Senior Executives Association

the voice of career federal executives since 1980

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July 24, 2014

The Honorable Darrell Issa
Chairman
House committee on Oversight & Government Reform
2157 Rayburn House Office Building
Washington, DC 20510

The Honorable Elijah Cummings
Ranking Member
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20510

Dear Chairman Issa and Ranking Member Cummings:

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. I am writing today to state SEA's concern with and opposition to H.R. 5169, the SES Accountability Act.

SEA has long supported efforts to hold employees accountable at all levels of government and believes there are ways to strengthen the application of existing tools. However, the policies and tools are already in place – it is ensuring they are understood and used appropriately that should be the focus of reform efforts. The provisions in H.R. 5169 are unnecessary at best and optically driven at worst. For these reasons, SEA asks you to oppose this legislation.

The following is a listing of SEA's strongest concerns.

- **Sec. 2 – Biennial Justification of Positions**
  Currently by statute (5 U.S.C. §3133) agencies must examine their needs for the number of SES positions and submit the request to the Office of Personnel Management (OPM). OPM, in consultation with the Office of Management and Budget (OMB), allocates the number of SES positions that each agency may fill. This position allocation is not based on specific jobs and titles, but rather on predicted needs of the agency. Agencies often have more slots than they fill to allow for flexibility in managing their SES corps based off of current as well as unforeseeable needs. Requiring agencies to link slot requests to specific titles would reduce an agencies' ability to manage their workforce, especially since slotting is done on a two year cycle.

Furthermore, adding a requirement for results and impact of jobs seems out of place in this section and should be part of an agency's performance and organizational management. It is unclear what OPM would do with this information since the agency is not in a position to assess the results justification nor do they have the capacity to deal with this requirement. While workforce assessment and planning should be a routine function of agencies, it should be part of their overall workforce management and the request for slots should then be informed by that assessment. It is unclear that this provision would achieve that goal; it would, instead, create a huge paperwork burden on agencies – which would be required to document 7000 slots – and on OPM, which would be required to review same.

- **Sec. 3 – 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 has heard nothing from agencies or from Senior Executives to suggest that an extension of the SES probationary period is necessary or useful.

  SEA has advocated, however, for an extension of the probationary period for those positions in the General Schedule that require extensive training (for instance, air traffic controllers and some positions in the Social Security Administration have over a year of initial training) since managers do not work with those employees during the first year and cannot fully assess their on the job performance. 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.

- **Sec. 4 – Modification of Pay Retention**
  When Senior Executives are removed for performance, the agency may terminate them or may allow them to "fall-back" to a GS-15 position if the Senior Executive came into the SES from the civil service. This option is typically exercised because an individual who is determined not to be qualified to succeed in the SES may have done well in his or her previous GS position.

  The current statute is very similar to this provision, except that this provision removes the ability of an agency to decide whether to set the base pay for the Senior Executive at the rate of basic pay for the GS job to which the SES is moving or the pay the Senior Executive was receiving just prior to entering the SES.

  It appears that this provision is a response to the belief that Senior Executives are retaining their SES level salary when they return to a GS position. It is SEA's understanding (from the information we have regarding such situations) that Senior Executives do not retain their pay. Typically, when an agency determines that a Senior

Executive needs to fall-back to a GS-15, the agency chooses the position, including the step level, and dictates the appropriate salary, essentially reducing the Senior Executive's pay. Therefore, it is unclear to SEA what issue this provision is intending to rectify.

- **Sec. 6 – Amendments to Adverse Action Provisions**
  Currently, when agencies take an adverse action against a Senior Executive they may suspend them for more than 14 days or terminate them. Senior Executives have not been subject to less than fourteen day suspensions, unlike their GS counterparts, due to the opportunity such suspensions would provide for politically motivated actions. Many Senior Executives report directly to political appointees. There has often been tension between the career SES and political appointees, especially after a Presidential transition when some career executives are seen as having been too helpful to or supportive of the prior Administration even though they are expected to do their very best for every Administration.

  Allowing political appointees the ability to pressure Senior Executives with the threat of a one to 14 day suspension – which has no third party review – opens the door to allow politically motivated adverse actions regardless of whether they are reasonable or not.

  Furthermore, adding the broad category of "efficiency of the service" is unnecessary. Senior Executives are routinely held accountable under current statutes. To the extent that they are not, it is not because tools do not exist to hold employees accountable; rather, it appears that they are not being used either because the Senior Executive isn't engaging in misconduct or poor performance, or because political leadership isn't willing to use the tools. It does not make a difference how many tools you add if leadership is not trained and willing to use them.

- **Sec. 7 – Mandatory Leave**
  SEA has serious concerns about the creation of this new leave category. It appears to be intended to allow agencies to force an employee to use his or her annual leave rather than using the current practice of placing an employee on administrative leave. Not only does SEA question the constitutionality of this prevision, we question its necessity.

  Unless there is a good reason to remove an employee from the workplace during adverse action proceedings, SEA believes that employees should remain in a duty status, either in their jobs or in comparable positions, and should only be removed from duty status in the case that the employees' presence poses a threat to themselves or others or jeopardizes a legitimate government interest.

  Although this provision does allow for a restoration of annual leave if an employee is found not to have engaged in conduct necessitating removal, this provision appears to be yet another attempt to punish employees before they have been found guilty.

H.R. 5169 appears on its face to reform the SES. However, several of the provisions are troubling and appear to be a solution in search of a problem. Rather than adding and changing the current laws, SEA encourages the committee to work with stakeholders to ensure that existing laws are being used and applied appropriately. This could be accomplished through mandatory supervisor training, onboarding for political appointees, and the creation of a straightforward guide to holding employees accountable.

Until the provisions of this bill are fully discussed to assess their impact, SEA asks you to vote NO on H.R. 5169.

Sincerely,

CAROL A. BONOSARO
President