positions have more authority and responsibility than others.**
7. All senior execs are not equal in terms of responsibility, duties, authority, or comparative market worth. The ES steps should be retained. (Also (181: Performance is just one factor. **Level of responsibility and authority play a part in the pay level of any other position in Federal government.** Pay levels within bands will become de facto pay [ranks.]
8. ... what is the purpose of abolishing ranks? Currently a lower rank SES can be promoted to a higher rank with a little effort on the part of the ranking officer, **so ranks constitute a means of establishing a distribution.** With no ranks an agency, or more likely a subunit within an agency, could happily assign the top salary to all members of the unit and thereby do away with the troublesome business of trying to fairly assess relative performance. The idea of no ranks is on the face of it good, but as a basis for improving evaluation it is not likely to be successful when the ranking officer is either lazy or embarrassed to pass judgment on junior colleagues. Some element of competition between individuals is often helpful.

Contra

1. I support this new direction for pay for senior executives. Six 'levels' of senior management simply don't make a lot of sense. Agencies need more authority to manage, and this is one vehicle for doing it. [There are many more important ones, but that is another subject.]

IX. Insufficient Funding will be a Problem Under Pay for Performance

1. Present plan just underfunded.

2. Fourth, I am concerned **that if Agencies have "total flexibility to set basic pay,, pay rates would inevitably be influenced by budgetary considerations** i.e. insufficient funds to fund appropriate raises.
3. Budgetary concerns, or other problems related to political concerns, could easily result in a substantial salary reduction.
4. ... those of us in FAA have already experienced the perception in tight budget times that even a performance based award system has the appearance of being "too much to fund" - even while employee annual increases and employee awards remain funded.

X. Expressions of Outrage

1. Since other agencies have been given authority to pay SES up to \$175,000, and the military can now have their retired pay excluded and get full SES pay, their proposal is blatantly unfair to us now, and for the work we have and are doing. Being from the private sector has little meaning to me other than they these "seemingly" great performers do not know what they need to know to start performing their jobs, yet they get more money because they haven't learned our profession, nor have the requisite knowledge of public service!! **Who's trying to fool whom?**
2. There are a lot of us that have been unfairly treated **and this new pay scheme may just be a case of the screwing we get for the screwing we just got.**
3. **I think this package is pathetic.** It offers tiny relief at a time when major relief is indicated. This package's only up side is a slight increase in pay with a major downside of being dependent upon what a political appointee thinks you are worth. I wonder if my pay can be decreased because of some arbitrary performance measurement system. This proposal will engender major objections for a less than significant pay increase. I support the questions raised by SEA. **I would push for a larger increase and more certainty on who will get the increase and how one goes about getting such an increase.**
4. The timing seems really bad, the economy is bad with no relief in sight, the country is running a deficit that is in a growth mode, The President is about to declare war and made commitments in his state of the nation address last night to send billions to Africa to fight the aids epidemic, fund prescription drugs for seniors, beef up medicare, activate a tax break for the wealthy who have large stock dividends, continue the battle against worldwide terrorism, expand the war in Afghanistan, initiate additional tax reductions in an effort to revitalize the stock market, etc. With all of these things already on his plate, what kind of a priority can SEA hope to get from the President and Congress? Other than removing the pay cap, I do not like anything about the OPM proposal. From where I stand, **It looks, talks and walks like a Trojan Horse whose mission is to kill SEA.**

5. In sum, this proposal appeared to do little to resolve the financial and morale issue associated with pay compressions. **Frankly, I feel like we're being offered a used car without a warranty.**
6. **This proposal is ridiculous**, and sounds like an attempt by this Administration to "encourage" SES members to leave the government as soon as possible.
7. I have been one of your many silent members, until now. **I am, frankly, shocked that SEA would even think of responding to OPM's trial balloon** with other than outrage.... A new pay system is window dressing. What is needed, first and foremost, is raising the pay cap and decoupling it from political expediency. The latter point in particular is key -- that Congress lacks the political moxie to defend relatively modest and well-deserved pay raises should not affect senior execs. ...**In sum, SEA should immediately turn its entire resources into fighting OPM's proposal.** I, and many of my colleagues, fully expect nothing less.
8. "Let's be real. **The proposal is an Edsal ... Fight it tooth and nail.**"
9. "Fight it."
10. "**Deep –six it.**" SES gives up lots and gets a little.
11. "**Arrogant at best, insulting at worst ...**"
12. "Do not screw up what we have ..."
13. Pay increases in Administration program are "paltry" and "insulting." SEA should communicate to the Administration that its program is completely unacceptable to its members ... Source of future abuse.
14. "Odious and insulting attempt to demean the SES's contributions to public service."
15. "Overall, must be viewed as an effort to entice us with a carrot of a cap raise while placing us in a system that is far less advantageous for us..."
16. Just oppose it.
17. "I see the proposal as throwing to us a small bone and carrying a potentially big stick..."
18. To give potentially less than 10% in total ceiling for the 60% at the max is unacceptable with the downside salary adjustment risk ...
19. ...**I would much prefer to pass on the possibility of raising the salary cap than suffer the rest of the proposal. It simply isn't worth it!**
20. Little or nothing ... to be of net benefit to the average SES member or the SES as a whole.

XI. Miscellaneous Comments

1. Former PMRS System proved to be inadequate.
2. Is there any sign the administration intends to put some more money in the pot to **get salaries raised initially on a one-time basis for people who have been in the SES for a while?**
3. I have arrived at the following conclusion. **Reinstate "supergrades"** (16, 17, 18), treat executives at least as "fairly" as the General Schedule, and forget about the SES. If we were on the General Schedule, we would get cost of living raises when everyone else did. We could compete for performance awards the same way GS's can, and those awards would come from a Departmental pool set aside for everyone. I really believe that **the SES is a failed** experiment.
4. I wrote because I wanted to to understand how strongly I feel about the way we have been treated. In fact, one might argue that we're better off as we are than we would be under what is proposed. I thought that there was a crisis in SES staffing. **Do they really think this will keep anyone from retiring? ... what we ought to be talking about is recapturing the amount of money we lost to pay compression over the last 10 years or so** without any conditions before we talk about a new system to measure performance prospectively. In other words, raise the cap to \$154,700 first. Pay compression does not exist because of executive incompetence. It exists for political reasons completely unrelated to our performance, good or bad, over the past ten years.
5. **This may also be the time to talk about including bonuses in the computation for retirement.**
6. ... I'm also not sure of the impact of this proposal on salaries for new appointments to the SES. I would opt for Agency discretion, but I would have the results reviewed on a periodic basis.
7. When I entered the SES pay compression was at its worst. Therefore, I entered as an ES-3, and was promoted to ES-4 in 1988 or 89. Since there are only 2 or 3 ES-5 positions in my organization (all in our Headquarters office in Washington), I have remained an ES-4. My performance has been regarded highly. I have received bonuses every year since 1992 and in 2002 received a Presidential Rank (Meritorious) award.

Your message indicated that if this new system were adopted that our placement within the band would be based upon performance. While I have performed very well, because I have chosen not to move to Washington, and stayed in the hinterlands of Philadelphia my position is among the lowest of the SES positions in my organization in terms of the organizational pyramid. (Those who have reached my position in recent years have been "capped" at ES-3.) Therefore, **do you know if this proposal contemplates "pegging" salaries based SOLELY upon performance (in which case I would do fine), or whether the "importance" of the job would also be a factor (in which case I would likely not fare any better than I do now while the non-career executives who come in to our**

Washington Headquarters for several years primarily (?) to improve their resumes would reap the benefits)??

[Ed] This member Is asking whether new system would be “pay for performance” or “rank in person.”]

8. **Should be time limit for OPM to certify.**
9. How will existing differences in **post-employment restrictions** be handled [if ranks are abolished]?
10. **Big agencies will get more ...Just give \$154,000 to those who meet presidential rank qualifications.**
11. My overall concern is **the increased time we will have to take to document our performance**, the creation of additional performance review boards – all the non productive administrative things that will most likely occur to implement the system. Speaking for myself, I do not want to take the time to do this in lieu of meeting mission requirements.