



April 15, 2015

The Honorable Brad Wenstrup
Chairman
Subcommittee on Economic Opportunity
House Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, DC 20515

The Honorable Mark Takano
Ranking Member
Subcommittee on Economic Opportunity
House Committee on Veterans' Affairs
333 Cannon House Office Building
Washington, DC 20515

Dear Chairman Wenstrup, Ranking Member Takano, and Members of the Committee:

As you know, the Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. On behalf of the Association, and of the SEA members who serve at the Department of Veterans Affairs (VA), I write to share the Association's perspective on H.R. 473.

SEA appreciates the subcommittee's consideration of performance management. SEA has long called for reforms to the SES performance management system to ensure it is utilized to incentivize the best performance. Those reforms have included ensuring greater transparency, timeliness of establishing performance plans and conducting performance appraisals and communicating their results, and ensuring political appointees who often supervise career senior executives understand the system and their obligation to making it work properly.

SEA appreciates the effort of Chairman Miller and committee professional staff who have crafted this legislation, including taking into account the feedback and technical suggestions from SEA that we believe have resulted in a stronger bill represented by Chairman Wenstrup's amendment in the nature of a substitute. However, we remain concerned about certain technical elements of this legislation outlined below.

As you know, the SES is a government-wide cadre. Consequently, SEA has concerns about creating a distinct framework for a single agency, which balkanizes that government-wide system and creates challenges in maintaining consistency and providing for appropriate oversight by OPM.

Furthermore, we are concerned that the forced distribution of ratings at the outstanding and exceeds fully successful level challenges an underpinning factor of the SES system that agencies make meaningful distinctions in performance. Senior Executives face a high barrier of entry into the corps; therefore a normal distribution of performance should not be expected nor imposed.

The VA Secretary has authority to sign-off on every SES performance appraisal. Complaints or reports from various oversight bodies are already taken into account in assessments of executive performance. Inspectors general are already consulted prior to issuance of performance awards.

Yet it is important that only substantiated complaints or reports are used in such assessments – it is unfair for an individual’s performance to be negatively affected by unconfirmed allegations. Additionally, it is unclear how efforts of an executive to maintain satisfaction and commitment among employees under their supervision would be assessed and measured for the purpose of informing an executive’s performance appraisal. Further, it is not unusual that executives seeking to improve performance may find themselves the subjects of union grievances or EEO complaints which are later found to have no merit.

SEA does not believe Congress should be in the business of micromanaging agencies by reviewing every performance appraisal. However, if the Committee persists in seeking this authority, then any information on performance appraisals provided to Congress should also be provided to the employee, along with notice that the information has been provided to Congress. Additionally, SEA strongly believes that protections should be put in place that prevents the public release of such sensitive personnel records by Congress along with strict penalties for doing so.

SEA suggests adding language under Section 3, subsection (3)(b), to require that before embarking on any rotations, the Secretary must develop a comprehensive human capital plan that ensures that rotations are appropriate, serve a business purpose, and won’t negatively impact agency operations. On a related note, in subsection (b) of the same Section, SEA also recommends language be added to include a review of the VA’s talent development pipeline and training programs for rising leaders in the agency, as well as for training of noncareer executives, including political appointees.

Regarding Section 2 of the bill, SEA agrees that should an employee be convicted of a felony related to their job duties, then they should not receive service credit toward their pension for the year or years in which the felony was committed. This provision should be narrowly tailored to ensure that the felony conviction is final (no pending appeals) and that the conviction is tied to their job (e.g. embezzlement of agency funds). The legislation should also make clear that the pension claw back is only for the time period in which the felony is committed, as determined by the courts and not the Secretary.

Regarding Section 4 of the bill, SEA shares the concern of Chairman Miller about the misuse of administrative leave at the VA and across the government. Yet this bill does not put an end to the ability of agencies to abuse administrative leave, but rather creates new reporting and tracking requirements. SEA is currently crafting a legislative solution to the issue of administrative leave abuse.

We look forward to continue working with the committee to address the remaining issues in the legislation.

Sincerely,



CAROL A. BONOSARO
President