

Calendar No. 1108

110TH CONGRESS
2D SESSION

S. 2148

[Report No. 110-517]

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2007

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. LIEBERMAN, with an amendment

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Senior Executive Serv-
5 ice Diversity Assurance Act”.

1 **SEC. 2. SENIOR EXECUTIVE SERVICE RESOURCE OFFICE.**

2 (a) **DEFINITIONS.**—For purposes of this section—

3 (1) the term “Director” means the Director of
4 the Office of Personnel Management;

5 (2) the term “Senior Executive Service” has the
6 meaning given such term by section 2101a of title
7 5, United States Code;

8 (3) the terms “agency”, “career appointee”,
9 and “career reserved position” have the meanings
10 given them by section 3132 of title 5, United States
11 Code; and

12 (4) the term “SES Resource Office” means the
13 Senior Executive Service Resource Office, estab-
14 lished under subsection (b).

15 (b) **ESTABLISHMENT.**—Not later than January 1,
16 2009, the Director shall establish within the Office of Per-
17 sonnel Management an office to be known as the Senior
18 Executive Service Resource Office. The mission of the
19 SES Resource Office shall be—

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

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

25 (3) to ensure that, in seeking to achieve a Sen-
26 ior Executive Service reflective of the Nation’s diver-

1 sity, recruitment is from qualified individuals from
2 appropriate sources.

3 (c) FUNCTIONS.—It shall be the function of the SES
4 Resource Office to make recommendations to the Director
5 with respect to regulations, and to provide guidance to
6 agencies, concerning the structure, management, and di-
7 verse composition of the Senior Executive Service. In
8 order to carry out the purposes of this section, the SES
9 Resource Office shall—

10 (1) take such actions as the SES Resource Of-
11 fice considers necessary to manage and promote an
12 efficient, elite, and diverse corps of senior executives
13 by—

14 (A) creating policies for the management
15 and improvement of the Senior Executive Serv-
16 ice;

17 (B) providing oversight of the perform-
18 ance, structure, and composition of the Senior
19 Executive Service; and

20 (C) providing guidance and oversight to
21 agencies in the management of senior executives
22 and candidates for the Senior Executive Serv-
23 ice;

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

4 (3) develop standards for certification of each
5 agency's Senior Executive Service performance man-
6 agement system and evaluate all agency applications
7 for certification;

8 (4) be responsible for developing and moni-
9 toring programs for the advancement and training of
10 senior executives, including the Senior Executive
11 Service Federal Candidate Development Program;

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

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

16 (7) establish and maintain lists (in a form that
17 renders them useful to appointing authorities and
18 candidates) of—

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

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

23 (C) whether candidates are being sought
24 for each such vacant position; and

1 (D) the names and (to the extent avail-
2 able) the race, ethnicity, gender, and any dis-
3 abilities of individuals who have been certified,
4 in accordance with section 3393(d) of title 5,
5 United States Code (as so redesignated by sec-
6 tion 3(a)), as having the executive qualifications
7 necessary for initial appointment as a career
8 appointee;

9 (8) establish mentoring programs for individ-
10 uals described in paragraph (7)(D);

11 (9) collect and maintain statistics relating to
12 the composition of the Senior Executive Service
13 based on race, ethnicity, gender, age, and persons
14 with disabilities;

15 (10) publish annually in the Federal Register
16 statistics relating to—

17 (A) the data collected by the SES Re-
18 source Office under paragraph (7); and

19 (B) the composition of the Senior Execu-
20 tive Service based on the factors listed in para-
21 graph (7)(D); and

22 (11) conduct a continuing program for the re-
23 cruitment of women, members of racial and ethnic
24 minority groups, and the disabled for Senior Execu-
25 tive Service positions, with special efforts directed at

1 recruiting from educational institutions, professional
 2 associations, and other sources.

3 (d) PUBLIC ACCESS TO STATISTICS.—The SES Re-
 4 source Office shall make the statistics under subsection
 5 (e)(10) accessible to the public through an Internet
 6 website.

7 **SEC. 3. CAREER APPOINTMENTS.**

8 (a) ESTABLISHMENT AND ROLE OF SES EVALUA-
 9 TION PANELS.—Section 3393 of title 5, United States
 10 Code, is amended—

11 (1) by redesignating subsections (b) through (g)
 12 as subsections (e) through (h), respectively; and

13 (2) by inserting after subsection (a) the fol-
 14 lowing:

15 “(b)(1)(A) Each agency shall establish one or more
 16 Senior Executive Service evaluation panels, as appro-
 17 priate, the members of which shall be appointed by the
 18 head of the agency (or his or her designee)—

19 “(i) from among senior executives of the
 20 agency or commissioned officers of the uni-
 21 formed services serving on active duty in such
 22 agency; or

23 “(ii) from among senior executives of or
 24 commissioned officers of the uniformed services
 25 serving on active duty in another agency, if—

1 “~~(I)~~ subparagraph ~~(B)~~ could not (but
2 for this clause) otherwise be satisfied; and

3 “~~(II)~~ the consent of the head of the
4 other agency is obtained.

5 “~~(B)~~ Each panel shall consist of ~~3~~ members, of whom
6 at least ~~1~~ shall be a woman and ~~1~~ other shall be a member
7 of a racial or ethnic minority group.

8 “~~(2)~~ It shall be the function of a Senior Executive
9 Service evaluation panel, with respect to any Senior Exec-
10 utive Service position for which a vacancy announcement
11 is posted—

12 “~~(A)~~ to review the executive qualifications of
13 each candidate for a position which is to be filled by
14 a career appointee; and

15 “~~(B)~~ to certify to the appropriate executive re-
16 sources board the names of candidates who, in the
17 judgment of the panel, are best qualified for such
18 position.

19 Nothing in subparagraph ~~(A)~~ shall be considered to apply
20 in the case of any candidate who is already a career ap-
21 pointee.”.

22 (b) ~~ROLE OF EXECUTIVE RESOURCES BOARDS.—~~
23 Paragraph ~~(1)~~ of section ~~3393~~(e) of title ~~5~~, United States
24 Code (as so redesignated by subsection ~~(a)~~); is amended
25 to read as follows:

1 “(1) for each career reserved position for which
2 a vacancy is posted; review the executive qualifica-
3 tions of candidates certified under subsection (b)
4 with respect to such position; and”.

5 (e) DEFINITION OF APPOINTING AUTHORITY.—See-
6 tion 3393 of title 5, United States Code, is amended by
7 adding after subsection (h) (as so redesignated by sub-
8 section (a)) the following:

9 “(i) For purposes of this section, the term ‘appoint-
10 ing authority’ means, with respect to a position within an
11 agency, the head of such agency (or his or her designee).”.

12 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) Section 3592(a)(1) of title 5, United States
14 Code, is amended by striking “3393(d)” and insert-
15 ing “3393(e)”.

16 (2) Section 3593 of such title is amended—

17 (A) in subsection (a)—

18 (i) in the matter before paragraph
19 (1), by striking “3393(b) and (c)” and in-
20 serting “3393(e) and (d)”; and

21 (ii) in paragraph (1), by striking
22 “3393(d)” and inserting “3393(e)”; and

23 (B) in subsection (e)(1)—

1 (i) in the matter before subparagraph
2 (A), by striking “3393(b) and (c)” and in-
3 serting “3393(e) and (d)”;

4 (ii) in subparagraph (C), by striking
5 “3393(d)” and inserting “3393(e)”.

6 (3) Section 3594 of such title is amended in
7 subsections (a) and (b) by striking “3393(d)” and
8 inserting “3393(e)”.

9 (4) Section 3595(b)(1) of such title is amended
10 by striking “3393(d)” and inserting “3393(e)”.

11 (5) Section 7541(1)(A) of such title is amended
12 by striking “3393(d)” and inserting “3393(e)”.

13 **SECTION 1. SHORT TITLE.**

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

16 **SEC. 2. FINDINGS.**

17 *Congress finds that—*

18 (1) *according to the Government Accountability*
19 *Office—*

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

24 (B) *women made up 34.3 percent of the in-*
25 *dividuals serving at the GS–15 and GS–14 levels*

1 *and 29.1 percent of the Senior Executive Service*
2 *in 2007; and*

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

9 (2) *according to the Office of Personnel Manage-*
10 *ment—*

11 (A) *black employees represented 6.1 percent*
12 *of employees at the Senior Pay levels and 17.8*
13 *percent of the permanent Federal workforce com-*
14 *pared to 10.1 percent in the civilian labor force*
15 *in 2007;*

16 (B) *Hispanic employees represented 4.0 per-*
17 *cent of employees at the Senior Pay levels and*
18 *7.8 percent of the permanent Federal workforce*
19 *compared to 13.3 percent of the civilian labor*
20 *force in 2007; and*

21 (C) *women represented 28.2 percent of em-*
22 *ployees at the Senior Pay levels and 43.9 percent*
23 *of the permanent Federal workforce compared to*
24 *45.7 percent of the civilian labor force in 2007.*

1 **SEC. 3. DEFINITIONS.**

2 *For purposes of this Act—*

3 *(1) the term “Director” means the Director of the*
4 *Office of Personnel Management;*

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

8 *(3) the terms “agency”, “career appointee”, and*
9 *“career reserved position” have the meanings given*
10 *them by section 3132 of title 5, United States Code;*
11 *and*

12 *(4) the term “SES Resource Office” means the*
13 *Senior Executive Service Resource Office, established*
14 *under section 4.*

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

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

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

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

1 (3) *to ensure that, in seeking to achieve a Senior*
2 *Executive Service reflective of the Nation’s diversity,*
3 *recruitment is from qualified individuals from appro-*
4 *priate sources.*

5 (b) *FUNCTIONS.—It shall be the function of the SES*
6 *Resource Office to make recommendations to the Director*
7 *with respect to regulations, and to provide guidance to*
8 *agencies, concerning the structure, management, and di-*
9 *verse composition of the Senior Executive Service. In order*
10 *to carry out the purposes of this section, the SES Resource*
11 *Office shall—*

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

15 (A) *creating policies for the management*
16 *and improvement of the Senior Executive Serv-*
17 *ice;*

18 (B) *providing oversight of the performance,*
19 *structure, and composition of the Senior Execu-*
20 *tive Service; and*

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

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

4 (3) *develop standards for certification of each*
5 *agency's Senior Executive Service performance man-*
6 *agement system and evaluate all agency applications*
7 *for certification;*

8 (4) *be responsible for coordinating, promoting,*
9 *and monitoring programs for the advancement and*
10 *training of senior executives, including the Senior*
11 *Executive Service Federal Candidate Development*
12 *Program;*

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

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

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

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

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

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

4 (D) the amount of time a career reserved
5 position is vacant;

6 (E) the amount of time it takes to hire a
7 candidate into a career reserved position;

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

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

17 (H) the composition of executive resources
18 boards with regard to race, ethnicity, sex, and
19 individuals with disabilities; and

20 (I) the composition of qualifications review
21 boards with regard to race, ethnicity, sex, and
22 individuals with disabilities;

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

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

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

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

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

24 (c) *PROTECTION OF INDIVIDUALLY IDENTIFIABLE IN-*
25 *FORMATION.—For purposes of subsection (b)(8), the SES*

1 *Resource Office shall combine data for any agency that is*
 2 *not named in section 901(b) of chapter 31, United States*
 3 *Code, to protect individually identifiable information.*

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

8 *(e) STAFFING.—The Director of the Office of Personnel*
 9 *Management shall make such appointments as necessary to*
 10 *staff the SES Resource Office.*

11 **SEC. 5. CAREER APPOINTMENTS.**

12 *(a) PROMOTING DIVERSITY IN THE CAREER APPOINT-*
 13 *MENTS PROCESS.—Section 3393(b) of title 5, United States*
 14 *Code, is amended by inserting after the first sentence the*
 15 *following: “In establishing an executive resources board, the*
 16 *head of the agency shall, to the extent practicable, ensure*
 17 *diversity of the board and of any subgroup thereof or other*
 18 *evaluation panel related to the merit staffing process for*
 19 *career appointees, by including members of racial and eth-*
 20 *nic minority groups, women, and individuals with disabil-*
 21 *ities.”.*

22 *(b) REGULATIONS.—Within 1 year after the date of the*
 23 *enactment of this Act, the Director shall promulgate regula-*
 24 *tions to implement subsection (a).*

1 (c) *REPORT.*—Within 1 year after the date of the en-
2 actment of this Act, the Director shall submit to the Com-
3 mittee on Oversight and Government Reform of the House
4 of Representatives and the Committee on Homeland Secu-
5 rity and Governmental Affairs of the Senate a report evalu-
6 ating agency efforts to improve diversity in executive re-
7 sources boards based on the information collected by the
8 SES Resource Office under subparagraphs (H) and (I) of
9 section 4(b).

10 **SEC. 6. ENCOURAGING A MORE DIVERSE SENIOR EXECU-**
11 **TIVE SERVICE.**

12 (a) *SENIOR EXECUTIVE SERVICE DIVERSITY PLANS.*—
13 Within 1 year after the date of the enactment of this Act,
14 each agency, in consultation with the Office of Personnel
15 Management and the Chief Human Capital Officers Coun-
16 cil, shall submit to the Office of Personnel Management a
17 plan to enhance and maximize opportunities for the ad-
18 vancement and appointment of minorities, women, and in-
19 dividuals with disabilities in the agency to the Senior Exec-
20 utive Service. Agency plans shall be reflected in the strategic
21 human capital plan. Agency plans shall address how the
22 agency is identifying and eliminating barriers that impair
23 the ability of minorities, women, and individuals with dis-
24 abilities to obtain appointments to the Senior Executive

1 *Service and any actions the agency is taking to provide*
2 *advancement opportunities, including—*

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

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

8 (3) *identifying career enhancing opportunities*
9 *for agency employees;*

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

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

15 *Agency plans shall be updated at least every 2 years during*
16 *the 10 years following enactment of this Act. An agency*
17 *plan shall be reviewed by the Office of Personnel Manage-*
18 *ment and, if determined to provide sufficient assurances,*
19 *procedures, and commitments to provide adequate opportu-*
20 *nities for the advancement and appointment of minorities,*
21 *women, and individuals with disabilities to the Senior Ex-*
22 *ecutive Service, shall be approved by such Office. An agency*
23 *may, in updating its plan, submit to the Office of Personnel*
24 *Management an assessment of the impacts of the plan.*

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

9 **(c) COORDINATION.**—*The Office of Personnel Manage-*
10 *ment shall, in carrying out subsection (a), evaluate existing*
11 *requirements under section 717 of the Civil Rights Act of*
12 *1964 (42 U.S.C. 2000e–16) and section 501 of the Rehabili-*
13 *tation Act of 1973 (29 U.S.C. 791) and determine how*
14 *agency reporting can be performed so as to be consistent*
15 *with, but not duplicative of, such sections and any other*
16 *similar requirements.*

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