



February 20, 2015

The Honorable Kyrsten Sinema
1530 Longworth House Office Building
Washington, DC 20515

The Honorable Dan Benishek, M.D.
514 Cannon House Office Building
Washington, DC 20515

Dear Representatives Sinema and Benishek:

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 express significant concerns with legislation you recently introduced, the "VA Bonus Accountability Act" (H.R. 575).

Let me begin by assuring you that I understand your concerns about accountability and ensuring the VA is properly rewarding employees. SEA agrees that awards must be determined through a process based on the performance of the individual and only given to the strong performers. Additionally, SEA does believe that any awards that can clearly be shown through an investigation and impartial hearing to have been awarded on the basis of fraudulent actions or accomplishments should be rescinded.

H.R. 575, as currently drafted, lacks basic fairness, clear due process, and proportionality between wrongdoing and penalty. It is unfair because it fails to distinguish between minor infractions and criminal wrongs by employees, all of which can arise from an "adverse finding" against the underlying employee. Adverse findings can result in a range of penalties and personnel actions, from written warnings to terminations. Yet the legislation would impose harsh consequences – a ban on bonuses for five years – upon all employees subject to an adverse finding, regardless of the nature or magnitude of the underlying conduct.

Finally, the bill's proposed plan for recouping previously awarded bonuses lacks clear due process, as the bill fails to specify the venue and impartiality of the body conducting the administrative hearing before a federal employee may be stripped of an award in any year in which an adverse finding is made. Our system of law recognizes the right of a hearing before a neutral third-party before property may be taken by the government. Additionally, there's nothing that provides a direct connection between the reason an award was provided to an employee and the reasons for an adverse finding. If the two are not linked, federal employees who performed outstanding work could be unjustly punished for an unrelated adverse finding.

Further, this legislation does nothing to address the system by which awards are provided to VA employees. If you believe VA employees are receiving awards absent strong performance, then the focus of any reform should be on the performance management system, rather than just removing awards after the fact.

When applied appropriately, performance management systems in place for SES employees are quite rigorous, with multiple levels of review, including a review for pending issues before the agency Inspector General, the EEOC, and the Office of Special Counsel, culminating with a final sign-off by the Secretary.

If this Senior Executive Service system, or the means by which awards are provided to the rest of VA's workforce, is not working properly, we urge that your attention focus on understanding that system and addressing it, rather than rescinding awards and banning their future acceptance for five years. SEA has long called for reforms to the SES performance management system to ensure it is utilized to incentivize the best performance, and SEA looks forward to working with you to develop such reforms.

Thank you for your consideration of our views. Enclosed is a letter SEA sent to the House Veterans Affairs Committee last summer with detailed thoughts on the SES performance management system, as well as recommendations for a Government Accountability Office (GAO) inquiry. Please do not hesitate to contact Jason Briefel (jbriefel@shawbransford.com), if you would like to discuss this issue further in detail.

Sincerely,



CAROL A. BONOSARO
President

Enclosure: SEA Letter to HVAC on SES Performance Hearing 6-20-14