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July 31, 2013

Ms. Kristine Prentice
Legal Administrative Specialist
Retirement Policy, Retirement Services
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415-3200

Dear Ms. Prentice:

The Senior Executives Association (SEA) is pleased to comment on the Office of Personnel Management's (OPM) proposed regulations regarding Phased Retirement (RIN 3206-AM71). SEA represents the interests of career federal executives in government, including those in the Senior Executive Service (SES) and in equivalent positions, such as Senior Level (SL) and Senior Scientific and Professional (ST) positions. SEA also works broadly across the federal sector to improve the efficiency and effectiveness of government.

By way of background, SEA has been a proponent of phased retirement for many years and supported the recent legislative action that gave rise to OPM's proposed regulations. In addition, SEA has supported similar initiatives to provide agencies with the necessary management tools to retain the most valued employees who have the necessary knowledge and skills to carry out the missions of their agencies. This is one of the major reasons SEA supported the phased retirement legislation and why SEA supported prior legislation that expanded the authorization for re-employed annuitants.

Indeed, we agree with OPM regarding the overall stated purpose of the Phased Retirement regulations, "to allow the Federal Government to continue to benefit from the services of experienced employees who might otherwise choose to retire." We believe this purpose is especially compelling during these times of reduced budgets and staffing levels, hiring freezes, and overall financial uncertainty.

Our specific comments on provisions of the proposed regulations of particular interest to SEA are reflected below.

Mentoring

Consistent with our prior support for OPM regulatory initiatives to bolster SES candidate development programs and management succession planning initiatives, we strongly agree with OPM's statement in the proposed regulations that the main purpose of phased retirement is to enhance mentoring and training of employees who will be filling the positions of more experienced employees who are preparing for full retirement. In this regard, SEA favors the requirement in the proposed regulations (5 CFR § 831.1781 and 5 CFR § 848.901) that phased retirees spend a substantial portion of their work time mentoring and training colleagues. In doing so, we note that given the current budget climate across the federal sector, positions within agencies will likely continue to be cut. During these times, it is critical for phased retirees (many of whom will occupy SES, SL and ST positions) to mentor remaining employees who will be required to perform mission essential functions in declining workforce and funding environments.

As a general comment we note that other OPM regulations (§ 412.201 Management Succession and § 412.202 Systematic Training and Development of Supervisors, Managers, and Executives) already require agencies to have comprehensive succession and leadership development plans in place pursuant to rigorous OPM requirements. Mentoring that is taking place through phased retirement should be part of these plans as well as any other agency mentoring, training and development programs that are already established. Therefore, *to properly contextualize the phased retiree mentoring requirement, avoid confusion and overlap, and economize and focus agency efforts and resources, the regulations should clearly recognize these connections and encourage linkage to OPM's existing regulations and related agency programs.*

More specifically, we applaud the requirement in the regulations that phased retirees spend at least 20 percent of their time in a mentoring capacity; however, we note that the remainder of the proposed regulation as it pertains to mentoring is general and vague and fails to establish clear expectations and guidance (or examples) of what would be considered effective mentoring arrangements and best practices. Although we do not oppose allowing agencies leeway to determine what type of arrangements work best given their particular missions, organizational cultures and human and financial resources programs, we urge OPM to provide specific guidelines in the final regulations to help ensure that this new mentoring requirement is taken seriously and implemented in a manner that supports government-wide employee development and succession planning goals and policies.

In this regard, we note that OPM has previously published a collection of guidance documents on its website that pertain to the topic of mentoring, including: *"Best Practices: Mentoring" (OPM 2008); "How to Build a Mentoring Program: A Mentoring Program Toolkit" (U.S. Patent and Trademark Office 2010)* and various other mentoring guides and materials. OPM should review these documents, its existing regulations in 5 C.F.R. Part 412 and other related material and *consider incorporating relevant portions of mentoring best practice guidance into the final regulations – specifying what types of criteria should be considered by agencies in establishing phased retiree mentoring arrangements and urging them to adopt best practices (for both mentors and protégés) well-suited to their missions and workforce planning/succession management goals.*

In another area of the proposed regulations, *OPM provides that an authorized agency official may waive the mentoring requirement in the event of an emergency or other unusual circumstance that in the official's discretion would make it impracticable for a retiree to fulfill the mentoring requirement. Although SEA generally supports agency discretion on these matters, the language, as written, is too broad and ambiguous.* To address this ambiguity OPM should provide examples and/or other guidance on what would constitute an emergency or unusual circumstance that is sufficient to result in a waiver of the mentoring requirement. OPM may also want to consider addressing time limits on exercise of agency waiver authority in certain circumstances. Without this type of guidance we fear that interpretation among agencies will be uneven and result, in some cases, in unwarranted and/or open-ended waivers being granted.

SEA further believes it would be beneficial for OPM to obtain and periodically share information on the number and types of mentoring arrangements that are established under the regulations. Monitoring agencies' implementation of the mentoring requirement will better enable OPM to determine if the policy goals of the requirement are being achieved and what, if any, adjustments might be needed in the future. To this end, we recommend that the final regulations require agencies to submit periodic reports to OPM noting the nature of mentoring/training activities undertaken by phased retirees, including the duration of such arrangements and the amount of time retirees spend in mentoring and similar activities. We also recommend that OPM periodically compile the data and share it with agencies and other interested parties.

Employee Benefits

SEA welcomes OPM's determination in the proposed regulations that treats phased retirees as full-time employees for the purposes of participating in the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees' Group Life Insurance Program (FGLI). However, *the regulations are silent regarding phased retirees' participation in other employee benefit programs, notably the Federal Employees Dental and Vision Insurance Program (FEDVIP), the Federal Long Term Care Insurance Program, and Flexible Spending Accounts.* Although we assume that employees will be allowed to continue coverage, OPM should make it clear that phased retirees will be able to participate in these programs when the final regulations are published.

Also, the proposed regulations appear silent regarding Thrift Savings Plan (TSP) participation. To avoid confusion, *OPM should clarify that phased retirees will continue to receive appropriate matching contributions to their Thrift Savings Plans, pursuant to their part-time employment.*

Eligibility for and Incentives to Participate in Phased Retirement

SEA agrees with the general requirement reflected in the proposed regulations that phased retirement arrangements require the mutual consent of both the agency and the employee. In this regard, we also support the provision allowing a phased retiree to end his or her arrangement and return to being a regular (fulltime) employee if the agency agrees with the change. We do, however, have some concerns about possible restrictions on what groups of employees are eligible to be considered for phased retirement arrangements as follows:

CSRS Retirement Eligible Employees

The proposed regulations appear to only extend eligibility for phased retirement under the Civil Service Retirement System (CSRS) to those employees eligible for immediate retirement pursuant to subsections (a) and (b) of 5 U.S.C. § 8336 (employees with 30 years of service and age 55 or older or employees with 20 years of service and age 60 or older). The rules do not appear to extend eligibility to CSRS-covered employees eligible for immediate retirement pursuant to subsection (f) of 5 U.S.C. § 8336 (employees with 5 years of service and age 62 or older). *SEA believes that all qualified retirement eligible employees should be able to participate in the phased retirement program.*

FERS Retirement Eligible Employees

For employees covered by the Federal Employees Retirement System (FERS), the proposed regulations appear to extend eligibility for phased retirement to those employees eligible for immediate retirement pursuant to subsections (a) and (b) of 5 U.S.C. § 8412 (employees with 30 years of service and at or beyond the employee's minimum retirement age or employees with 20 years of service and age 60 or older). However, the rules do not appear to extend eligibility to FERS-covered employees eligible for immediate retirement pursuant to subsections (c) and (g) of 5 U.S.C. § 8412 (employees with 5 years of service and age 62 or older or employees entitled to a reduced annuity with 10 years of service and who are at or above the employee's minimum retirement age).

It is unclear why the proposed rules would exclude these employees from eligibility for phased retirement. Again, with many federal agencies facing hiring freezes, increasing skill gaps and financial uncertainty, phased retirement offers a viable coping tool to mitigate the loss of experienced staff and the associated opportunity to engage in knowledge transfer and succession planning. With this in mind, SEA urges OPM to *revisit the eligibility criteria in the proposed regulations and consider broadening it to be more inclusive of retirement eligible employees.*

Incentives for Eligible Phased Retirees

In a similar vein, SEA is concerned that the proposed regulations, as written, might contain disincentives to some classes of otherwise retirement eligible employees. For example, the regulations would appear to deprive FERS-covered phased retirees of (an appropriate percentage of) the annuity supplement that the law provides to employees entering full retirement under FERS prior to the age of 62. This could act as a disincentive to continue working in a part-time capacity for employees considering phased retirement as an alternative to full retirement, contrary to the intent of the law. Further, the proposed rules do not specifically address how phased retirement annuities will be computed for CSRS-Offset employees. We assume that reductions in CSRS annuities pursuant to 5 U.S.C. § 8349 will be reduced by the phased retirees working percentage. *To avoid confusion and inadvertent disincentives, OPM should clarify the effect of FERS annuity supplement and the CSRS Offset when the final regulations are published.*

SEA appreciates the opportunity to provide comments on OPM's proposed regulations on phased retirement. Should you have any questions or need clarification regarding our views, please feel free to contact Tim Dirks, SEA's Director of Member and Agency Liaison, on 202-927-7000 or dirks@seniorexecs.org.

Sincerely,

A handwritten signature in black ink that reads "Carol A. Bonosaro". The signature is written in a cursive, flowing style.

CAROL A. BONOSARO