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June 19, 2013

Mr. Stephen T. Shih
Deputy Associate Director
Senior Executive Service & Performance Management
Office of Personnel Management
1900 E Street NW, Suite 7412
Washington, D.C. 20415

RE: RIN 3206-AM58; Proposed Rule for Flag Recognition Benefit

Dear Mr. Shih:

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. We write to share our comments on the proposed rule to implement the Civilian Service Recognition Act of 2011.

As you know, SEA was a leading proponent of this legislation and spearheaded legislative efforts to enact H.R. 2061. SEA worked with the originators of the “Flags for the Fallen” concept, Terry Newell and Bob Gest, to ensure that the spirit of their proposal, to honor every civilian federal employee killed in the line of duty, was embodied in the legislation. It is with this same purpose that we write to ensure that rules governing implementation of the law ensure a smooth process that quickly gets a flag, and the honor and gratitude that the flag symbolizes, to the next of kin of a civilian federal employee who gave his or her life in the line of duty.

SEA applauds OPM for reaching out to the agencies which oversee similar programs and also for soliciting input from federal employee associations to ensure that the regulations are comprehensive and effective in implementing the letter and the spirit of the statute. Although OPM has incorporated much of the input already provided by SEA, we continue to have concerns that certain provisions within the regulations may make the process more time consuming and cumbersome than is necessary.

Eligibility

In Section 550.1504, Eligibility, the regulations list the ways in which an employee must have died in order to be eligible for a flag, including allowing the President to determine some unforeseen circumstance. However, SEA understands that the President has already delegated the authority to define “other circumstances” to the head of the Office of Personnel Management. If this is the case, we believe that this should be mentioned in the accompanying guidance memo at the very least, if

not in the regulations themselves. *There should be a process by which agencies may decide whether a request for a flag is legitimate if the cause of death does not fall neatly into one of these categories and to whom they should petition if they think a flag should be granted.* For instance, in the case of federal firefighters who were killed in a plane crash en route to a forest fire, would that fall under “natural disaster” or would it fall under “other circumstances?” Moreover, once determinations have been made to allow a cause of death as appropriate under “other circumstances,” it may be helpful to ensure that OPM is keeping track of instances when a flag has been allowed for a death that does not fall into an original cause category.

Beneficiaries

In Section 550.1505, Order of Precedence, we are pleased to see an expanded list of beneficiaries. *However, we do question the use of “close family affiliation.” It is unclear what this means and to whom this would apply. Will OPM have some standard by which to judge who this may mean?* Allowing flexibility to deal with unforeseen circumstances is helpful, but *OPM should clarify how the decision-making process will be handled.* Furthermore, OPM already has an expansive list of beneficiaries, including ones with close family affiliation, listed on its pay and leave benefit site – <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/definitions-related-to-family-member-and-immediate-relative-for-purposes-of-sick-leave/>. This list could be used for the flag benefit as well and would also keep beneficiaries consistent across benefit guidelines.

Distribution

Under Section 550.1506, Beneficiary Responsibilities, SEA continues to believe that this section needs to make the distribution of a flag to next of kin as smooth and quick as possible. *Unfortunately, the way in which this section is worded leads us to believe that the burden of proving eligibility will fall disproportionately on the next of kin.* It is our assumption that much of this language mirrors procedures used by the Department of Veterans Affairs (VA). While it makes sense for the VA to require written requests and death certificate documentation, it does not do so for the purposes of this regulation. Regardless of when they served and the cause of death (which may occur for any reason and many years after the term of service), former military members are eligible to receive a flag. Because of the time lapse between service and death, it makes sense for the VA to require documentation and a formal request.

However, it is hard to image that active duty military families are required to go through a formal request process, especially when the families may not know the circumstances that led to the death and are being informed by the military that their loved one was killed in the line of duty. In fact, the military has a very quick and formal process to notify next of kin about a death in the line of duty. *SEA assumes that federal agencies also have a formal process to alert next of kin should a federal employee be killed in the line of duty and that the agency is therefore privy to the circumstances surrounding the death, rendering the need of a formal written request with supporting documentation unnecessary.*

In the accompanying memo on the flag benefit and the Wall of Honor that was released at the same time as the regulations, OPM lists under the Wall of Honor agency responsibilities that the agency “must notify the family member or other representative of the eligibility to be recognized by the Wall of Honor Memorial.” Why is this same notification requirement not extended to the flag benefit? *If the agency must notify the beneficiary of the Memorial, it makes sense to have this done at the same time as the agency notifies the beneficiary of the flag benefit.*

We appreciate the need to comply with the underlying law in implementing guidance and regulations. We also approve of keeping flexibilities within the regulations to allow for determination of circumstances and requests that may be unforeseen by the law. However, of primary concern should be ensuring the regulations and systems put in place to provide this benefit make it easy for agencies to get a flag to the next of kin. Burden should be put on the agencies to do so, not the beneficiaries.

It is long overdue that the federal government formally honor federal employees in this way and recognize the sacrifice that far too many have made in service to their country. We appreciate OPM’s efforts to ensure that this honor is bestowed appropriately.

Sincerely,



CAROL A. BONOSARO
President



WILLIAM L. BRANSFORD
General Counsel