June 3, 2015

The Honorable James Lankford  
Chairman  
Subcommittee on Regulatory Affairs and Federal Management  
Committee on Homeland Security and Governmental Affairs  
601 Hart Senate Office Building  
Washington, DC 20510

The Honorable Heidi Heitkamp  
Ranking Member  
Subcommittee on Regulatory Affairs and Federal Management  
Committee on Homeland Security and Governmental Affairs  
605 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee:

Thank you for the opportunity to submit written testimony to the Subcommittee on Regulatory Affairs and Federal Management regarding 21st Century Ideas for the 20th Century Federal Civil Service. The topics being considered by the Subcommittee in this hearing, including but not limited to – recruitment, hiring, and retention of the federal workforce, effective performance management, compensation under the General Schedule and other pay systems, disciplinary and dismissal processes that uphold principles of fairness and due process – are ripe for the attention of Congress. These written comments will focus on broad, government-wide topics while also addressing issues of particular relevance pertaining to the SES.

The Senior Executives Association (SEA) is a professional association that for 30 years has represented the interests of career federal executives in government, including those in Senior Executive Service (SES) and equivalent positions, such as Senior Level (SL) and Scientific and Professional (ST) positions. SEA has long promoted policies to ensure an efficient and effective government. In doing so, SEA has advocated for a strong SES system to ensure that the Federal government can attract, develop, and retain the best career leadership possible.

The SES is comprised of the approximately 7,000 men and women who are critical to a high performing government and to implementing an Administration’s program goals and management agenda in each agency. These are the top career professionals in government, with an average of 26 years of experience; a majority who hold advanced degrees, and all
obtained their positions on the basis of merit following a rigorous selection and vetting process. Career Senior Executives undertake a myriad of jobs and hold substantial responsibilities, including overseeing budgets and programs that would place their responsibilities on a par with executives in Fortune 500 companies.

**Senior Executive Service**

SEA testified before the House\(^1\) and Senate\(^2\) in 2014 regarding necessary updates for the SES and the civil service. That testimony is relevant to the topic of this committee’s inquiry into the civil service, and I encourage Members to review it, as the testimony remains just as relevant as when submitted. Key challenges for the SES, hiring, recruitment and retention, selection and development of leaders, SES pay, and performance management are addressed, among other issues.

**Budget and Appropriations**

Article I of the Constitution enshrines the principal obligation of Congress to approve a budget. Based on an agreed upon budget, Congress then may appropriate funding to facilitate the implementation of that budget. Unfortunately, it has been nearly twenty years since the last time, in 1997, that Congress approved a budget in accordance with the law. According to the Congressional Research Service (CRS), in only four years since 1977 has Congress passed all appropriations bills on time.\(^3\) The result has been a troubling reliance on continuing resolutions (CRs), which create massive uncertainties and inefficiencies within agency operations.

The persistent reliance on CRs is relevant to a discussion regarding the federal workforce because budget uncertainty negatively effects agency operations, hinders planning, and results in suboptimal allocations of resources, according to a 2013 Government Accountability Office (GAO) analysis.\(^4\)

At a time when Congress is attempting to curtail wasteful government spending, a goal with which SEA whole-heartedly agrees, the act of relying on CRs in-and-of-itself is creating waste, with agency staff dedicating inordinate amounts of time to budgeting and re-budgeting for multiple scenarios and contingencies, rather than focusing their full attention on implementing the laws and programs which Congress has enacted.

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\(^2\) Testimony of SEA President Carol Bonosaro before the Senate Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce for “A More Efficient and Effective Government: Cultivating the Federal Workforce,” May 6, 2014, [http://www.hsgac.senate.gov/download/?id=20e20158-5b8f-43ce-a974-21b7c485a0af](http://www.hsgac.senate.gov/download/?id=20e20158-5b8f-43ce-a974-21b7c485a0af).


Federal executives and managers are tasked with ensuring agencies and programs run effectively, agencies’ missions are met, and programs stay within budget. Yet the ability of executives and managers to fulfill those prerogatives is hindered by chronic budgetary uncertainty. Such uncertainty produces negative effects inside agencies, such as deferred decisions and delayed upgrades to systems, leading to increased costs to the American taxpayer. These negative side effects are unacceptable to our members, yet they can only be addressed by Congress making the difficult decisions about what policies and programs to fund, and at what levels and doing so in a timely fashion.

GAO’s research has “consistently shown the direct link between effective strategic human capital management and successful organizational performance.”\(^5\) As the board of directors for the federal government, it is important that Congress fulfill its fiduciary responsibilities to timely provide agencies with budgets to facilitate the process of strategic human capital planning and management. Failure to do so lays a portion of blame for the Executive Branch’s organizational performance squarely at the feet of legislators.

**Human Capital Management**

Human capital management has been on the GAO’s High Risk list since 2001. With 14 percent (approximately 270,000) of the current federal workforce retirement eligible now, and those figures expected to rise to 31 percent (approximately 590,000) of the entire federal workforce by 2019, it is critical that Congress work with the Administration and agencies to ensure appropriate human capital management and planning is taking place right now in order for the government to be equipped with the employees necessary to tackle increasingly complex 21\(^{st}\) century challenges. The impending retirement wave for the federal workforce, including that for the SES, where 63 percent of executives will be retirement eligible by 2016, presents both a challenge and an opportunity.

The challenges presented by the looming retirement wave are well documented. Many agencies do not engage in adequate succession planning, lack robust systems for strategic workforce training and development, and inadequately identify and work to close skills and competency gaps. Compounding these challenges is a fragmented human capital community where agency actions and initiatives are not necessarily aligned with broader, human capital efforts, according to GAO.\(^6\)

Meanwhile, the Office of Personnel Management (OPM) and the Chief Human Capital Officers (CHCO) Council are not fully asserting their leadership on the issue of human capital management across the government.\(^7\) OPM and the CHCO Council have produced many tools and resources, offer advice and counseling, and have initiated many reviews and working

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\(^6\) GAO-15-619T

groups. However in the case of some of these initiatives where linkages should exist, for example with efforts to assess and close mission-critical skills gaps - initiatives like HRstat reviews, the CHCO Council’s Working Group on mission-critical skills gaps, and the Federal Agency Skills Team (FAST) - opportunities for collaboration and silo-busting are being missed. 

It is important for Congress to assess OPM’s role and responsibility for the federal workforce. Is it the central human resources/human capital policy shop for the federal enterprise? If so, is OPM currently funded and staffed adequately to fulfil this mission? Should OPM and its policy guidance be given teeth it currently lacks? If not, does each agency need dedicated authorities and flexibilities to mold the workforce it and the government needs to meet missions? As Congress considers updates to the civil service, these questions and many more must be asked and answered.

The opportunity for Congress is that the government is operating on a 70-year-old classification system and a 40-year-old civil service framework. With questions long raised about the adequacy of the General Schedule system for a government that increasingly employs highly educated professionals rather than clerical employees, coupled with a demographic shift in the workforce, Congress has now has a moment to have the difficult and complex discussions about how to structure the workforce and civil service to best serve the American people in the 21st century. Doing so will not be easy or engaging or headline grabbing, but a transformational opportunity now exists to reform the workforce in order to drive improved efficiency, effectiveness, and performance – the question is, does Congress have the fortitude and will to seize the moment and pursue meaningful updates?

**Recruitment, Hiring, and Retention**
The ability of any organization to effectively recruit, select for hire, and retain talent is of paramount importance. Congress plays an important role in fostering an environment in which Americans want to serve their nation by working for the federal government and that the government has the tools it needs to attract and retain the next generation of public servants.

The predominant focus by Congress in recent years on negative and punitive legislative proposals relating to the federal workforce – scaling back or eliminating due process protections that guard against politically motivated personnel actions, setting higher contributions from employees for their pensions and benefits, scaling back pay and benefits, discussing eliminating public service loan forgiveness programs, reducing the number of agency employees absent a business case for doing so, proposing attrition-based restrictions on hiring, to name a few – coupled with negative congressional rhetoric about the workforce has created an environment in which many talented recent graduates and other citizens are not considering the federal government for employment.

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In 2014, only 7 percent of new hires to the federal government were under the age of 25, compared to 23 percent in the private sector, according to the Partnership for Public Service. Given an impending and long-anticipated retirement wave in government, Congress has a duty to foster an environment in which public servants feel appreciated and valued for their service.

Congressional recognition of the fact that 33.2 percent of new hires to the federal government in 2014 were veterans, coupled with knowledge that over 90 percent of the growth of the workforce since 2004 has been at the Departments of Defense (DOD), Homeland Security (DHS), and Veterans Affairs (VA), hopefully can drive a shift in attitude regarding the workforce.

Congress should examine current federal recruitment and hiring practices. Concerns have been raised in recent years by many about the USAJobs platform, the state of the Presidential Management Fellows (PMF) program, the Pathways Program that eliminated old internship and recent graduate programs, and the time it takes between applying for a job and receiving a decision, to name a few. These areas are ripe for improvement and congressional oversight.

A 2015 report by the Merit Systems Protection Board (MSPB) found that the principle of fair and open competition for federal jobs is being challenged by a proliferation of hiring authorities, overuse of restrictive hiring authorities and practices, potential abuse of hiring authorities by some managers, and some human resources’ staff prioritizing internal processes over providing efficient customer service to job applicants. While agencies are unique, the sprawling morass of numerous authorities causes confusion for hiring managers and human resources specialists and inhibits effective oversight.

Congress should explore the role of competitive examining in federal hiring, and which authorities need to be streamlined and consolidated legislatively versus which can be accomplished administratively by OPM and agencies. When it comes to hiring authorities and flexibilities, Congress needs to answer whether departments and agencies should be considered as constituting a single enterprise or as many separate entities.

Questions have also been raised recently about the government’s hiring of individuals with past conduct or tax delinquency issues. While these issues should not be grounds for automatic disqualification for federal employment, ensuring agencies have information about applicants

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early in the process can help ensure they are not wasting time considering an applicant who will not receive an offer of employment. SEA has provided to OPM a proposal to change agency guidance and ensure Optional Form 306\(^{15}\), the Declaration for Federal Employment, is mandatory and used as one of the first pieces of information an agency considers in determining suitability for federal employment, including both for new hires and employees transferring between agencies.

**Diversity**

In order to compete in an increasingly diverse economy, we must commit to making our federal workforce more inclusive and multifaceted. Doing so means OPM and agencies must eliminate barriers for minorities, women, and individuals with disabilities to enter the workforce, and once they are in the workforce, that talent pipelines exist to facilitate career growth and lay the foundation for diverse managerial and SES ranks.

Agencies should also create plans to enhance and maximize opportunities for the advancement and appointment of minorities, women and individuals with disabilities. These plans should be approved by OPM and must address how the agency is identifying and eliminating barriers and steps the agency is taking to provide advancement opportunities, including: conducting outreach; fostering leadership development and identifying career enhancing opportunities; and conducting inventories of employee skills to address current and potential gaps. These plans should be updated every two years to ensure that the agency is keeping on task and adapting to hiring trends.

To do this at the SES level, we can move to require, to the extent practicable, that Executive Resources Boards (which are tasked with conducting the merit staffing process for career entry into the SES; which, ideally, have general oversight of the management of the agency’s executive resources; and which must approve development plans for each of the agency’s CDP participants) include minorities, women and individuals with disabilities.

**Probationary Period**

Across the government, most employees are subject to a one year probationary period upon starting their jobs. During this time they are in an “at-will” status. SEA supports legislation extending the probationary period for positions that require extensive training.

For example, air traffic controllers and some positions with the Social Security Administration (SSA) and Internal Revenue Service (IRS) have extended training periods, significant portions of which occur outside of the employee’s home office, before achieving journeyman status. Since managers often do not work extensively with those employees during the first year and cannot fully assess their on the job performance, it is reasonable to extend the probationary period or begin it upon completion of training. Furthermore, managers should have to certify that an employee has cleared the probationary period.

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This extensive out of office training is not an issue at the SES level and agencies routinely use the current one year period to remove unqualified Senior Executives. To the extent that it is not being fully utilized, that is an issue of training and understanding how to use the probationary period. 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.

**Supervisor Selection, Training, and Development**
Supervisors are the nexus between Government policy and action and the link between management and employees. For this reason, the supervisor’s proficiency in both technical and leadership skills is important for success. Effective supervisors increase employee motivation, communicate expectations, and ultimately increase organizational performance. The Merit Systems Protection Board (MSPB) highlighted the importance of first-level supervisors in a 2010 report.  

The manner in which the government selects which employees to take on supervisory roles is in dire need of an update. Under the General Schedule, an employee often must take on supervisory duties in order to ascend the ranks. Yet there is no assessment of whether that employee, who may be an excellent technician or subject matter expert (SME), has the capacity to serve as a supervisor and leader. Federal employees require career ladders that let them chose whether they prefer to remain a SME or whether they want to manage, and both options should present opportunities for career advancement and growth.

Research published by Gallup highlights the importance of selecting the correct employee for supervisory and managerial duties in the first place. One in ten employees have the unique combination of skills and perspective to be a manager, while an additional two in ten can be taught to be a great manager. That means seven out of ten employees, who may be great SMEs, are likely not cut out for supervising employees. Ensuring the government selects the appropriate individuals for supervisory roles will produce an improved management talent pipeline, with the most adept of those leaders eventually rising to the SES ranks.

Meanwhile, more must be done to ensure that supervisors, managers, and executives are provided the training and development necessary to oversee the workforce. Despite directives from OPM and laws passed by Congress (i.e. P.L. 108-411) mandating agencies provide initial and ongoing supervisor training and have succession management plans, it is clear that improvements in these areas are necessary. Oversight of existing laws is needs, and consideration of whether additional legislative or administrative updates are necessary should be discussed.

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**Performance Management**

Training is also a key to successful performance management efforts. Supervisors and employees alike need to understand their agency’s performance management system and their roles and obligations within that system. A lack of understanding or poor implementation of performance management systems breeds distrust between supervisors and employees, which can generate disengagement and lowered productivity and performance levels.

Many Senior Executives are supervised by political appointees who are not trained on performance management. A survey of Senior Executives conducted by SEA in 2013 found many dissatisfied with their performance management systems, noting appointees often failed to timely discuss and establish annual performance plans, to discuss progress throughout the year, and to provide the results of year-end appraisals. More than four months into the next fiscal year, one fourth of respondents reported not receiving a final performance rating for fiscal year 2013. The survey found low morale among Senior Executives stemming from a malfunctioning performance management system, lack of transparency and communication regarding their performance, no performance awards despite receiving the highest level performance rating, lack of support from appointees and the Administration, and pay compression.

Under current law, Senior Executives may be removed for poor performance and, when they are, they have no effective appeal rights. By law, Senior Executives must be removed from the SES if they receive two unsatisfactory ratings within five consecutive years or two less than fully successful ratings within three consecutive years. An agency may choose to remove the Senior Executive after just one unsatisfactory rating. SEA strongly supports holding employees accountable for their performance. Should an executive need to be removed, then an agency already has the tools to do so.

This is true, as well, for General Schedule employees, however, many managers and supervisors are not well versed in how to rehabilitate or remove poor performers. OPM recently developed a handbook on this subject; it should be mandatory reading for every supervisor, manager, executive and human resources specialist.

**Political Appointee Onboarding and Training**

To ensure that political appointees can properly assimilate into the agencies they are entering, it is imperative that we have a system to foster this transition.

Each agency should provide onboarding to new political appointees within their first month in the appointed position. This onboarding process can be conducted as in-person training, virtual training, or through a comprehensive handbook. It should include:

- Ethics guidance

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The agency’s budget, procurement and HR processes – to include supervision of the career SES and general workforce performance management

- Career-political relations
- Congressional relations
- Agency’s mission, structure, stakeholders, programs and culture

The basic onboarding course or handbook should be prepared by the National Academy of Public Administration (NAPA) for use by agencies, and the process should be conducted or supervised by the office of the Chief Operating Officer, or agency equivalent. Funds should be made available for the orientation of political appointees in the Presidential Transition Act of 2000 (P.L. 106-293) may be used to off-set costs incurred by agencies or NAPA in creating onboarding programs.

In addition to training appointees, agency leadership positions in operations and administration should be reserved for career SES, rather than filled by political appointees who are most appropriate for policy-oriented appointments. Career executives provide the necessary institutional memory, have a long-term focus, and are essential at times of transition.

**Employee Discipline and Manager Fairness**

Managers often do not receive adequate training on working with employees, dealing with provisions of their agency’s contract or contracts with federal employee unions, or dealing with problem employees. The proliferation of EEO and other employee complaints, and the complexity of the rules surrounding disciplinary cases, make managers reluctant to deal effectively and quickly with poor performers and employee misconduct.

Increased emphasis on accountability through statutes such as the No FEAR Act (P.L. 107-174) makes managers even more reluctant to act against poor performers out of fear of an EEO or IG complaint, which can take up a substantial amount of their time and threatens to label them unfairly. While there are legitimate EEO claims, some employees who use the EEO process are merely attempting to paralyze their managers. These charges clog the system and delay attention to justified complaints.

Managers are often kept in the dark about complaints against them – they are not always told that a complaint has been filed, the basis of the complaint, or when a resolution to the complaint has been reached. Even a manager who is a “witness” to the complaint is often not asked to testify to provide his or her side of the issue.

Considering the overly lengthy process from the time a complaint is filed to ultimate resolution of the complaint, managers can be left in a state of limbo for years as they wait to learn the resolution of the case. This hampers job productivity and manager morale, especially given the large number of cases that are ultimately found to be without merit.

To combat this problem, the SEA and the Government Managers Coalition (GMC) have long supported a Federal Managers Fairness Act that would allow managers to participate during the
EEO process, have the right to be consulted before a settlement, have the right to know when a case is filed and when it is finished, and be considered for lost benefits resulting from EEO complaints found to be without merit. The Federal Managers Fairness Act would allow managers to be assured that they will receive fair treatment during the complaint process. It will also provide managers with one more tool to ensure that they effectively deal with employees and are not unfairly burdened by a system they do not fully understand.

SEA also supports the creation of a Federal Employee Court of Appeals that would serve as a singular point of resolution for all employee complaints, including EEO and labor arbitration. Creation of such a Court would end the process of “forum shopping,” in which employees can file complaints to various entities (i.e. MSPB, EEOC, FLRA, OSC), in the hope of delaying the process or reaching a settlement. A unified Court would also address the problem of conflicting precedents in EEO cases by various circuit courts.

SEA is concerned with recent efforts by Congress to make it easier for agencies to discipline or terminate employees. These concerns arise not because SEA opposes employee accountability – in fact, SEA strongly supports holding employees accountable for their performance and conduct – but rather because of fears that placing Congress or the media in the middle of personnel decisions threatens to politicize those decisions, and by extension, the workforce. Following the assassination of President James Garfield in 1881 by a disgruntled federal job seeker, Congress passed the Pendleton Civil Service Reform Act (ch. 27, 22 Stat. 403) in 1883 to ensure government jobs were awarded based on merit rather than political affiliation and connections.

SEA believes the rules already enshrined in law are adequate for ensuring the accountability of the workforce, and Congress should focus on ensuring that managers understand the tools at their disposal and how to use them, and that agencies, including counsel and human resources, support managers in taking actions against poor performing employees.

**Administrative Leave**

Administrative leave has been improperly used by agencies pending a decision on employee actions. SEA is currently working with members of the Senate on a bipartisan legislative solution to revamp the administrative leave process. Administrative leave in the federal government should only be authorized at the agency’s discretion and should be more narrowly defined when being used in cases of adverse actions or investigations.

Up to three consecutive days of leave per instance without reduction in pay is a sufficient amount of time to initially assess claims of misconduct and ensure that this person is not a potential threat to themselves or their colleagues, government property, or information related to an investigation. If additional time is needed to continue and complete the investigation, the head of the agency should be notified and approve such an extension.
Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed or who is under investigation, should remain in a duty status in his or her regular position during the advance notice period.

In those rare circumstances where the agency determines that the employee’s continued presence in the workplace during the investigation or notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, or the agency has probable cause that the employee may have committed a felony, the agency may elect one or a combination of the following alternatives:

- Assign the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property, including information pertinent to the investigation;
- Allow the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;
- Curtail the notice period when the agency can invoke the crime provisions of title 5.

Ending the misuse of administrative leave will save taxpayer dollars, promote accountability and decision making by agencies on personnel actions, and is an SEA priority.

**Pay for Performance**

Many Members of Congress say they support the concept of pay for performance in the government. The SES is a pay for performance system, which was created by the Bush Administration in 2004. Within a broad band, all pay adjustments are discretionary and based on performance. Senior Executives receive annual performance ratings based on standards which focus on measurable results, and high performers are eligible to be considered for a performance award. Unlike GS employees, Senior Executives do not receive locality pay, comp time or cost of living increases. Almost 25% of the SES make equal to or less than their GS subordinates.19

Many Senior Executives perceive the performance appraisal system to have a lack of transparency and fairness. There is a skewed risk and reward ratio that Senior Executives face. They take on more duties and work longer hours, yet receive no compensatory time, no locality pay, and no guaranteed annual comparability pay raises, all of which are a part of the compensation system for GS employees, as is a more robust right to appeal adverse actions.

Over the past several years, multiple surveys of Senior Executives have highlighted that the SES pay and performance system is a major factor in the recruitment and retention challenges

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facing the SES.\textsuperscript{20} Additionally, it is important to note that these individuals are focused on working on behalf of the American people rather than earning the higher salaries many would receive in the private sector. Coupled with the other challenges facing the SES and the workforce as a whole, this system serves as a major detractor to recruitment, retention and high morale.

While there are many talented, able managers who are motivated by a call to public service, incentives are still needed to encourage others to make the leap from the GS-14/15 level into the SES. Those who do join the executive ranks find that the pay and performance management system does not work as intended. What is clear is that a system that was meant to relieve pay compression, to be transparent and flexible, and to reward superior performance, has instead become a disincentive for many of the best employees who might otherwise desire to serve in the highest ranks of the career civil service.\textsuperscript{21}

It is time to implement meaningful reforms, including ending downward pressure on performance awards, strengthening the timeliness and transparency of the system, and putting stability back into the system by restoring locality pay and providing annual increases based on the General Schedule increases to those executives rated fully successful or higher.

If SES is a pay for performance system, high performers must be rewarded. SEA is concerned that the current rhetoric surrounding federal pay is degrading the pay for performance concept. Generally, performance awards have evolved into the part of compensation that draws meaningful distinctions in performance. Like all federal employees, Senior Executives were subjected to three years of frozen pay and even though that was lifted for GS employees, many agencies did not grant pay adjustments to their SES employees. Because SES annual pay increases are entirely discretionary, this has created the perception that a Senior Executive cannot rely on the receipt of an increase based on superior performance.

The statute governing the SES pay and performance management system provides that 10\% of the aggregate amount of basic pay paid to career Executives as of the end of the previous fiscal year (with an alternative formula provided for small agencies) can be utilized for performance awards. However, for Fiscal Years 2011-2014, OPM and the Office of Management and Budget (OMB) issued guidance limiting the overall spending on awards to 5\% of the aggregate salary of career Executives instead of the usual 10\%.\textsuperscript{22} As a result, at some agencies, even those Executives rated at the highest level have not received performance awards. This undermines trust in the pay for performance model.

Conclusion
In addition to significant preparatory time and behind the scenes effort, Congress spent nearly a full week debating the Civil Service Reform Act of 1978. In the years since then, Band-Aids and quick fixes have been applied, yet the fundamental nature of the civil service has not been robustly considered or debated. SEA and the organizations which testified for this hearing have highlighted many areas of potential legislative and administrative action that can be taken to strengthen the civil service.

Given the complex challenges our nation and the world face in the 21st century, it is important that Congress work with stakeholders to develop a path forward for modernizing the civil service while maintaining important features, such as the protection against politicized personnel actions. SEA stands ready to work with this Subcommittee and all Members to discuss how the civil service can be brought up to date in order to best serve the American people.

Sincerely,

Carol A. Bonosaro
President

CAROL A. BONOSARO