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July 14, 2015

The Honorable Jeff Miller
Chairman
House Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, DC 20515

The Honorable Corinne Brown
Ranking Member
House Committee on Veterans' Affairs
333 Cannon House Office Building
Washington, DC 20515

Dear Chairman Miller, Ranking Member Brown, 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 provide our comments on H.R. 1994, the VA Accountability Act of 2015.

As you also know, SEA opposed the legislation passed by Congress last session providing new authority to the VA Secretary to hold VA SES accountable for performance or misconduct. We still oppose the idea that such authority was needed; it was not responsive to the real management issues at the Department and it was unnecessary because sufficient legal authorities already existed to hold career Senior Executives accountable.

H.R. 1994 extends the authority to remove VA SES for performance or misconduct provided last congressional session to the entire VA workforce. The bill also allows the Secretary to demote employees. However, this legislation will likely have unintended consequences because appeal rights to the Merit Systems Protection Board (MSPB) are irrelevant in many circumstances for various categories of VA employees, who pursue alternative legal processes. Specifically, many VA employees facing disciplinary action have those actions adjudicated by a union grievance and arbitration procedure, per the union contract with the agency. Grievance and arbitration decisions are legally binding on the agency in the same manner as MSPB decisions. If an employee subject to an adverse action is a member of the union, the union will represent the employee in his or her grievance or arbitration proceedings. The union does not represent employees before the MSPB – employees must hire independent counsel if they appeal to the MSPB.

Historically, the MSPB sustains agency actions approximately 85% of the time, whereas the agency action is only sustained in a union grievance or arbitration approximately 50% of the time.

Consequently, passage of this legislation will all but ensure that non-management employees facing adverse actions will likely eschew MSPB proceedings in favor the prospect of a more promising outcome at union-represented grievance or arbitration proceedings, resulting in the opposite effect that Congress appears to be seeking through this legislation.

If this committee is truly interested in fostering accountability at the VA, it must consider all legal channels of relief available to employees facing adverse actions, and not just the MSPB.

Lastly, SEA does not believe extending the probationary period for VA SES is necessary nor will it move the needle on VA accountability efforts. SEA has heard nothing from agencies or from Senior Executives to suggest that an extension of the SES probationary period is necessary or useful, given the high barrier to entry into the SES corps. To the extent that the existing probationary period is not being fully utilized, that is an issue of training leadership to use the authority, as is the case for workforce accountability authorities for performance and misconduct.

SEA looks forward to continuing to work with the committee to improve to improve veterans' services provided by the Department.

Sincerely,



CAROL A. BONOSARO
President

CC: Members of the House Committee on Veterans' Affairs