Congress of the United States
Washington, DC 20515

February 8, 2005

The Honorable Donald H. Rumsfeld
Secretary
Department of Defense
The Pentagon
Washington, DC 20301

The Honorable Dan G. Blair
Acting Director
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Mr. Secretary and Mr. Blair:

We are writing to express our serious concern that some Department of Defense (DOD) political and noncareer employees are receiving higher pay raises than career employees, as noted by the *Washington Post* on January 18, 2005.

According to the news account, DOD political appointees and noncareer members of the Senior Executive Service (SES) are eligible to receive a 2.5 percent raise if they are deemed "fully successful."[1] In contrast, the same job rating earns a career SES employee only a 2 percent raise.

In 2003, Congress gave federal agencies the flexibility to give performance-based pay to SES employees. Congress stated that an employee's pay would be "based on individual performance, contribution to the agency's performance, or both."[2] Nowhere did Congress state that an agency could base SES pay on an employee's status as a political appointee. In addition, the new Office of Personnel Management (OPM) final rule on SES pay states that an agency can "consider such things as unique skills, qualifications, or competencies that the individual possesses, and their significance to the agency's performance, as well as the senior executive's current responsibilities."[3] Again, there is no mention of an employee's career or noncareer status affecting his pay.

According to DOD, political SES employees merit higher raises because they occupy the most senior positions in the government. Even if federal law allowed this factor to be considered in setting pay raises — and it does not — we question whether this statement is even true. According to the 2004 edition of *U.S. Government Policy and Supporting Positions*, career SES employees occupy many of the director, deputy director, and associate director positions at the Department.

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[1] *At Defense, Career Executives Can Expect Less than Appointed Colleagues*, Washington Post (Jan. 18, 2005).

[2] 5 U.S.C. §5382(a).

[3] 5 C.F.R. §534.404(b)(3).

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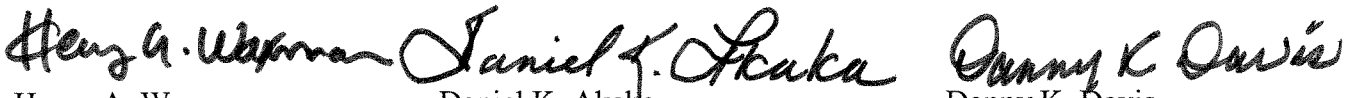
DOD also asserts that political and noncareer SES employees merit higher pay raises because, unlike career employees, they are not eligible for bonuses. In fact, political and noncareer SES employees are eligible for certain types of bonuses such as agency awards and special act or service awards.

We believe the importance of maintaining high morale among career DOD employees far outweighs the benefits of giving slightly higher pay raises to political appointees. The new DOD policy has the effect of valuing the work of career employees less than that of political appointees. This is the wrong message to be sending to 700,000 career DOD employees while they are performing work essential to fighting the war on terror and the war in Iraq.

We are also concerned that the new pay policy for SES employees will serve as a precedent for the pay-for-performance system that DOD is currently developing for all Department employees. Should this be the case, it would violate the principles that Congress set forth in the National Defense Authorization Act for FY 2004, which stated that any performance-based pay system must be "fair and equitable and based on employee performance."[4]

For these reasons, we would appreciate your explaining more fully the rationale for these reported pay discrepancies. In addition, we request that you provide any internal DOD memoranda, correspondence, or documents relating to this new SES pay policy and suspend its implementation until we have had an opportunity to review the aforementioned materials.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives

Daniel K. Akaka
Ranking Minority Member
Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia
Committee on Homeland Security Security and Governmental Affairs
U.S. Senate

Danny K. Davis
Ranking Minority Member
Subcommittee on Civil Service and Agency Organization
Committee on Government Reform
U.S. House of Representatives

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[4] 5 U.S.C. §9902(b)(6)(G).