

SENIOR EXECUTIVES AT THE DEPARTMENT OF **VETERANS AFFAIRS**



A Survey of VA Leaders on the Proposal to Move
Career Executives from Title 5 to Title 38

March 2016



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; and to enhance public recognition of their accomplishments. For additional information about SEA, visit www.seniorexecs.org.

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EXECUTIVE SUMMARY

Following the start of the Great Recession in 2007, and growing since 2010, Senior Executive Service (SES) members and equivalents across the federal government have come under enormous scrutiny. As slow-boiling issues involving access to care at the Department of Veterans Affairs (VA) exploded onto the national scene in 2014, Senior Executives within the agency became the target of widespread ire, proceeded by a slew of legislative proposals aimed at quelling public outrage by promising accountability for those deemed to be the root of the agency's problems.

In 2014, Congress passed a law to address access to care issues and expedite the appeals process for career executives, effectively making it easier for the VA Secretary to fire or demote SES employees. In January and February of 2016, the VA [lost three successive personnel](#) decisions under this new authority, leading the VA Secretary to propose shifting the employment jurisdiction governing all VA SES from Title 5 to Title 38 of the United States Code.

"...it is the politicians who are using and will use these new lots as political cover for events not of their liking. How can one reasonably be expected to lead in a competent fashion in that environment?"

In response to this proposal, the Senior Executives Association (SEA) conducted a survey of current and former VA SES and equivalent employees to determine their views on the Secretary's proposal and elements it purported to address, including how the agency appoints, compensates, appraises, and holds accountable career SES employees.

Approximately [400 career SES](#) are currently employed at the VA. Our survey garnered responses

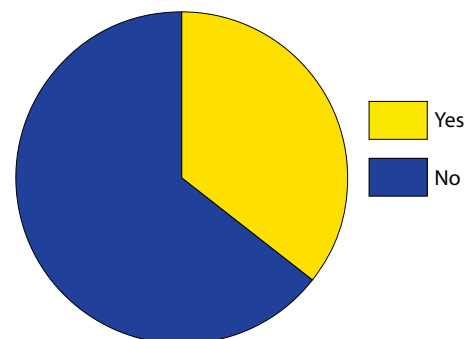
from 236 current and former VA career executives, answering a multitude of questions regarding their perception of the impact this proposal would have, as well as the current climate within the Department.

"I cannot support a proposal that would remove the few job protections we currently have with essentially only a promise of more \$\$\$. Most of us are not in this business because of the \$\$ - we do what we do for the sake of the mission - specifically for the Veterans and the employees we serve."

Key findings include:

- 69% said they do not believe the Secretary's proposal would improve service to veterans
- 64% do not support the proposed move to Title 38, even with the opportunity for an increase in salary
- 59% of respondents said they do not think the proposal would help the VA retain quality senior executives

Do you support the Department of Veterans Affairs' proposal to move all SES positions from Title 5 into Title 38, enabling executives to be paid up to a maximum salary of \$235,000 (and up to \$400,000 in salary and bonuses) but resulting in fewer job protections?



Of the respondents who opposed the Secretary's proposal, the reasons for doing so fell largely into two categories:

- A deep fear of politicization of their jobs, the SES, the federal civil service, and the distribution of services and benefits to veterans
- Skepticism that the touted benefits, such as improved salary and overall compensation, were merely a veneer; yielding few tangible benefits for employees in exchange for much greater personal and professional risk; and skepticism that the proposal would improve service to veterans

Respondents who support the Secretary's proposal did so with the caveats that the proposal be applied in a targeted manner, for appropriate medical center and VISN directors at VHA, and as

long as full Title 38 due process rights came with the proposal.

Additionally, survey respondents were asked a range of questions about whether they thought the proposal would help the agency recruit and retain high caliber VA SES talent. A majority of respondents (50%) do not believe that enactment of the proposal will help the agency attract talented external candidates, and a larger majority (67%) of respondents said they do not think it would help attract high quality executive talent from inside the VA's workforce.

Unfortunately, the survey revealed many career executives feel that neither VA nor Congressional leaders are approaching the challenges at within the agency with the nuance and thoughtfulness necessary to find solutions that would help not only the agency and its employees, but the veterans the agency serves.

INTRODUCTION

On December 9, 2015 during a [hearing](#) before the House Veterans' Affairs Committee (HVAC), Deputy Secretary Sloan Gibson, the senior accountable official at the Department of Veterans Affairs (VA), told the committee members, "You can't fire your way to excellence." Shortly thereafter, the VA lost three successive executive accountability cases heard by three separate administrative judges at the independent Merit Systems Protection Board (MSPB). On February 10, 2016 – just two days after the third decision was rendered – VA Secretary Robert McDonald [testified](#) before HVAC that he intended to propose shifting all VA SES employees from Title 5 to Title 38 in order to change how the agency appoints, compensates, appraises, and holds accountable career SES employees.

In 2014, spurred by revelations that the VA was having issues with patient wait times and access to care – issues that were [well documented](#) dating back to 1999 – Congress passed the Veterans Access, Choice and Accountability Act of 2014. This new law amended Title 38 by creating Section 713, which provides an alternative expedited removal or demotion process for career Senior Executive Service (SES) positions at the VA when allegations of poor performance or misconduct are brought forth. Since its passage, the VA has opted to utilize this new authority in every [appeals case](#) to date, and Deputy Secretary Gibson has asserted it is his policy to forego previously accepted Title 5 accountability provisions and to exclusively employ the Title 38 Choice Act process.

“...I think that the legislation that limited our appeal rights before MSPB had a significant negative impact and I feel that the proposed Title 38 legislation would have an even greater negative impact. Simply put; why would anyone apply for a senior executive position in VA versus other agencies as VA executives essentially have a target painted on their back. There is no psychological safety in VA and I do not believe that this exists at other agencies in the federal government.”

THE PROPOSAL

In an effort to lead a “radical transformation,” the VA Secretary has [proposed](#) the development of a new Title 38 based appointment, compensation, performance management, and accountability system for career senior executives at the VA.

This proposal indicates the need for “business-oriented employment authorities to recruit and retain leaders who can transform VA’s business practices to better serve veterans.” In addition to these new authorities, the proposal expresses the need to better position the VA to compete for top talent – particularly for medical center and network executives – with private sector employers who can offer more generous compensation packages.

The Secretary’s initial proposal cited the 2013 Healthcare Compensation Survey conducted by the Hay Group, where individuals holding the position of Chief Executive Officer (CEO) in

private sector health care systems received on average \$731,800 annually in cash compensation, and CEOs of a single facility within a system received an average of \$393,100 in annual cash compensation.

Under this new initiative, the VA would be allowed an increase in the cap of executive base pay up to \$235,000 and total overall compensation up to \$400,000.

The initial proposal also stated that the “VA needs to appraise and reward executives’ performance based on organization outcomes, as businesses do.”

Finally, the Secretary has asserted that “current VA executive accountabilities do not support transformation.” Additionally, his proposal argues that Title 38 disciplinary and appellate procedures are a better fit for executive leaders at a Department undergoing such transformations.

VA'S NEW PROPOSAL WON'T HAVE THE IMPACT THE AGENCY IS LOOKING FOR

SEA's survey received responses from 236 current and former VA SES. Respondents reflected executives with a range of career experience, with 41% of respondents having no plans to retire in the foreseeable future, 22% planning to retire in the next 4-5 years, 24% planning to retire in the next 2-3 years, and 13% planning to retire within the next year. Approximately 35% of respondents work at the Veterans Health Administration (VHA), 23% of respondents at other parts of VA, 17% at the Veterans Benefits Administration (VBA). Seventeen percent (17%) of respondents were former VA SES.

A strong majority of respondents, 69%, said they do not believe the Secretary's proposal would improve service to veterans. Sixty-four percent (64%) said they do not support a move to Title 38, even if it would provide an opportunity to increase compensation. Additionally, 59% said they do not think the proposal would help the

agency retain quality career senior executives.

Recruitment & Retention

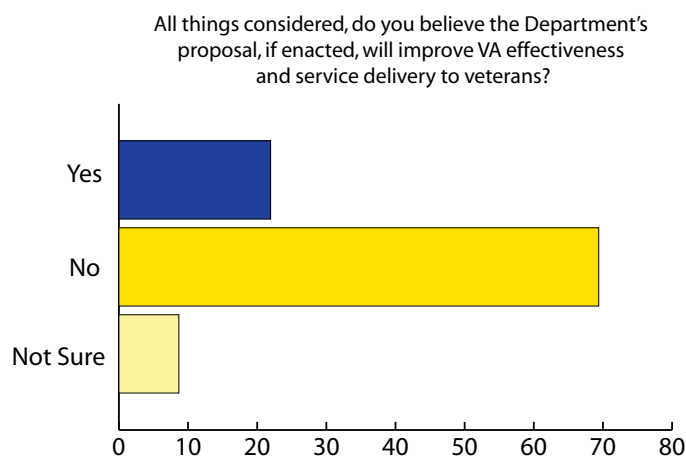
In addition to providing information on their own career plans and experiences with VA executive recruitment and retention efforts, respondents also provided their perspective on whether they felt enactment of the proposal would change their current career trajectory.

Twenty-seven percent (27%) said if the proposal was implemented, they would likely retire from the agency sooner than planned, and 51% said they were not likely to stay at the agency longer should the proposal be enacted. Additionally, if the VA proposal were to pass, 45% said they would likely not apply for a Title 38 SES job at VA.

Respondents also expressed little belief that the proposal would change many of the issues facing the VA today. Fifty percent (50%) said the proposal would not improve the recruitment of high quality external candidates, with 67% saying they were doubtful that it would improve recruitment for internal candidates.

Morale & Performance

When it comes to improving morale among career senior executives at the VA, nearly three in four (72%) do not believe this proposal would aid in that objective, nor would it create a high performance culture (71%).



“...The real issue for recruitment and retention has less to do with compensation, in my opinion, than culture. The public shaming, blaming, trashing of one’s reputation without full consideration of facts and context is just one disgruntled employee call away for any VA executive at this time. There is no support for us...”

Politicization vs. Accountability

SEA has consistently [expressed deep concerns](#) that the agency’s proposal to turn its career executive leaders into de facto political appointees is being driven not by the policy decisions necessary to address VA’s challenges, but by politics.

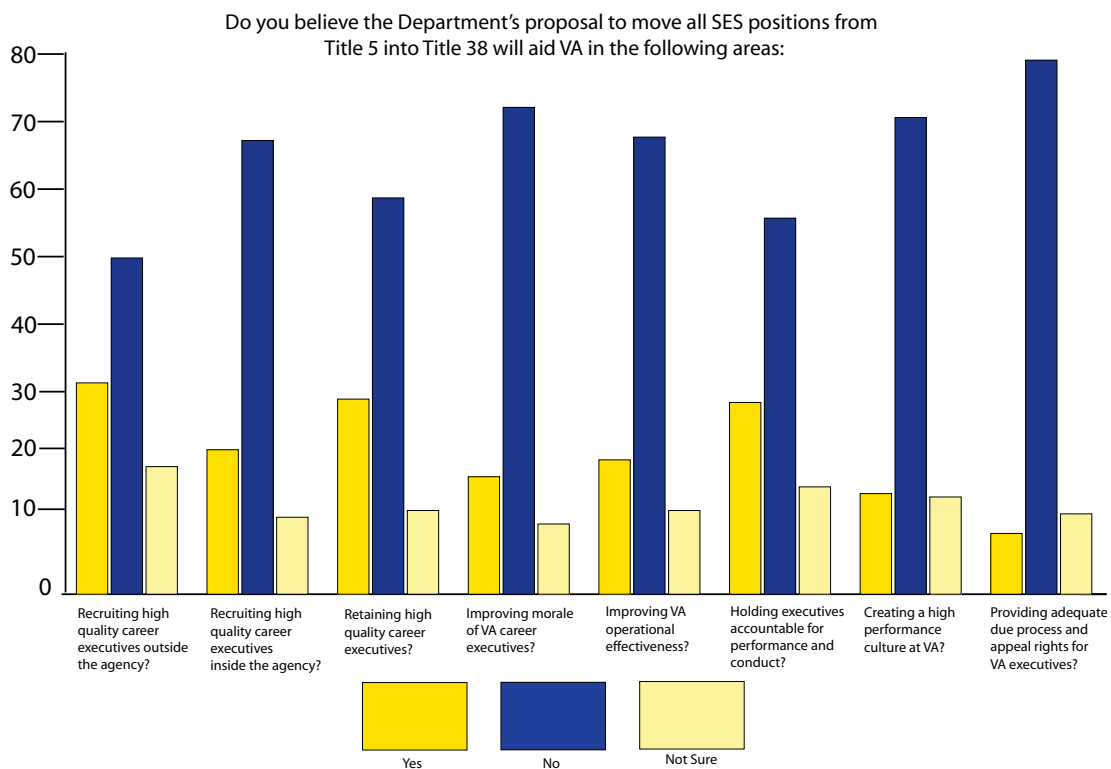
The basis of many Title 5 authorities, including core values of a merit based civil service free from political influence, have been in place in the United States since the passage of the Pendleton Act of 1883. Prior to that, employment by the federal government was dictated by one’s relationship with the political party in power, a process known as the “spoils system.” Passage of the Civil Service Reform Act (CSRA) of 1978, which created the career SES as a keystone professional leadership cadre and barrier between political appointees and the federal workforce, was spurred by politically motivated actions of the Watergate era. A report

by the MSPB released in May 2015 entitled [“What is Due Process in Federal Civil Service Employment?”](#) outlines how and why the current framework for career SES accountability, among many other factors, exists as it does.

The findings from this survey suggest that many career senior executives at the VA also are concerned that the Secretary’s Title 38 proposal is politically and optically driven and does not clearly or adequately address many of the fundamental factors contributing to the agency’s challenges in staffing its career executive ranks with high caliber senior executives.

As for improving accountability, more than half (56%) do not believe this proposal will accomplish that objective, though nearly eight in ten (79%) fear this will not provide adequate due process and appeals rights for career senior executives.

“This is a sham; the purpose is to be able to fire at will. Only a small handful of the ~400 SES in VA will receive higher pay. This is another step closer to the spoils system, which Civil Service was established to end. SES have few rights now and fewer rights pending. This is a nightmare and little more than pandering to Congress.”



BEYOND THE PROPOSAL

Larger systemic issues were also highlighted as driving factors for current VA SES to consider leaving federal service or service at the VA. Furthermore, an environment characterized as “toxic,” one of “fear,” and “mistrust” is exacerbating agency leadership challenges, causing dedicated long-term employees to seek employment in other agencies or outside of government, or to downgrade out of an SES job. Respondents noted that lack of leadership support and absence of a “psychological safety” net made it difficult to do their jobs.

Congress and the Media Aren’t Helping

Respondents were also asked which circumstances were contributing to their considerations of leaving federal service. Topping the list of factors that would cause executives to leave the government, a moderate to great extent of frustration with Congress (71%), fear of unfair media or Congressional scrutiny (70%), and frustration with VA political leadership (60%).

Obstructions in the Pipeline

Survey respondents reported that high quality GS-14 and GS-15 candidates had very low (34%), low (36%), and moderate (22%) interest in SES jobs at the VA.

Respondents were equally as split on whether they encouraged highly qualified employees to apply for SES positions. Nearly half (49%) said they did not, while 39% said they did and 13% were not sure if they would encourage current qualified GS employees to apply for vacant SES positions. However, respondents did note that they attempted to counsel those who aspired to enter the SES, and that doing so at VA brought a unique set of risks which should be known.

When encouraged to become an SES at VA,

“The relentless media and congressional oversight is generally biased, usually inaccurate, and negative which is detrimental to the health of the organization making VA an increasingly unattractive agency to work in.”

respondents said that high quality SES aspirants responded half the time (51%) with interest, and rarely with interest about a quarter of a time (28%). Respondents also noted that the [risk-reward imbalance](#) was insufficient to induce talented GS-14 and GS-15 employees to become SES at the VA. The fact that, despite the challenging environment, SES aspirants were sometimes interested in becoming a VA executive suggests that improvements to the environment is crucial in addressing this particular challenge the agency faces.

Additionally, while survey respondents said that the agency had a good talent pipeline, 60% of respondents expressed hesitancy that those in the pipeline were not “ready and able” to fill SES positions. Nearly nine in ten respondents (88%) rated the level of difficulty in filling executive roles at the VA as being either somewhat or very difficult, with nearly 60% saying doing so was very difficult. Ninety-seven percent (97%) of VA executives said they were concerned – to a great extent (59%), to a moderate extent (26%), somewhat (12%) – about the ability of the agency to fill SES vacancies with highly qualified candidates.

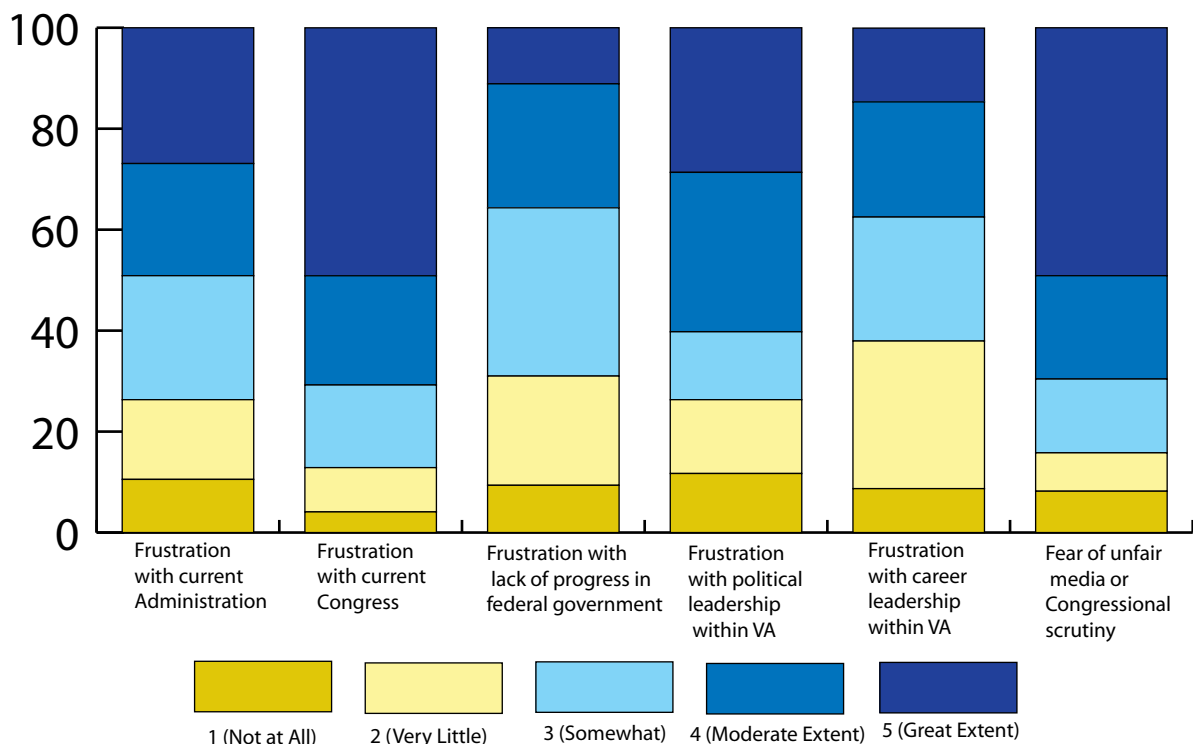
“HR Process is Broken” at VA

In written comments, several respondents voiced their concerns about VA’s human resources (HR)

processes, noting that challenges with HR made filling vacancies at the agency - particularly at the executive level - difficult.

“The HR process, particularly for senior staff, is absolutely broken in VA and no one is holding them accountable (the AS for HR [Assistant Secretary, Office of Human Resources and Administration] is a political appointee).”

On a scale of 1 (Not at All)-5 (Great Extent), how much will each of these reasons impact or contribute to your decision to separate from federal service?



“Obtaining a highly qualified pool has never been a problem. The problem has been, and continues to be the slow nomination / selection / on-boarding processes. Good candidates won’t wait around for months to hear back from HR.”

“HR is a joke in VA.”

RECOMMENDATIONS

Addressing broader, systemic issues, as well as fundamental issues such as ensuring VA has a competent human resources apparatus is seen as being a stronger driver of VA improvement than is the Secretary's proposal – the ambiguous details of which and the manner by which the details were shared left many executives feeling alienated.

Many respondents also noted that the VA is not currently utilizing Title 5 authorities to address compensation, performance, or misconduct, and therefore questioned why passage of new authorities would change the equation. SEA too, encourages Congress to conduct vigorous oversight of VA leadership, and prior to approving new authorities, better understand why the VA seems unable or unwilling to use existing authorities. Previous research by SEA [demonstrated](#) that political appointees often do not meet their obligations or use the authorities or flexibilities available to them for rewarding or holding executives accountable.

Such authorities include critical pay authority (5 U.S.C. 5377 and 5 CFR part 535), Title 5 authorities to better compensate qualified medical professionals, and recruitment, retention, and relocation incentives (3Rs), to name a few. Respondents also noted lack of support from

“The current leadership has created an atmosphere of fear and intimidation. One mistake of omission and they fire you. This hurts Veterans and forces employees to be rules based rather than values based in their actions.”

“When Congress politicizes one agency, forcing its Secretary to back down on supporting every executive there, it makes us feel we don't have leadership support. Then caving in on bonuses, raises, and workplace protections synchronously as congress increasingly singles out VA employees makes VA a singularly unpleasant place to work.”

the agency for home sales and relocation when the VA geographically reassigns executives to fill critical leadership gaps contributed to the agency's difficulty in filling those vacancies. Some respondents accused agency leadership of violating statutory authority (Chapter 43 of Title 5, USC) by artificially lowering SES performance appraisal ratings through a “forced distribution of ratings.”

Lastly, members of the career SES in the federal government are governed by Title 5 of the U.S. Code, and VA executives voiced skepticism that talented executives from other agencies would not seek employment at the VA under the terms of the Secretary's proposal. Careful consideration of whether the Secretary's new proposed VA SES system will truly help the agency attract the quality and caliber of leaders is warranted in assessing the Secretary's proposal.

CONCLUSION

As one of the largest federal agencies, VA is a complex entity with complex issues. Yet, many respondents expressed the desire to serve our nations veterans as a key motivation for continued employment at the VA. Sixty-six percent (66%) said that the ambition to pursue a position in a sector other than the private sector, such as the non-profit sector, or the private sector (57%) would not contribute to their consideration for leaving federal service.

Taken together, the quantitative and qualitative data collected in this survey demonstrates an agency career executive corps that is deeply committed to the VA mission, VA employees, and veterans. It highlights a group of individuals that is generally not driven by an excessive desire for increased compensation, but rather a desire to be adequately compensated and appropriately recognized for their contributions. Yet there is a feeling of being under near-constant siege, lacking support from Congress, agency political leaders or the White House, and suffering from a debilitating culture of fear.

This survey finds an agency already experiencing a significant leadership crisis. However, the proposal by the VA Secretary, and how it may be taken up and amended by Congress, left few respondents with positive feelings that the proposal will help the agency better recruit,

hire, retain, compensate, appraise, or hold accountable career executive leaders.

Respondents largely confirmed that the VA's toxic environment is contributing to the difficulty the agency is having filling key executive leadership roles – [such difficulty intended](#) by those who seek to profit from the VA's troubles.

The environment is causing talented VA SES to leave the agency, or to seek non-executive positions at the VA, and is turning away talented GS-14 and GS-15 employees at VA and other agencies from pursuing VA SES opportunities. The current lack of support for career SES is driving employees towards bureaucratically-driven rules adherence instead of taking actions and making decisions in the best interest of the agency and the veterans it serves.

Changes related to the VA's career SES corps should be taken with great care and consideration for how those policy decisions made today will affect the quality and character of those willing to take on VA's career SES roles, and ultimately how veterans who receive services and benefits from the agency will be affected. It would be a terrible and tragic mistake to make hasty decisions now in the name of "accountability" only to have those decisions backfire on veterans in the future.

"I still encourage highly qualified GS-15 employees to apply for SES positions as I care about the agency and want competent leaders to help our organization excel. However, most of the GS-15 employees that I talk with state that they do not want to become an SES in VA due to the recent legislative initiatives."

APPENDIX I: METHODOLOGY

Between March 2 and 8, 2016, SEA conducted a survey of current and former VA SES and equivalents. The survey was sent to 791 individuals, 236 of whom responded. Three fourths (178) of the survey respondents are current VA SES. There are approximately 400 career SES employed at the VA right now. Nearly one-third (35%) of survey respondents worked for the Veterans Health Administration (VHA), 23% at other parts of VA, 17% at the Veterans Benefits Administration (VBA), and 17% were former VA SES. Both quantitative and qualitative data was collected, with comments offered by respondents.

APPENDIX II: SURVEY INSTRUMENT

Survey of Current and Former Senior Executives at the Department of Veterans Affairs

As you may well know, the Secretary of Veterans Affairs has [proposed](#) – and is in active discussion with Members of Congress regarding – moving all VA Senior Executive positions out of Title 5 and into a new Title 38-based executive system. VA leadership has [touted](#) the proposed new “business-oriented employment authorities” as a solution necessary to support agency “transformation” by changing how the agency appoints, hires, pays, and appraises executives. The proposal raises the salary cap for VA career SES to \$235,000 and enables increased salaries and bonuses, reaching a total compensation cap of \$400,000, while executives would lose their employment protections and rights under Title 5, including the ability to appeal disciplinary actions against them, such as removal, to the independent Merit Systems Protection Board (MSPB). Appeals would be handled internally at the VA, with limited judicial review for major personnel actions. The proposal also calls for a new, undefined, performance management and appraisal system established by the Secretary via regulation.

As the Senior Executives Association (SEA) works on Capitol Hill to educate Members regarding the impact of these proposals, we would like your input, specifically, on your 1) career plans, 2) experience with regard to filling SES vacancies, and 3) views of the Department’s proposals.

SEA urges your participation in this very important survey. The survey should take no more than 10 minutes to complete and your responses will be anonymous and confidential. Thank you in advance for your timely participation!

1. Are you currently a member of the Senior Executives Association?

- Yes
- No
- Not, but I was previously
- No – never

2. Are you currently employed as a Senior Executive (or equivalent) in the Department of Veterans Affairs?

- Yes - Veterans Health Administration
- Yes - Veterans Benefits Administration
- Yes - National Cemeteries Administration
- Yes – Other
- No, but I am a former VA SES
- No

3. Are you planning to retire or resign in the foreseeable future?

- Yes, within the next year
- Yes, within the next two to three years
- Yes, within the next four to five years
- No plans to retire or resign in the foreseeable future

4. On a scale of 1 (not at all)-5 (great extent), how much will each of these reasons impact or contribute to your decision to separate from federal service? (Not At All, Very Little, Somewhat, Moderate Extent, Great Extent)

- Frustration with current Administration
 - Frustration with current Congress
 - Frustration with lack of progress within the federal government as a whole
 - Frustration with political leadership within VA
 - Frustration with career leadership within VA
 - Fear of unfair media or Congressional scrutiny
 - Diminished or complete inability to receive/be considered for performance bonuses or other merit-based awards
 - Diminished or complete inability to receive/be considered for pay increases
 - Desire to pursue a position in the private sector
 - Desire to pursue a position in a sector other than the private sector (e.g., non-profit)
 - Desire for more leisure/vacation time
 - Desire to spend more time with family/friends
 - Need to care for a family member/friend
- Please provide comments:*

5. Please think about SES, SL and/or ST job applicants over the past two years for which you are familiar. How would you rate the quality of these applicants – both internal (i.e., from within your agency or another federal agency) and external (from outside the federal government)? (Very Low, Low, Moderate, High, Very High, Not Sure)

- Internal Applicants
- External Applicants

6. To what extent, if at all, has the overall quality of internal and external candidates for career SES, SL and/or ST job vacancies in your agency changed in the past two years? (Much Lower Quality Now, Slightly Lower Quality Now, About the Same, Slightly Higher Quality Now, Much Higher Quality Now, Not Sure)

- Internal Applicants
- External Applicants

7. Thinking specifically about job vacancies within the past two years, how would you rate the level of ease or difficulty that your agency has experienced in attracting high quality personnel to apply for career SES, SL and ST positions?

- Very Easy
- Somewhat Easy
- Neither Easy Nor Difficult
- Somewhat Difficult
- Very Difficult
- Not Sure

Please provide comments:

8. To what extent, if at all, are you concerned about the ability of your agency to fill career SES, SL and/or ST vacancies with highly qualified candidates?

- Great Extent
- Moderate Extent
- Somewhat
- Very Little
- Not At All
- Not Sure

9. How would you rate the level of interest that high quality GS-14 and GS-15 (or equivalent) employees have in applying for career SES, SL and/or ST positions in your agency?

- Very High
- High
- Moderate
- Low
- Very Low
- Not Sure

10. Given conditions in your agency, do you encourage highly qualified GS-15s (or equivalent) employees to apply for SES, SL and/or ST positions?

- Yes
- No
- Not Sure

Please provide comments:

11. When you encourage highly qualified GS-15s (or equivalent) personnel to apply for SES, SL and/or ST positions, how is your encouragement received? (choose best answer):

- Never Met With Interest
- Rarely Met With Interest
- Sometimes Met With Interest
- Often Met With Interest
- Always Met With Interest
- Not Sure

Please provide comments:

12. Generally speaking, do you believe your agency has a good pipeline of highly qualified GS-15 (or equivalent) employees who are ready and able to fill future SES, SL and/or ST positions?

- Yes
- No
- Not Sure
- Other (please specify with comments)

13. Do you support the Department of Veterans Affairs' proposal to move all SES positions from Title 5 into Title 38, enabling executives to be paid up to a maximum salary of \$235,000 (and up to \$400,000 in salary and bonuses) but resulting in fewer job protections?

- Yes
- No
- Other (please specify with comments):

If this proposal were to be enacted, would you be likely to:

14. Retire sooner than planned?

- Yes
- No
- Not Sure
- N/A

15. Stay on longer than planned?

- Yes
- No
- Not Sure
- N/A

16. Apply for one of the new positions?

- Yes
- No
- Not Sure
- N/A

Do you believe the Department's proposal to move all SES positions from Title 5 into Title 38 will aid VA in the following areas:

17. Recruiting high quality career executives from outside the agency?

- Yes
- No
- Not sure

18. Recruiting high quality career executives from inside the agency?

- Yes
- No
- Not sure

19. Retaining high quality career executives?

- Yes
- No
- Not sure

20. Improving morale of VA career executives?

- Yes
- No
- Not sure

21. Improving VA operational effectiveness?

- Yes
- No
- Not sure

22. Holding executives accountable for their performance and conduct?

- Yes
- No
- Not sure

23. Creating a high performance culture at VA?

- Yes
- No
- Not sure

24. Providing adequate due process and appeal rights for VA executives?

- Yes
- No
- Not sure

25. All things considered, do you believe the Department's proposal, if enacted, will improve VA effectiveness and service delivery to veterans?

- Yes
- No
- Not Sure

26. In your own words, please provide any comments, reactions and/or concerns you have regarding the Department's proposal to create a new personnel system for career SES under VA's Title 38:



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