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December 9, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Homeland Security and
Governmental Affairs
442 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Johnson, Ranking Member Carper, and Members of the Committee:

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. SEA is pleased to offer the committee its perspective on several of the bills being considered at the committee's December 9 legislative markup.

Administrative Leave Act of 2015

The manner in which administrative leave has sometimes been abused by federal agencies has been unfair to employees, agencies, and American taxpayers. SEA understands that this legislation is not ready to be considered yet by the committee, but we look forward to working with members of the committee, the Senate, and the Congress to improve and advance this common sense, good government proposal.

S. 2127, Dr. Chris Kirkpatrick Whistleblower Protection Act of 2015

SEA supports the efforts of Congress to strengthen whistleblower protections and ensure all employees are fully aware of their rights, responsibilities, and avenues for recourse regarding whistleblowing. We applaud the provision in Section 107 of the legislation directing agencies to ensure supervisors are trained on the disposition of whistleblower complaints. That said, there are some concerning provisions in this legislative proposal, and SEA requests the Senate to either address these concerns or consider instead alternative whistleblower bills pending before the Congress.

Sections 102 and 104 are of most concern to SEA. Provisions of these sections accelerating review and disposition of claims could significantly undermine due process of employees, or at worst, be unconstitutional. In fact, the provisions of Section 104 regarding an expedited review by a Merit Systems Protection Board (MSPB) administrative law judge, without further appeal, which appear to be modeled off of Section 707 of the Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113-146), are currently the subject of a constitutional challenge at the United States Court of Appeals for the Federal Circuit in *Helman v. Dept. of Veterans Affairs*, Case No. 15-3086 (Fed. Cir. 2015). SEA urges the Congress to allow for judicial review of such provisions before enacting them in new legislation.

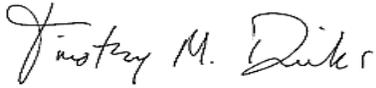
More broadly, SEA is concerned with efforts of the Congress to alter agency procedures or to force timelines for decisions absent a broader discussion of whether agencies being tasked with more work or

expedited timelines are able to meet those new directives – and still be fair to employees. It is understandable that Congress would like to see decisions made quicker, but it should not be done at the expense of justice, employee rights, and due process.

Given these strong concerns with S. 2127, SEA cannot support the bill as currently drafted. SEA remains committed to working with Congress to strengthen whistleblower protections while maintaining the fairness, rights, and due process afforded to all federal employees.

Please contact SEA Legislative Director Jason Briefel (jbriefel@shawbransford.com; 202-463-8400) if SEA can be of further assistance to any of you on these matters.

Sincerely,

A handwritten signature in cursive script that reads "Timothy M. Dirks". The signature is written in black ink and is positioned above a horizontal line.

TIMOTHY M. DIRKS
Interim President
Senior Executives Association