

At Will Employment in the Career Senior
Executive Service:

Promoting Accountability or Threatening Federal Government Effectiveness and Senior Management Capability?

**A Report by the Senior Executives Association Professional Development League
Based on a Government-wide Survey of SEA Members' Views on the Advisability
and Potential Impact of Congressional Legislative Proposals to Allow Career
Senior Executive Service Employees to be Terminated "At Will"**

March 2015





Senior Executives Association

SEA is a non-profit, non-partisan professional association that has served as the voice of the career federal executive corps since 1980. SEA's mission is to improve the efficiency, effectiveness, and productivity of the federal government; to advance the professionalism and advocate the interests of career federal executives; and to enhance public recognition of their accomplishments. For additional information about SEA, visit www.seniorexecs.org.

Senior Executives Association Professional Development League

The Senior Executives Association Professional Development League is a non-profit, educational organization that is committed to advancing the professionalism of career federal executives through the sponsorship of training, recognition activities, and research.

Senior Executives Association

Professional Development League

Prepared under the direction of Carol Bonosaro, President

Project Director: Tim Dirks, former Director of Member and Agency Liaison

Graphics and Layout: Jeff Spinella, Director of Communications

For additional information about this report, please contact:

Jeff Spinella

Director of Communications

Senior Executives Association

202-971-3300

Email: *action@seniorexecs.org*

At Will Employment in the Career Senior Executive Service: Promoting Accountability or Threatening Federal Government Effectiveness and Senior Management Capability?

A Report by the Senior Executives Association Professional Development League Based on a Government-wide Survey of SEA Members' Views on the Advisability and Potential Impact of Congressional Legislative Proposals to Allow Career Senior Executive Service Employees to be Terminated "At Will"

Table of Contents

Introduction.....	1
Background	
Content	
Respondents	
Comments	
Executive Summary.....	4
Key Finding 1:	6
Key Finding 2:	7
Key Finding 3:	10
Key Finding 4:	13
Key Finding 5:	17
Conclusion and Next Steps	20
Appendix A – Survey Instruments.....	23
Appendix B – Survey Respondent Participation Rates by Agency	35

Introduction

From August 20, 2014 to September 19, 2014 the Senior Executives Association (SEA) conducted a survey of its members, those currently working in the federal government as well as those who are federal retirees. The purpose of the survey was to gauge the views of SEA members regarding the advisability and potential impact of Congressional legislative proposals to allow federal career senior executive service (SES) employees to be terminated “at will” by their agencies without advance notification, opportunity to respond, appeal rights and other due process protections. At the time of the survey, Congress was actively considering several such proposals to make it easier for federal agencies to summarily terminate career senior executives for alleged poor performance, misconduct, malfeasance and other reasons.

Background

From its inception as a key provision of the Civil Service Reform Act of 1978 through its more recent history and legislative and regulatory evolutions, the Senior Executive Service has continued to be a carefully balanced personnel system of risks and rewards for members who occupy career SES positions. The law underlying the SES is deeply grounded in the notion of pay for performance. Unlike employees in lower level GS positions, SES employees do not receive annual cost of living pay increases, longevity-based pay adjustments, locality pay or overtime pay.

Instead, base pay increases as well as cash bonuses, are performance driven and completely with the discretion of the agency – with career executives having no formal, independent right of redress if they disagree with the agency’s performance rating or related compensation decisions. Also, current law allows agencies to remove career SES employees from their positions on the basis of inadequate performance with minimal procedural requirements or appeal avenues.

Content

The survey posed numerous questions and issues related to the wisdom and likely effects of at will employment (AWE), including its potential impact on SES recruitment, retention, accountability, productivity and performance as well as

public confidence in the federal government and relationships and trust between career executives and Administration political appointees and Congressional staff. The survey also posed questions concerning agencies’ willingness and ability to fire career executives should at will employment legislation become law. Survey respondents were also asked to express, in their own words, the potential impact that passage and enactment of AWE legislation would have on overall government operations and effectiveness as well as the personnel systems covering SES and senior professional (SP) employees, including the career employees who comprise these systems and other, lower level career employees who might aspire to SES and SP positions (See Appendix A for the full survey instrument).

Respondents

Four hundred and seventy six SEA members from across the government completed the survey, 283 of whom were current career executives and professionals and 193 of whom were retired executives and professionals. Of those who responded, over 86% of current employees were career SES and over 89% of retirees were former career SES. Approximately 5% of current employee respondents were SP employees and about 8% of retiree respondents were former SP employees. General Schedule (GS) 15 managers and staff comprised about 4.5% of current employee respondents and



about 1.5% of retiree respondents. The remainder of current and former employee respondents were in equivalent executive and professional positions in intelligence and other excepted service and similar positions outside the SES, SP and GS systems.

Among current employee respondents 15% had served in their current grade levels three years or less, 26% had served three to six years, 28% had served seven to ten years and 31% had served over ten years. For retiree respondents, 3% had served three years or less in their former grade/appointment levels at the time of their separation from federal service, 12% had served three to six years, 27% had served seven to ten years, and 58% had served over ten years. Among agencies with

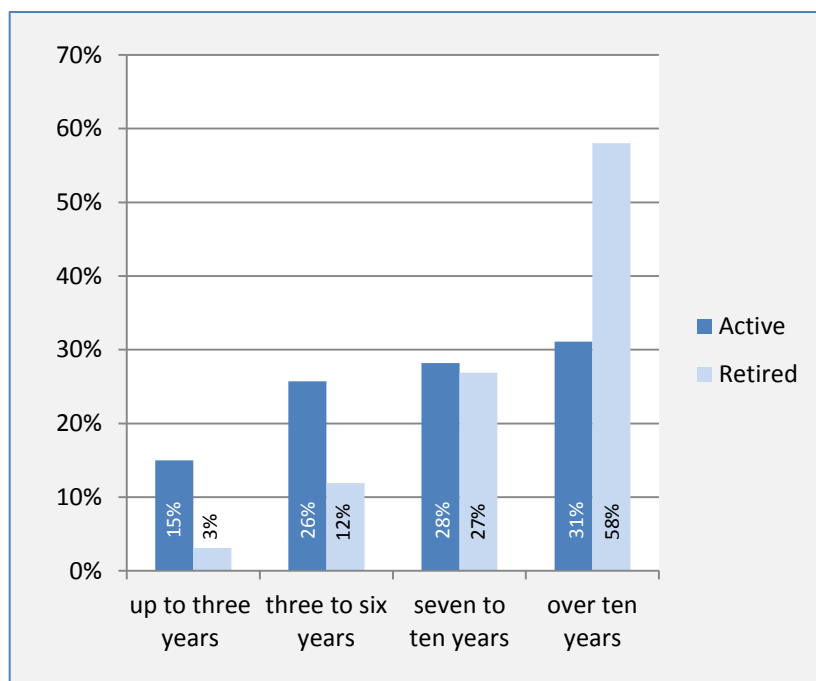
the greatest number of survey respondents were the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Interior, Labor, Treasury, Transportation and Veterans Affairs (see Appendix B for a more complete breakdown of survey respondent participation rates by agency).

Comments

In addition to answering numerous pre-formatted, forced choice survey questions, respondents, in almost all cases, provided written comments highlighting their concerns and suggestions in several different areas related to the potential impact of AWE. Taken together, over 500 written comments were offered, many of which provide highly insightful

perspectives on the advisability and potential consequences of AWE as well as the future outlook for and current state of morale of today's career executive and senior professional corps.

Length of service of those responding to the survey



Executive Summary

Due to budget restrictions, Administration-imposed limitations and other reasons, agencies have reduced funding and pay outs for SES and SP bonuses and other pay for performance compensation in recent years. This has resulted in pay compression in relation to General Schedule subordinates, increased turnover within the SES and SP ranks, heightened difficulty in recruiting talented replacements, and notably lower morale within the senior career executive and professional corps.

The advent of highly publicized “scandals” and alleged mismanagement involving senior level officials arising at the Department of Veterans Affairs, Internal Revenue Service, and the General Service Administration has led to increased Congressional oversight of and demands for reforms in senior executive pay, employment security and accountability at these agencies as well as legislative proposals that would bring about government-wide system changes, including allowing agencies to terminate career SES employees with minimal or no due process. Indeed, since the time this SEA at will employment survey was conducted last year, such legislation has been enacted

“The premise of this initiative – that the career SES corps are not professionals dedicated to performing their jobs is just one more insult piled on by some members of Congress determined to find scapegoats for political policy failures.”

with regard to career SES employees at the Department of Veterans Affairs.

SEA has vigorously opposed Congressional at will employment legislative proposals both at the Department of Veterans Affairs and government-wide. The findings and insights gained from this member survey have helped inform SEA’s positions and will hopefully influence Congressional and Administration decision-makers as further deliberations take place on SES reform proposals involving employment security and other important matters.

Taken together, the results of SEA’s survey evidence high degrees of fear, frustration and demoralization regarding the notion of at will employment and the prospects that further erosion of employment security for career senior executives and professionals could take place if Congressional proposals become law. Many current senior executives and professionals responding to the survey commented that they would seek to (and in some cases already have initiated action) retire, move to the private sector or even search for a lower level career position (e.g., GS-15) if AWE is enacted. Many also indicated they could not, in good conscience, advise talented subordinates and other high potential prospective candidates for future career SES and SP jobs to pursue them if AWE legislation is passed. In many cases, retiree

“Continue the beatings until morale improves. This legislation clearly continues that policy.”



survey respondents remarked that things have generally gotten worse for career senior executives and professionals since their departure from government. Some also commented that if AWE had been in place during their tenure, they would have retired earlier or never signed up to serve in their demanding positions to begin with.

SEA's detailed survey analysis reflects five major key findings that are supported by data and respondents' written comments. In most instances, survey responses and sentiments among current employee respondents and retiree respondents are very similar and reinforcing in nature. The five major key findings are as follows:

- ***At will employment legislation is overwhelmingly viewed as a bad idea***
- ***Enactment of at will employment legislation would have a highly damaging impact on career SES recruitment and retention and further erode morale within the government's executive ranks***
- ***At will employment would lead to politicization of the SES system, subjugation of career executives***

and suppression and deterioration of relationships between career managers and political appointees as well as other government stakeholders

- ***At will employment would be harmful to the efficiency, effectiveness, integrity, productivity, innovation and operational stability of government, as well as the public's confidence in it***
- ***Current laws, government-wide regulations and agency management tools and flexibilities provide ample authority for holding career executives accountable for satisfactory performance and conduct***

Thorough discussions of each of these key findings follow below along with supporting data and written comments received from survey respondents.

"Instead of establishing and rewarding excellence Congress is amplifying and focusing on a very narrow few who have not been successful. My life experience says negativity breeds negativity."



Key Finding 1: At will employment legislation is overwhelmingly viewed as a bad idea: When surveyed members were asked, *“Generally speaking, do you feel the type of “at will” legislation being considered by Congress is a good idea,”* the overwhelming majority of current employee respondents (92.4%) said no and only 5% said yes. Among retiree respondents, a similarly vast majority (87.9%) said no and only about eight and a half percent said yes. About two and a half percent of current employees and about three and a half percent of retirees indicated they had no opinion on the issue.

Those who responded “no” on this question were further asked what additional standards should be established for improving executive performance and accountability and given several possible options (they were invited to select as many of the options as desired). Of the options provided the top choice by far was *“stricter adherence to establishing performance standards that reflect actual work assigned”* (chosen by almost 82% of current employees and over 77% of retirees). The

“This is clearly a bad idea, which is politically motivated.”

next most chosen option was *“more flexibility in agency reassignments within the commuting area”* (chosen by just over 24% of current employees and just over 26% of retirees). Almost 12% of current employee respondents and about 14% of retiree respondents also selected a somewhat similar option, *“more flexibility in reassigning employees outside the commuting area.”* Another option chosen by numerous respondents was *“making it easier to downgrade employees without loss of salary”* (chosen by almost 21% of current employees and just over 17% of retirees).

Respondents were also given the opportunity to provide written comments on the issue of what other things agencies could do to performance and accountability standards and their suggestions included: *strengthening agency ethical standards, tougher screening in SES appointments, decreasing the number of political appointees, and holding supervisors accountable if they don’t hold their direct report SES accountable.*

“This could be the most damaging legislation I have witnessed in my 30 year career.”

“I think any legislation based on ‘considered guilty’ before evidence is a bad idea.”



Key Finding 2: Enactment of at will employment legislation would have a highly damaging impact on career SES recruitment and retention and further erode morale within the government's executive ranks:

In their responses to specific questions and in their written, narrative comments, survey respondents from all agencies, both current employees and retirees, expressed strong sentiments that imposition of at will employment policies would severely damage the government's ability to recruit and retain a talented, dedicated and motivated career SES and SP corps. Survey respondents, in numerous cases, also predicted that such legislation would eviscerate merit within the SES system and lead to "spoils" in employment practices whereby political allegiance and compliance with political imperatives would play increasingly prominent roles in SES hiring, advancement and retention outcomes.

In support of these claims, survey data reflect that 83.5% of current employee respondents (and 81.9% of retiree respondents) disagreed with the assertion that passage and enactment of employment at will legislation would *"improve retention of current career senior executives (SES) and senior professionals (SL and ST) employees,"* with approximately 64% of these current employees (and 50%

"Even the consideration of this type of legislation is leading me to seriously consider retirement as soon as I am eligible."

of retirees) strongly disagreeing. Only 10.6% of current employees (and 9.2% of retirees) agreed that AWE legislation would improve retention of SES and SP employees. About 6% of current employees expressed the view that AWE legislation would have little or no impact on retention (and about 9% of retirees).

In response to another related question dealing with whether enactment of AWE would *"increase the likelihood that senior executives will retire as soon as they are eligible,"* 79.1% of current employees agreed (73.8% of retirees agreed), with 45% percent of these current employees strongly agreeing (and about 36% of retirees strongly disagreeing). Only 15.1% of current employee respondents disagreed that AWE would cause senior executives to retire as soon as eligible (and 21.7% of retirees). About 6% of current employees expressed the view that AWE would have little or no impact on this issue (and 4.5% of retirees).

Regarding impact on recruitment, sentiments were even stronger, with 88.4%

"Will gut the SES. No one in their right mind would want to join or stay in the SES."

"This will make it very difficult to recruit the talent we need to lead and sustain our federal workforce."

“Such legislation undercuts the desirability of the SES at a time when it already is only marginally desirable to most people.”

of current employee respondents (and 83.4% of retirees) disagreeing with the assertion that passage and enactment of AWE legislation would *“improve recruitment to the SES of talented employees already working within the federal government at lower grade and/or pay levels (e.g. GS-15s and 14s),”* with about 71% of these current employee respondents strongly disagreeing (and about 54% of retirees strongly disagreeing). Only 9.1% of current employee respondents (and 12.6% of retirees) agreed that AWE legislation would improve recruitment of talented lower level employees into the SES. About two and a half percent of current employees (and about 4% of retirees) felt that AWE legislation would have little or no impact.

“I am in my early 40s and somewhat reluctantly joined the SES last year after putting aside significant reservations about the invasive financial reporting requirements and loss of legal protections available to non-SES employees. Had at will provisions been in place, I would have declined an SES appointment.”

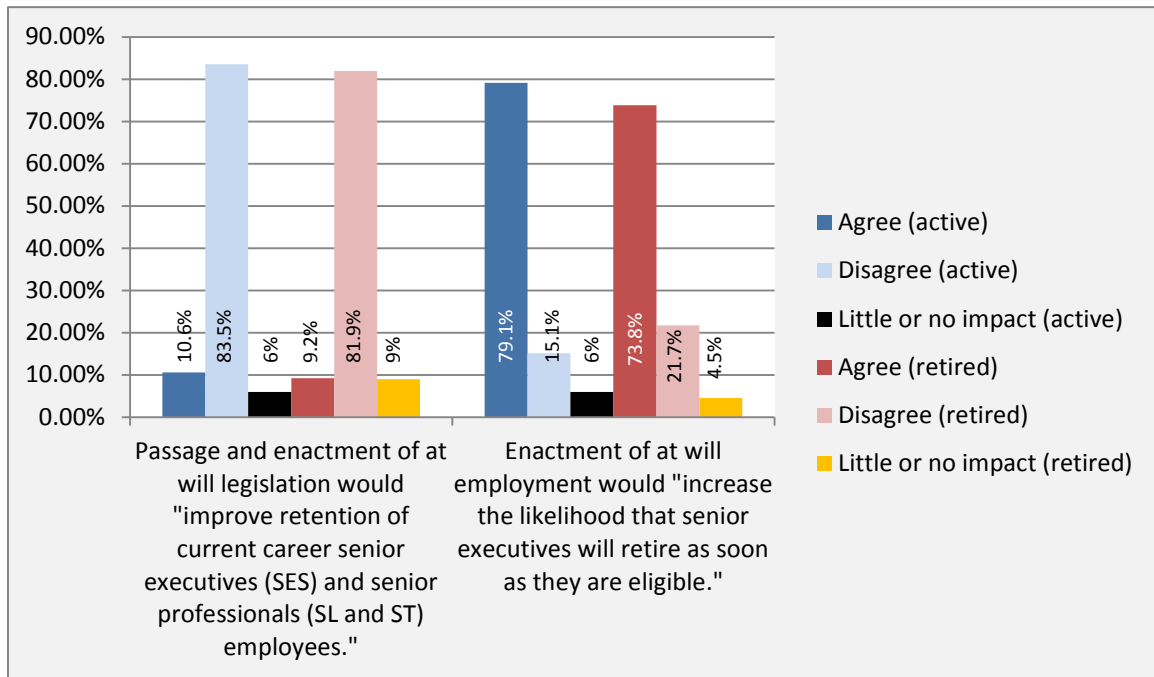
“I worked very hard, averaging 70 hours a week. I got tired of the endless beatings on the Hill and in the press. That’s why I retired. By the way, my agency has lost more than 20 like me in the last 2 years. To a person, they were the BEST!”

On a similar note, when asked about whether AWE would *“improve recruitment of individuals working outside the federal government,”* 84.5% of current employees (and 79.1% of retirees) disagreed, with 62% of current employees (and about 42% of retirees) strongly disagreeing. Only 7.9% of current employees (and 10.3% of retirees) agreed that AWE would improve recruitment of those working outside government. About 7.5% of current employees (and about 10.5% of retirees) indicated AWE would little or no impact on this issue.

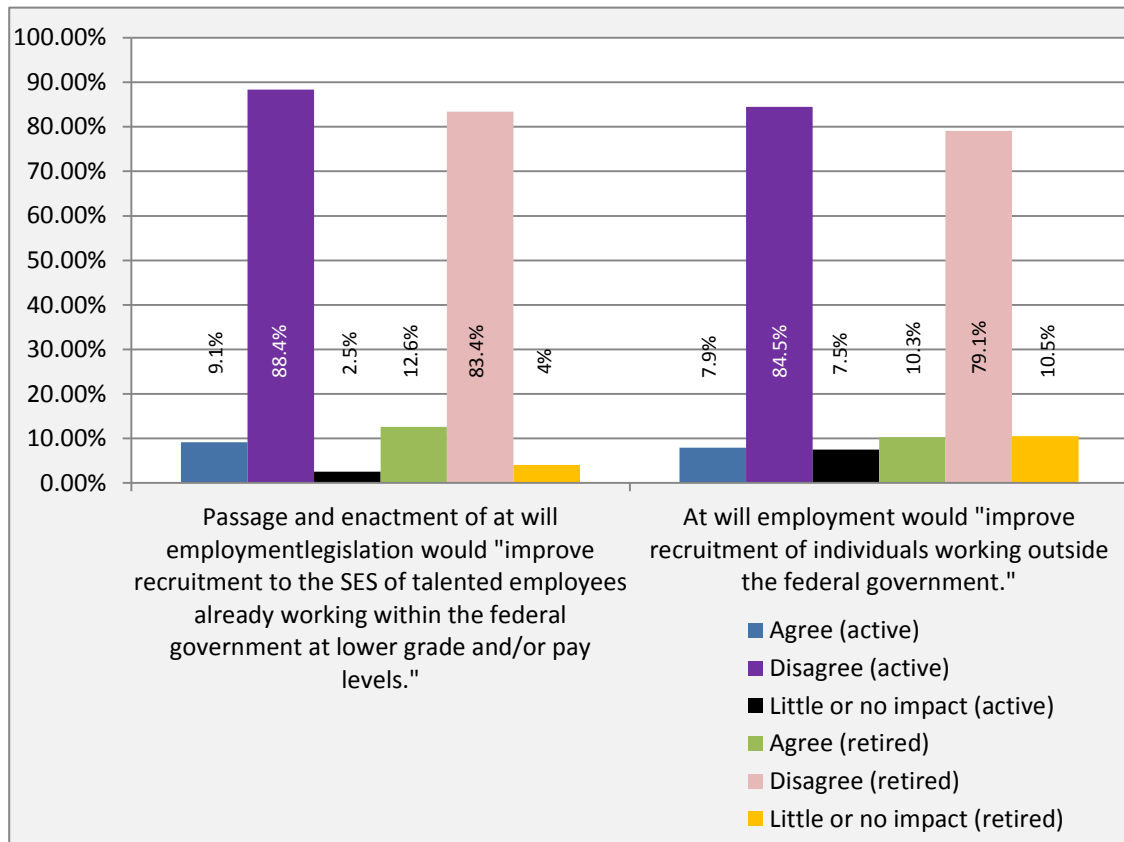
“I’m a GS-15 who has spent more than a decade preparing for the SES. I believe in serving the public and was looking forward to having a position with more responsibilities. I’m reconsidering my career plans. I can’t afford to put my compensation at risk while I still have kids in school.”



Retention



Recruitment



Key Finding 3: At will employment would lead to politicization of the SES system, subjugation of career executives and suppression and deterioration of relationships between career managers and political appointees as well as other government stakeholders:

Survey respondents were quite clear in expressing their concerns that enactment of AWE legislation would work to eliminate the distinction between career executives and politically appointed executives and contribute to a culture of political submission, acquiescence and greater politicization within the Executive Branch of government.

Many predicted that, under AWE legislation, the removal of current limited employment security and due process protections would greatly affect an executive's willingness to openly advise or, if necessary, confront political superiors according to survey respondents' written comments. While respondents recognized it is the responsibility of career executives to assist political appointees with their agendas, they asserted it is also the responsibility of career executives to secure the long-term interests of the agency or department such as obligations to maintain legal and ethical operations, and ensuring efficient and effective business practices.

"I would not have entered the SES eight years ago and made the sacrifices I've made, if I knew I could be replaced at the whim of agency leadership or as a result of personal bias."

"A senior executive's job should not be placed in jeopardy for....telling the truth, or rendering advice that may not be popular."

Some respondents expressed concerns that under AWE political overreach would dampen openness, diminish honesty and trust, and diminish productive communication between career executives and their political bosses. In survey comments, some executives indicated they had witnessed retaliation against career executives by political superiors in the current system and feared that the frequency of reprisal would increase greatly with implementation of AWE.

Some comments similarly expressed fear that the specter of at will employment and terminations without due process rights and protections will suppress whistleblowing as well as reporting of and acting on the discovery of waste, fraud and abuse – and suggesting that current whistleblowing laws could lose their desired effects as protections for whistleblowers could be supplanted by unimpeded dismissal of informants.

In support of the above concerns survey data indicate that when asked, *"Do you believe that at will legislation will politicize the career SES?"*, an overwhelming majority of current employee respondents (86.5%) said yes and only 3.9% said no, with 9.6%

"Members of the SES who are top performers, but not the personal pick of a new political, will find themselves out on the street with a 'poor performer' label."



“This is morale busting and career threatening to me. It will immediately politicize the SES.”

indicating they were not sure. Among retiree respondents there was also strong agreement with approximately 77% saying yes, about 6% saying no, and 17% indicating they were not sure.

Also, in response to a series of questions dealing with the likely impact of AWE on political appointee/career executive interactions, current employee respondents strongly opined (96%) that SES superiors or political leadership would be more likely to fire career executives they disagreed with under AWE legislation (99% for retiree respondents).

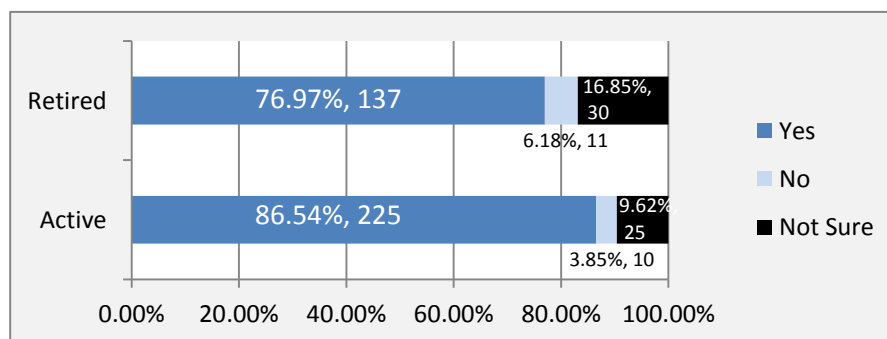
“The SES will become an arm of the party in power and no longer be free to promote the policies embodied in the law without fear of retribution.”

“At will employment will end the SES as we know it; all positions will become political appointments.”

Current employee respondents also strongly indicated (95.6%) that career executives would be less likely to disagree with their immediate supervisors or political leadership under AWE (93.5% for retiree respondents). Further, just over 61% of current employee respondents (and almost 67% of retirees) opined that, under AWE legislation, career executives would be more likely to carry out orders which they believe may present legal or ethical concerns.

“The proposed legislation will remove safeguards intended to prevent using public resources to support political agendas.”

Do you believe the at will legislation will politicize the career SES?



"This is a disaster! The SES corps will be politicized. There is already pressure to adhere to political positions."

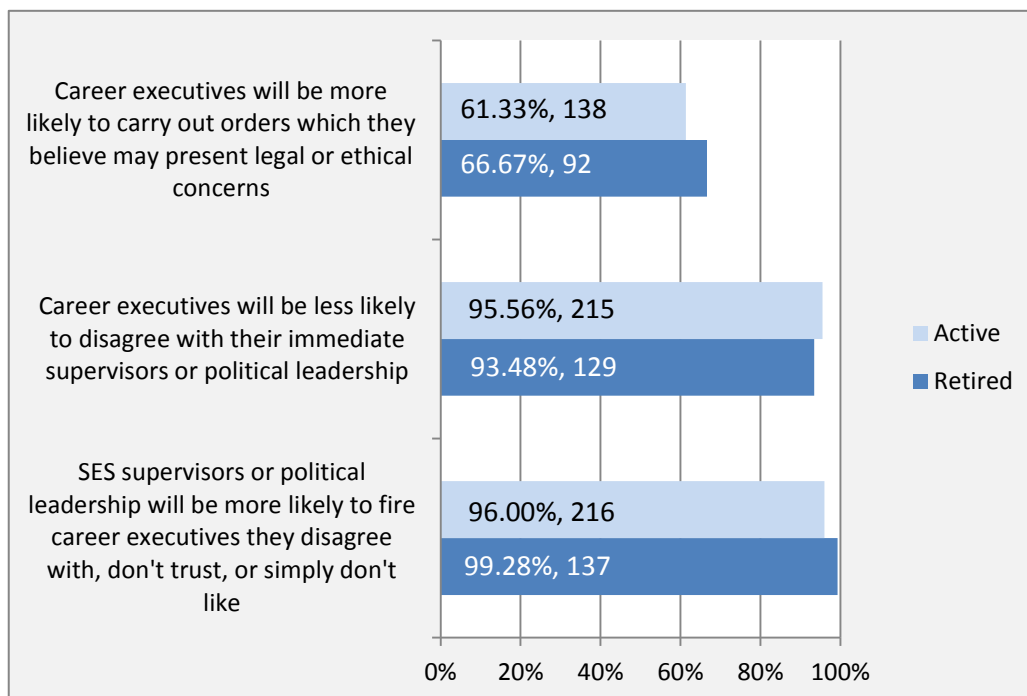
On the survey question dealing with whether passage and enactment of AWE legislation would *"improve relationships between agency political appointees and career senior executives and professionals,"* a great majority of current employee survey respondents disagreed (82.1%), with about 68% strongly disagreeing, while only about 8% agreed. For retiree respondents, 81.7% disagreed, with 54% strongly disagreeing, while only about 11% agreed. Just under 10% of current employee respondents and just over 7% of retiree respondents expressed the view that AWE legislation would have little or no impact on relationships between political appointees and career executives.

"Fear is already palpable in SES ranks. At will legislation will only exacerbate these problems and there will no longer be 'career' SES just quasi-political SES."

In a similar question dealing with whether passage and enactment of AWE legislation would *"improve relationships between Congressional Committees and staff and career senior executives and professionals,"* a sizable majority (74.1%) of current employee respondents disagreed (78.4% for retirees), while only 6.8% agreed (9.4% for retirees) and approximately 19% indicated it would have little or no impact (just over 12% for retirees).

"Tammany Hall, here we come!"

Please check as many of the statements which follow as you believe will result from at will legislation.



Key Finding 4: At will employment would be harmful to the efficiency, effectiveness, integrity, productivity, innovation and operational stability of government, as well as the public's confidence in it: Some of the chief concerns expressed by survey respondents dealt with the likely impact that enactment of AWE legislation would have on the effectiveness of agencies in which they serve as well as the government as a whole. Many predicted that, under AWE, performance, integrity productivity and innovation would suffer as agency goals and program direction turn toward short-term political agendas and away from longer-term mission accomplishment. Some expressed concern that AWE could lead to weakening of inherently governmental functions and responsibilities such as enforcement of laws and regulations, oversight of commercial and industry practices, and proper execution of federal procurement standards. Specifically, respondents were asked if they agreed or disagreed with whether passage and enactment of AWE legislation *"would improve performance and productivity among current career senior executives."* Only 15.4% of current employee respondents agreed, with just under 5% strongly agreeing. Over 75% of current employees disagreed, with almost 51% of these strongly disagreeing. Just over

"It will make the SES less attractive for the best and the brightest and encourage a lot of knowledge to walk out the door – retire or go to private industry where they can at least be paid adequately."

9% of current employee respondents opined there would be little or no impact caused by the AWE legislation. For retiree respondents, only 18.1% agreed (with just under 3% strongly agreeing), almost 74% disagreed (with 38% strongly disagreeing), and just over 8% indicated there would be little or no impact. Others worried that AWE would destabilize the executive workforce through high turnover and suboptimal hiring (as high potential career employees in lower grade levels spurn applying for SES/SP jobs or choose to seek employment outside government), which, in turn, would lead to decreased institutional memory and accountability. Others expressed concerns about the potential impact of AWE on innovation and risk taking. In response to a survey question asking respondents to choose whether, under AWE legislation, *"Career executives will be less likely to innovate since such actions outside existing performance plans are (1) riskier and therefore more likely to fail and (2) likely to make it harder for executives to meet the performance goals in their plans,"* over 87% of current employees indicated agreement (approximately 82% for retiree respondents).

"It will convert the SES into a cadre of political hacks. The professionals will depart, to be replaced by poorly qualified friends of political appointees."

"Passage of at will legislation will undermine the merit system and create a culture of fear and intimidation that will inhibit excellence."



“This will weaken the ability of the federal government to meet the challenges for innovation and creativity while upholding ethics and accountability – all being demanded by the public.”

Some predicted that politically motivated agendas would supersede mission-driven needs and objectives and noted that recent increases of political executives taking more operational roles (which is an expansion from their traditional roles as policy managers and advisors) have led to performance planning and evaluation becoming more myopic and short-term focused. These circumstances could lead to instability in program management, create gaps between agency goals and individual employee performance plans, and contribute to a shift toward rewarding executives who deliver short term, politically inspired results – outcomes that are generally inimical to efficient and effective government as well as the concept of pay for performance. In response to a survey question asking respondents to choose whether, under AWE legislation, *“Career executives will be more likely to place their attention and efforts on directives which do not relate to their immediate responsibilities or performance standards but which they believe will please their immediate supervisor or political leadership,”* 80% of current employee respondents indicated agreement (approximately 70% for retiree respondents).

“In my former SES job I made a lot of decisions with acceptable risk. I’d never do that in this environment.”

“Creating such strong punishments for less than 1% of a group of performers has a lasting damaging effect on the 99% of good strong performers. It decreases morale and greatly inhibits innovation and risk taking.”

Respondents were also asked if they agreed or disagreed with whether passage and enactment of AWE legislation would *“improve pay for performance by making it easier to distinguish among those career senior executives and professionals who deserve awards vs. those who do not.”* Only 8.4% of current employee respondents agreed, with under 2% strongly agreeing. Over 71% of current employees disagreed, with almost 50% strongly disagreeing. Approximately 20% of current employee respondents opined there would be little or no impact caused by the AWE legislation. For retiree respondents, only 12.7% agreed (with just under 2% strongly agreeing), almost 69% disagreed (with 32% strongly disagreeing), and just under 19% indicating there would little or no impact.

In terms of public confidence, respondents were asked whether they agreed or disagreed with whether passage and enactment of AWE would *“improve confidence in government among members of the public and/or major government stakeholders.”* Only 17.1% of current employee respondents agreed, with just over 3% strongly agreeing. Almost 60% of current employees disagreed, with

“The best will go (vote with their feet); marginal non-risk takers will remain.”

approximately 32% strongly disagreeing. Approximately 23% of current employee respondents opined there would be little or no impact caused by the AWE legislation. For retiree respondents, 22.6% agreed (with just under 3% strongly agreeing), approximately 59% disagreed (with just over 19% strongly disagreeing), and about 18% indicating there would little or no impact.

“The executives who can compete for better jobs will leave sooner, and those who can’t will stay, gradually degrading the quality of the corps.”

“This may prove to be the most damaging legislation ever enacted that will have a severe negative impact on the long-term capacity of the Executive Branch to serve the American people.”

“The net effect would be LOSE-LOSE! Honest disagreement in management is essential to solving problems, and that aspect would be lost.”

“Say good-bye to any meaningful attempts to innovate and lead change, and create more efficient and effective government.”

“SESers will no longer have the courage to do the right things for the right people. They will be forced to compromise their integrity, honesty and moral responsibility.”

“This proposed legislation will write into law pernicious leadership practices that will destroy career civil service initiative and creativity as well as push political considerations further into what ought to be management, scientific and policy based decisions.”

“At will employment defeats the entire purpose of the career SES corps – to be independent from partisan politics and to pursue doing what is right for the taxpayers and their agency.”

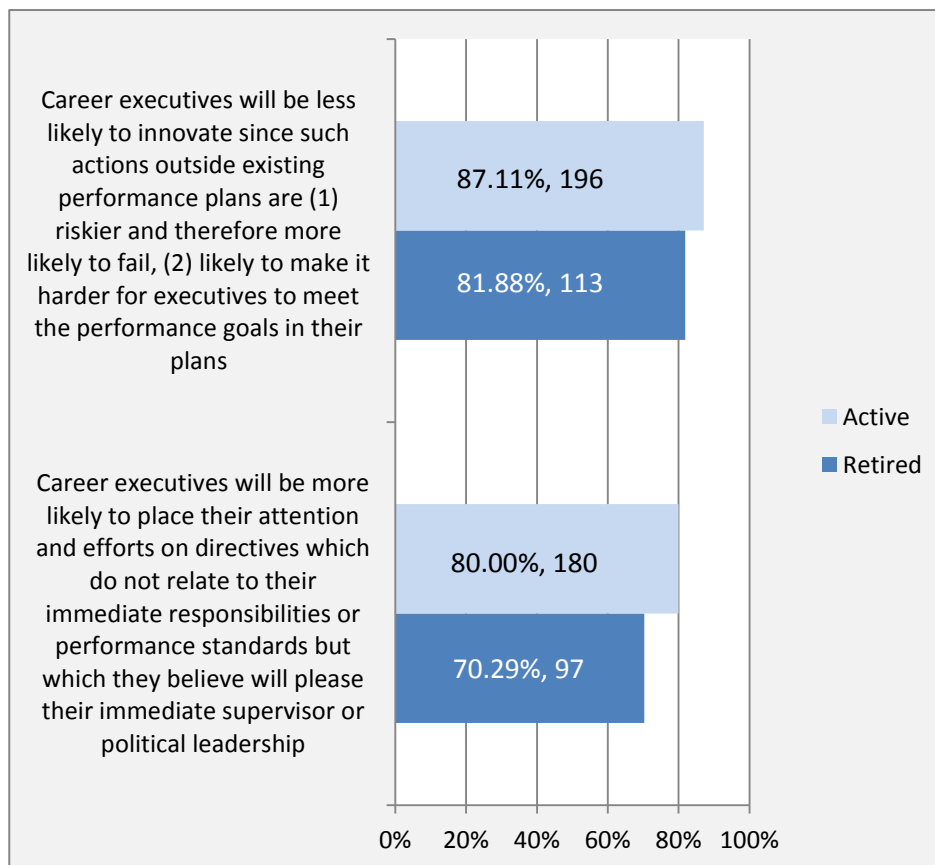


"This legislation will obstruct the vital strategic and operational planning needed to carry out an agency's mission."

"This is a terrible backward step in government administration. SES/SP are the glue that holds the government together through transitions...they ensure the entire mission, not just the Administration's agenda, is performed for the good of the country."

"The legislation will simply result in an exodus of leaders who actually know what they are doing. They will be replaced by lesser able senior leaders and a politically charged revolving door of mediocrity."

Please check as many of the statements which follow as you believe will result from at will legislation.



Key Finding 5: Current laws, government-wide regulations and agency management tools and flexibilities provide ample authority for holding career executives accountable for satisfactory performance and conduct: Many

respondents, in their answers to specific survey questions and in written comments, pointed out that under current law, regulation and agency management practices, ample authority and tools exist for holding career senior executives and professionals accountable for doing their jobs and for taking needed management and personnel actions to reward, recognize and discipline as needed.

Some commenters pointed out that career SES are appointed after a rigorous qualifications review process, with most of them having already served and proven their capabilities in highly demanding managerial and professional positions prior to their appointment to the SES. In support of these claims, almost 94% of current employee respondents and approximately 86% of retiree respondents answered yes to the survey question, *“Do you think the current laws are sufficient for holding Senior Executives accountable for performance/conduct?”*

In a similar vein, just over 74% of current employee respondents and almost 70% of retiree respondents disagreed when

“Senior executives that lie, cheat, or commit fraud should be fired, but the current law already allows for their termination.”

“The mechanisms for holding SES accountable already exist. The problem is that leadership has not exerted the fortitude necessary to confront non-performing SES and hold them accountable.”

responding to the survey question which asked if passage and enactment of AWE legislation would *“improve accountability among current career senior executives and professionals,”* with approximately 41% of current employees and 29% of retirees strongly disagreeing. Only about 14% of current employees and 25% of retirees agreed with the statement, while just over 11% of current employees and 5.5% of retirees indicating that AWE would have little or no impact on improving accountability.

Others commented that career executives are given annual performance goals and plans that require the achievement of specific objectives – and failure to meet these goals can result in the relatively easy removal of the executive from his or her position through reassignment, downgrade, or termination – with no effective rights of appeal. Should career executives become engaged in misconduct or malfeasance, legal authority exists for agencies to conduct disciplinary action (i.e., formal reprimand, suspension without pay, forced

“Stronger and clearer performance requirements should be the mechanism for improved accountability.”

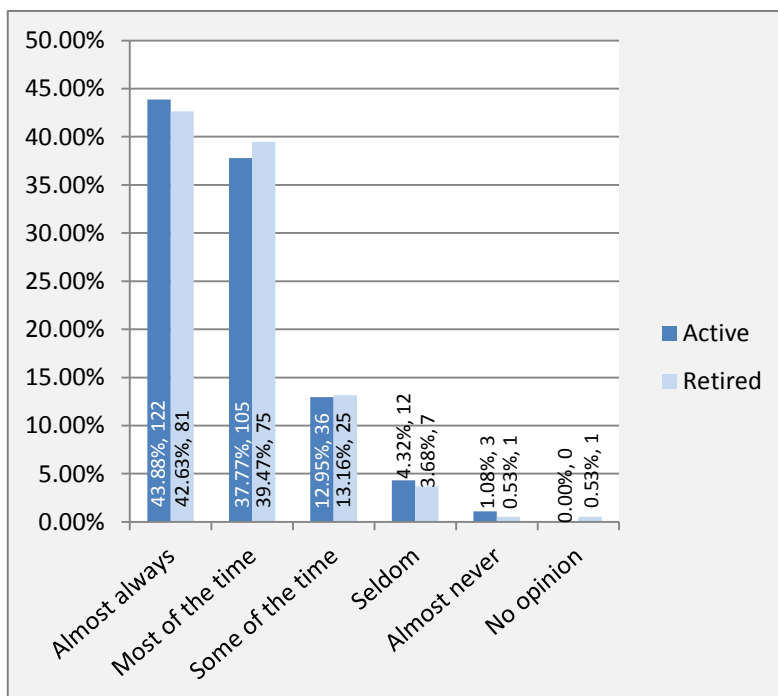
"I believe that current procedures are adequate. Political leadership should not blame the system for their failure to employ it, as designed."

termination) up to and including removal from the federal service.

In response to a specific survey question that asked, *"Do you think Senior Executives are regularly held accountable for their performance/conduct,"* almost 82% of current employee responded either "almost always" or "most of the time," while approximately 13% responded "some of the time" and the remainder (approximately 5%) responded "seldom" or "almost never." Retiree respondents were highly similar with just over 82% responding "almost always" or "most of the time," about 13% responding "some of the time," and just over 4% responding "seldom" or "almost never."

Others commented that their agencies had training and other programs in place to improve both individual and organizational performance and accountability. However, some respondents noted that the full breadth of management tools and resources to enhance accountability and performance are under-utilized because of a lack of funding, training, time and/or understanding of or attention to such tools and resources by political appointees. In response to a survey question that asked, *"What primary reason do you believe is responsible to lack of regular accountability,"* just over 30% of current employee respondents and almost 43% of retiree respondents chose the option "lack of will on the part of supervising leadership," while 5% of current employees and almost 7% of retirees chose "lack of SES supervisors understanding the process." The plurality of both respondent groups chose the option, "I believe executives in my agency are held accountable."

Do you think Senior Executives are regularly held accountable for their performance/conduct?



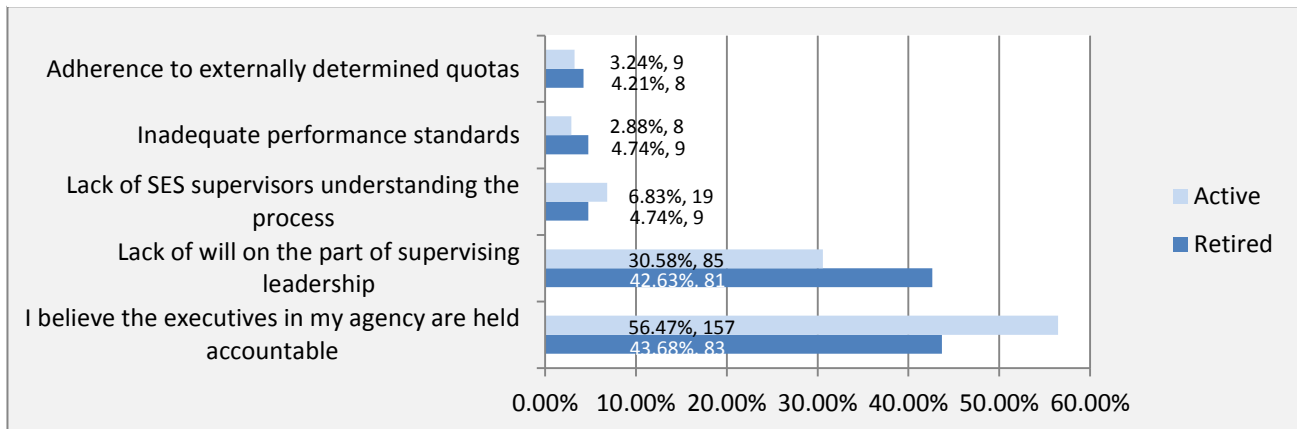
Survey respondents also were somewhat skeptical about whether the availability of AWE legal authority would actually lead to increased willingness or commitment by their agencies to terminate career executives and professionals for poor performance or misconduct. In response to survey questions asking whether passage and enactment of AWE legislation would (1) *increase agency*

“Accountability is simple, and most people don’t mind being held accountable. But that means having clear expectations and holding us to those expectations.”

willingness to fire career senior executives and professionals viewed as poor performers or engaging in misconduct and (2) increase the number of career senior executives and professionals who are actually fired for poor performance or misconduct, only 40.7% of current employee respondents agreed that AWE legislation would increase agency willingness to fire and 41.9% agreed it would increase the number who are actually fired, with over 15% expressing the

view that AWE legislation would have little or no impact on willingness or actual firing. Among retiree respondents, 49.7% agreed that the availability of AWE legislation would increase agency willingness to fire and 52.5% agreed that it would increase the number actually fired, with about 9% expressing the view that AWE legislation would have little impact on willingness or actual firing.

What primary reason do you believe is responsible for lack of regular accountability?



Conclusions and Next Steps

The results of the survey strongly confirm SEA's concerns about the likely highly negative impacts and consequences that passage and enactment of AWE legislation would have on:

- The vitality, quality and motivation of the government's career senior executive and professional corps
- Politicization of the SES and SP personnel systems as well as politically imbued decision making and program management stewardship
- Relationships between career senior executives and professionals and agency political leadership as well as other key stakeholders such as Congressional members and staff
- The efficiency, effectiveness, integrity, productivity, innovation and operational stability of the federal government

Making it easy to fire career Senior Executives without cause or due process is what many in Congress and the media see as a ready solution to allegations of mismanagement at the Department of Veterans Affairs and other agencies. However, in SEA's view, this is a reactionary solution that does not solve the problems in question.

"At will employment un-does civil service reforms put in place to de-politicize federal employment."

Moreover, it is important to understand that current SES members are already in a completely separate personnel system, with no locality pay, all pay adjustments and awards based on performance (and entirely discretionary with their agencies), and with no effective appeal rights on performance based personnel actions. Where there are poor performers, sufficient remedies currently exist to remediate and hold career senior executives and professionals accountable with relative ease.

As is well known, the management and operational challenges facing the federal government are long-running and complex. Although SEA strongly supports holding career senior executives accountable for their performance and conduct, punishing all senior executives by establishing at will employment in the SES will do more harm than good by chasing the best current executives into retirement and dissuading excellent candidates from applying to the SES – thereby further exacerbating the difficult problems needing to be addressed. Indeed, a February 2014 survey of SEA's membership found 51% of survey respondents rating overall morale among Senior Executives and Senior Professionals

"Hold poor performers and bad actors accountable. Do not destroy the merit system, including the SES corps. At will employment legislation blurs the line – violates the Pendleton Act and the Civil Service Reform Act – and returns the United States to a 19th century of governance."

"I was part of a team at the Civil Service Commission that passed CSRA and created the SES. I believe those processes have been largely successful in creating and maintaining a professional, highly talented career service. This trend is a disaster."

at their agencies as "low or very low" (with only 13% rating overall morale as high or very high). And since the time of that survey, things seem to have gotten even worse. Also, SEA notes that the rate of retirement of current Senior Executives is already up 40% since 2009 – a further sign of dissatisfaction among current career executives.

Should AWE legislation become broadly enacted, the SES, a system that is already under ample duress due to pay compression, hiring limitations, and low morale, may well become a place of last resort as high performing employees increasingly retire or take their skills to the private sector. The upshot of such an exodus, coupled with unwillingness of high performing potential successors to seek SES jobs, would likely be increased disruption to and vulnerabilities in managing crucial federal programs. The specter of AWE would also operate to inhibit risk taking and innovation and to encourage safe decisions, rather than the best decisions for the American public.

It has long been SEA's view – one that is shared by many good government organizations and former and current Administration political officials and

members of Congress – that career executives and professionals carry out their responsibilities in a non-partisan manner, providing unwavering support to and implementation of Congressional and Administration directives and policies. They also ensure political neutrality and operational continuity to our entire government. They have chosen careers in the federal government, not for pay and benefits, but due to a desire to serve.

Unfortunately, with increasing frequency in recent years, some career senior executives have been hired for or reassigned to a position to address personnel and program challenges, but then are often left holding responsibility for a problem they did not create and were attempting to fix. Others have been caught between Congressional demands and Administration policies not of their making and then blamed when positive outcomes cannot be achieved – essentially becoming scapegoats. Instead of the "quick fix" and "rough justice" approaches embodied in AWE legislative proposals, SEA recommends comprehensive review and necessary reforms to the SES – a system that by and large has served our government and our nation exceedingly well since its inception in 1978. Not only do those proposals

"The only thing that has held this government together in the past few years has been skilled career SES management. If their skills are lost because they have been dispatched without cause or unbiased appeals mechanisms, over time everything from the management of the nuclear weapons program to the IRS will collapse."



trample on the Constitutional right to due process, they open the door to politicization of the career executive corps. They also create dangerous precedents that threaten a return to 19th and 20th century patronage systems where federal jobs were given as political favors and when Administrations changed political parties, political appointees cleaned house at federal agencies. Services to citizens were not administered fairly, but on a partisan basis that was determined by politics and handouts. This is not the time to turn back to “spoils” type civil service policies. These policies represent outdated and counterproductive relics of a bygone era, prior to the introduction of merit in federal hiring and retention laws.

To this end, SEA will continue its vigorous efforts to educate Congressional and Administration officials on existing flexibilities in the current SES system as well as propose specific changes to improve recruitment, retention, performance, productivity and accountability among career senior executives and professionals. There is simply too much at stake for the government’s bedrock senior management system and the nation it serves to do otherwise.

“Good luck recruiting the top quality talent we’ve been getting until now. One more nail in the coffin of a leading nation. One more example of shooting ourselves in the foot.”



Appendix A – Survey Instruments

SURVEY OF SEA ACTIVE MEMBERS ON THE POTENTIAL IMPACT OF “AT WILL” EMPLOYMENT LEGISLATION

Recently enacted legislation will make the SES “at will” at the Department of Veterans Affairs. Congress is currently considering several proposals to make it easier to fire career Senior Executives government-wide, as well as allow agencies to take action against Senior Executives with limited advance notice for the typical reasons of misconduct, malfeasance, and neglect of duty with the addition of “efficiency of the service.”

The Senior Executives Association (SEA) is seeking your views on the advisability and potential impact of “at will” and accountability proposals. We urge you to take a few minutes to respond to this questionnaire due to the importance of the issues it covers. We will be developing our legislative strategy based on your views.

Thank you in advance for sharing your views! Your answers to survey questions will be held in the strictest confidence and aggregated in a manner that will not allow personal or organizational identification. If you have any comments about the survey itself, please write to me.

Carol Bonosaro, President SEA, seapresident@seniorexecs.org

DEMOGRAPHIC AND POSITION INFORMATION

1. If currently employed in the federal government, what is your current type of appointment/grade-level (select appropriate button)?

- ☐ Senior Executive Service (SES)
- ☐ Senior Level (SL)
- ☐ Scientific or Professional (ST)
- ☐ GS-15
- ☐ Other (please specify)



2. How long have you served at your current grade level (count service as SES or SP as the same grade level) (select appropriate button)?

- ☐ up to three years
- ☐ three to six years
- ☐ seven to ten years
- ☐ over ten years

3. Please select the appropriate button below that reflects your age:

- ☐ 30 or under
- ☐ 31-40
- ☐ 41-50
- ☐ 51-60
- ☐ over 60

4. What is your current agency (select from the drop-down menu)?

5. Do you think Senior Executives are regularly held accountable for their performance/conduct?

- ☐ Almost always
- ☐ Most of the time
- ☐ Some of the time
- ☐ Seldom
- ☐ Almost Never
- ☐ No opinion



6. What primary reason do you believe is responsible for lack of regular accountability?

Appendix A

- ☐ I believe the executives in my agency are held accountable
- ☐ Lack of will on the part of supervising leadership
- ☐ Lack of SES supervisors understanding the process
- ☐ Inadequate performance standards
- ☐ Adherence to externally determined quotes
- ☐ Other (please specify)

7. Do you think the current laws are sufficient for holding Senior Executives accountable for their performance/conduct? (Current law provides for mandatory removal from the SES of executives who have 2 minimally successful ratings within 5 years or 1 unsatisfactory and 2 minimally within 3 years. If there is 1 unsatisfactory rating the executive must be moved to another SES position or removed from SES.)

- ☐ Yes
- ☐ No
- ☐ No opinion

8. Generally speaking, do you feel the type of “at will” employment legislation being considered in Congress is a good idea?

- ☐ Yes
- ☐ No
- ☐ No opinion

9. If no, what additional standards should be established?

- ☐ “At will” employment legislation
- ☐ Making it easier to downgrade employees without loss of salary
- ☐ More flexibility in agency reassignments outside the commuting area
- ☐ More flexibility in agency reassignments within the commuting area
- ☐ Stricter adherence to establishing performance standards that reflect actual work assigned
- ☐ Other (please specify)



For the following statements, please use the drop-down scale boxes after each statement to indicate on a scale of one to ten (with one being “strongly disagree” and ten being “strongly agree”) how you feel about the potential impacts of passage and enactment of employment “at will” legislation on career senior executives and professionals. If you believe “at will” employment legislation would have a negligible or no impact and any of the statements/issues below, select “Little or No Impact”.

10. Improve retention of current career senior executives (SES) and senior professionals (SL and ST) employees.

11. Improve recruitment to the SES of talented employees already working within the federal government at lower grade/pay levels (e.g., GS-15s and 14s).

12. Improve recruitment to the SES of talented individuals working outside the federal government.

13. Improve performance and productivity among current career senior executives and professionals.

14. Improve accountability among current career senior executives and professionals.

For the following statements, please use the drop-down scale boxes after each statement to indicate on a scale of one to ten (with one being “strongly disagree” and ten being “strongly agree”) how you feel about the potential impacts of passage and enactment of employment “at will” legislation on career senior executives and professionals. If you believe “at will” employment legislation would have a negligible or no impact and any of the statements/issues below, select “Little or No Impact.”

15. Improve confidence in government among members of the public and/or major government stakeholders.

16. Improve pay for performance by making it easier to distinguish among those career senior executives and professionals who deserve rewards vs. those who do not.



- 17. Improve relationships between agency political appointees and career senior executives and professionals.**
- 18. Improve relationships between Congressional committees and staff and career senior executives and professionals.**
- 19. Increase agency willingness to fire career senior executives and professionals viewed as being poor performers or engaging in misconduct.**

For the following statements, please use the drop-down scale boxes after each statement to indicate on a scale of one to ten (with one being “strongly disagree” and ten being “strongly agree”) how you feel about the potential impacts of passage and enactment of employment “at will” legislation on career senior executives and professionals. If you believe “at will” employment legislation would have a negligible or no impact and any of the statements/issues below, select “Little or No Impact.”

- 20. Increase the number of career senior executives and professionals who are actually fired for alleged poor performance or misconduct.**
- 21. Increase the likelihood that agency actions to fire career senior executives and professionals will be upheld by third party reviewers (e.g., the Merit System Protection Board, EEOC, the courts.).**
- 22. Increase the likelihood that similar “at will” employment provisions might be enacted for employees below the SES and Senior Professional level (e.g., GS-13, 14 and 15s).**
- 23. Increase the likelihood that senior executives will retire as soon as eligible?**



24. Do you believe that at will legislation will politicize the career SES?

- ☐ Yes
☐ No
☐ Not sure

25. Please check as many of the statements which follow as you believe will result from at will legislation.

- ☐ SES supervisors or political leadership will be more likely to fire career executives they disagree with, don't trust or simply don't like
☐ Career executives will be less likely to disagree with their immediate supervisors or political leadership
☐ Career executives will be more likely to carry out orders which they believe may present legal or ethical concerns
☐ Career executives will be more likely to place their attention and efforts on directives which do not relate to their immediate responsibilities or performance standards but which they believe will please their immediate supervisor or political leadership
☐ Career executives will be less likely to innovate since such actions outside existing performance plans are (1) riskier and therefore more likely to fail, (2) likely to make it harder for executives to meet the performance goals in their plans
☐ Other (please specify)

26. In your own words please describe your views about the potential impact that passage and enactment of "at will" employment legislation would have on the SES and SP systems, the career employees who comprise these systems, employees who might aspire to these positions and/or government operations and effectiveness. *Such statements can be particularly effective in influencing members of Congress; your name and agency will not be disclosed.*



SURVEY OF SEA RETIRED MEMBERS ON THE POTENTIAL IMPACT OF “AT WILL” EMPLOYMENT LEGISLATION

Recently enacted legislation will make the SES “at will” at the Department of Veterans Affairs. Congress is currently considering several proposals to make it easier to fire career Senior Executives government-wide, as well as allow agencies to take action against Senior Executives with limited advance notice for the typical reasons of misconduct, malfeasance, and neglect of duty with the addition of “efficiency of the service.”

The Senior Executives Association (SEA) is seeking your views on the advisability and potential impact of “at will” and accountability proposals. We urge you to take a few minutes to respond to this questionnaire due to the importance of the issues it covers. We will be developing our legislative strategy based on your views.

Thank you in advance for sharing your views! Your answers to survey questions will be held in the strictest confidence and aggregated in a manner that will not allow personal or organizational identification. If you have any comments about the survey itself, please write to me.

Carol Bonosaro, President SEA, seapresident@seniorexecs.org

DEMOGRAPHIC AND POSITION INFORMATION

- 1. If retired or resigned from the federal government, what was your former type of appointment/grade at the time of your separation (select appropriate button)?**

- ☐ Senior Executive Service (SES)
- ☐ Senior Level (SL)
- ☐ Scientific or Professional (ST)
- ☐ GS-15
- ☐ Other (please specify)



2. How long did you serve in the appointment/grade level you had held at the time you separated from the federal government (select appropriate button)?

- ☐ up to three years
- ☐ three to six years
- ☐ seven to ten years
- ☐ over ten years

3. What agency did you work in at the time you separated from the federal government (select from the drop-down menu)?

4. Do you think Senior Executives are regularly held accountable for their performance/conduct?

- ☐ Almost always
- ☐ Most of the time
- ☐ Some of the time
- ☐ Seldom
- ☐ Almost Never
- ☐ No opinion

5. What primary reason do you believe is responsible for lack of regular accountability?

- ☐ I believe the executives in my agency are held accountable
- ☐ Lack of will on the part of supervising leadership
- ☐ Lack of SES supervisors understanding the process
- ☐ Inadequate performance standards
- ☐ Adherence to externally determined quotes
- ☐ Other (please specify)



6. Do you think the current laws are sufficient for holding Senior Executives accountable for their performance/conduct? (Current law provides for mandatory removal from the SES of executives who have 2 minimally successful ratings within 5 years or 1 unsatisfactory and 2 minimally within 3 years. If there is 1 unsatisfactory rating the executive must be moved to another SES position or removed from SES.)

- ☐ Yes
- ☐ No
- ☐ No opinion

7. Generally speaking, do you feel the type of “at will” employment legislation being considered in Congress is a good idea?

- ☐ Yes
- ☐ No
- ☐ No opinion

8. If no, what additional standards should be established?

- ☐ “At will” employment legislation
- ☐ Making it easier to downgrade employees without loss of salary
- ☐ More flexibility in agency reassignments outside the commuting area
- ☐ More flexibility in agency reassignments within the commuting area
- ☐ Stricter adherence to establishing performance standards that reflect actual work assigned
- ☐ Other (please specify)



For the following statements, please use the drop-down scale boxes after each statement to indicate on a scale of one to ten (with one being “strongly disagree” and ten being “strongly agree”) how you feel about the potential impacts of passage and enactment of employment “at will” legislation on career senior executives and professionals. If you believe “at will” employment legislation would have a negligible or no impact and any of the statements/issues below, select “Little or No Impact”.

9. Improve retention of current career senior executives (SES) and senior professionals (SL and ST) employees.
10. Improve recruitment to the SES of talented employees already working within the federal government at lower grade/pay levels (e.g., GS-15s and 14s).
11. Improve recruitment to the SES of talented individuals working outside the federal government.
12. Improve performance and productivity among current career senior executives and professionals.
13. Improve accountability among current career senior executives and professionals.

For the following statements, please use the drop-down scale boxes after each statement to indicate on a scale of one to ten (with one being “strongly disagree” and ten being “strongly agree”) how you feel about the potential impacts of passage and enactment of employment “at will” legislation on career senior executives and professionals. If you believe “at will” employment legislation would have a negligible or no impact and any of the statements/issues below, select “Little or No Impact.”

14. Improve confidence in government among members of the public and/or major government stakeholders.



- 15. Improve pay for performance by making it easier to distinguish among those career senior executives and professionals who deserve rewards vs. those who do not.**
- 16. Improve relationships between agency political appointees and career senior executives and professionals.**
- 17. Improve relationships between Congressional committees and staff and career senior executives and professionals.**
- 18. Increase agency willingness to fire career senior executives and professionals viewed as being poor performers or engaging in misconduct.**

For the following statements, please use the drop-down scale boxes after each statement to indicate on a scale of one to ten (with one being “strongly disagree” and ten being “strongly agree”) how you feel about the potential impacts of passage and enactment of employment “at will” legislation on career senior executives and professionals. If you believe “at will” employment legislation would have a negligible or no impact and any of the statements/issues below, select “Little or No Impact.”

- 19. Increase the number of career senior executives and professionals who are actually fired for alleged poor performance or misconduct.**
- 20. Increase the likelihood that agency actions to fire career senior executives and professionals will be upheld by third party reviewers (e.g., the Merit System Protection Board, EEOC, the courts.).**
- 21. Increase the likelihood that similar “at will” employment provisions might be enacted for employees below the SES and Senior Professional level (e.g., GS-13, 14 and 15s).**



22. Increase the likelihood that senior executives will retire as soon as eligible?

23. Do you believe that at will legislation will politicize the career SES?

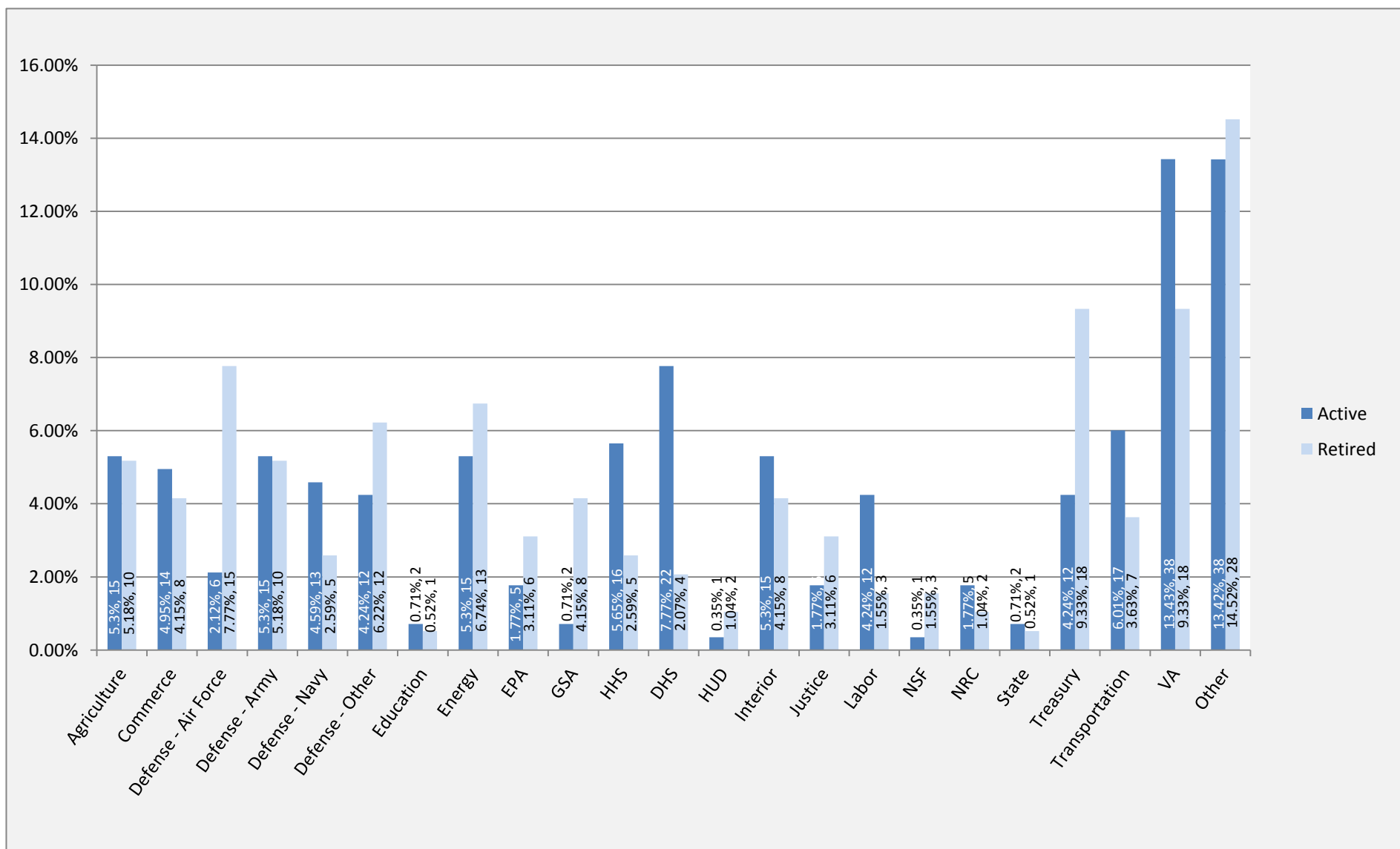
☐ Yes
☐ No
☐ Not sure

24. Please check as many of the statements which follow as you believe will result from at will legislation.

☐ SES supervisors or political leadership will be more likely to fire career executives they disagree with, don't trust or simply don't like
☐ Career executives will be less likely to disagree with their immediate supervisors or political leadership
☐ Career executives will be more likely to carry out orders which they believe may present legal or ethical concerns
☐ Career executives will be more likely to place their attention and efforts on directives which do not relate to their immediate responsibilities or performance standards but which they believe will please their immediate supervisor or political leadership
☐ Career executives will be less likely to innovate since such actions outside existing performance plans are (1) riskier and therefore more likely to fail, (2) likely to make it harder for executives to meet the performance goals in their plans
☐ Other (please specify)

25. In your own words please describe your views about the potential impact that passage and enactment of "at will" employment legislation would have on the SES and SP systems, the career employees who comprise these systems, employees who might aspire to these positions and/or government operations and effectiveness. *Such statements can be particularly effective in influencing members of Congress; your name and agency will not be disclosed.*

Appendix B – Survey Respondent Participation Rates by Agency





Senior Executives Association
Professional Development League
77 K Street, NE
Suite 2600
Washington, DC 20002
www.seniorexecs.org | 202.971.3300