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March 17, 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 and Ranking Member Brown:

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 express significant concerns with legislation you recently introduced, the "Veterans Affairs Retaliation Prevention Act of 2015," (H.R. 571).

Whistleblowers are an important part of government efficiency – potentially exposing waste, fraud and abuse in agencies across the government. For decades, protections have been in place for federal employees who blow the whistle. However, in original whistleblower laws passed by Congress several loopholes existed that prevented certain disclosures from being protected. In 2012, those loopholes were closed through the expansion of protected disclosures, and the creation of a more robust system to hold those who retaliate accountable provided for in the Whistleblower Protection Enhancement Act of 2012 (WPEA).

SEA worked for several years with offices in Congress to address some of these concerns through the WPEA and supported the expanded protections provided for in the WPEA.

Since the enactment of the WPEA, it is SEA's understanding that the law is working as intended and that while reprisal may occur, the Office of Special Counsel (OSC) has taken swift action to investigate and hold employees accountable when such retaliation is found to have occurred. It is unclear that H.R. 571 is necessary given the current laws in place and could instead create confusing duplication. Furthermore, it appears that Secretary of Veterans Affairs Bob McDonald has been working to ensure that employees engaging in prohibited personnel practices, including whistleblower reprisal, are being investigated and held accountable.

Given current law and the actions of Secretary McDonald, SEA questions how H.R. 571 would strengthen existing protections. Ensuring that employees know their rights, that supervisors

receive appropriate and ongoing training and that agency political leadership is aware of the laws and regulations governing employee rights, performance and accountability will do more to change the culture at the VA than will H.R. 571. While culture change may be necessary, trying to achieve such change through legislation is rarely successful.

Instead, SEA urges this Committee to focus on supervisor training – an area that is sorely under-utilized across the government. For years, SEA along with other federal employee organizations, including the American Federation of Government Employees (AFGE), have raised the alarm that first time supervisors receive little in the way of comprehensive training (including on prohibited personnel practices or dealing with problem employees) and that what training there is has been pushed largely to online training as downward pressure on travel and training budgets has occurred over the past few years. While such training may be cheaper, it is not necessarily effective, nor does it ensure that a supervisor has achieved competency in the training materials.

Before putting punitive restrictions in place, as would H.R. 571, across-the-board, comprehensive training should be in place for supervisors to ensure that they are adequately prepared to deal with whistleblowers and aware of the laws and protection in place.

H.R. 571 only provides a supervisor two days to determine if a whistleblower claim is legitimate. Especially absent the aforementioned training, it is unclear how a supervisor would be able to determine the merits of a complaint in such a short time period. Despite the many instances of legitimate whistleblower disclosures, it is also sometimes the case that a disgruntled employee chooses to lodge a whistleblower claim or a claim of reprisal as a means of tying up the supervisor so he or she has little recourse to take action against the problem employee.

SEA believes that laws are absolutely needed to protect whistleblowers, but they must also not be so one-sided as to provide unwitting protection for problem employees who choose to abuse the system.

SEA applauds the Committee's goal of encouraging employees to be engaged in creating a culture of efficiency and accountability. It is incumbent on senior leaders, managers and employees to be a part of the effort to ensure a positive culture at the VA. However, absent specific evidence that current whistleblower laws are proving inadequate, SEA does not believe H.R. 571 is advisable or necessary.

SEA looks forward to exploring ways in which employee accountability could be better achieved.

Sincerely,



CAROL A. BONOSARO  
President