# OVERSIGHT OF THE FEDERAL WORKFORCE: THE VIABILITY OF THE SENIOR EXECUTIVE SERVICE

## HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND THE CENSUS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JULY 11, 2014

**Serial No. 113–134**

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

89–782 PDF WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

JOHN L. MICA, Florida
MICHAEL R. TURNER, Ohio
JOHN J. DUNCAN, JR., Tennessee
PATRICK T. MCHENRY, North Carolina
JIM JORDAN, Ohio
JASON CHAFFETZ, Utah
TIM WALBERG, Michigan
JAMES LANKFORD, Oklahoma
JUSTIN AMASH, Michigan
PAUL A. GOSAR, Arizona
PATRICK MEEHAN, Pennsylvania
SCOTT DESJARLAIS, Tennessee
TREY GOWDY, South Carolina
BLAKE FARENTHOLD, Texas
DOC HASTINGS, Washington
CYNTHIA M. LUMMIS, Wyoming
ROB WOODALL, Georgia
THOMAS MASSIE, Kentucky
DOUG COLLINS, Georgia
MARK MEADOWS, North Carolina
KERRY L. BENTIVOLIO, Michigan
RON DESANTIS, Florida

ELIJAH E. CUMMINGS, Maryland, *Ranking Minority Member*
CAROLYN B. MALONEY, New York
ELEANOR HOLMES NORTON, District of Columbia
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts
JIM COOPER, Tennessee
GERALD E. CONNOLLY, Virginia
JACKIE SPEIER, California
MATTHEW A. CARTWRIGHT, Pennsylvania
TAMMY DUCKWORTH, Illinois
ROBIN L. KELLY, Illinois
DANNY K. DAVIS, Illinois
TONY CARDENAS, California
STEVEN A. HORSFORD, Nevada
MICHELLE LUJAN GRISHAM, New Mexico
*Vacancy*

LAWRENCE J. BRADY, *Staff Director*
JOHN D. CUADERES, *Deputy Staff Director*
STEPHEN CASTOR, *General Counsel*
LINDA A. GOOD, *Chief Clerk*
DAVID RAPALLO, *Minority Staff Director*

## SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND THE CENSUS

BLAKE FARENTHOLD, Texas, *Chairman*

TIM WALBERG, Michigan
TREY GOWDY, South Carolina
DOUG COLLINS, Georgia
RON DESANTIS, Florida

STEPHEN F. LYNCH, Massachusetts, *Ranking Minority Member*
ELEANOR HOLMES NORTON, District of Columbia
WM. LACY CLAY, Missouri

# CONTENTS


| | Page |
|---|---|
| Hearing held on July 11, 2014 | 1 |

WITNESSES

| | |
|---|---|
| Mr. Stephen Shih, Deputy Associate Director, Executive Resources and Employee Development, U.S. Office of Personnel Management | |
| Oral Statement | 4 |
| Written Statement | 7 |
| Mr. Samuel Retherford, Principal Deputy Assistant Secretary, Office of Human Resources and Administration, U.S. Department of Veterans Affairs | |
| Oral Statement | 15 |
| Written Statement | 17 |
| Ms. Carol A. Bonosaro, President, Senior Executives Association | |
| Oral Statement | 23 |
| Written Statement | 25 |

APPENDIX

| | |
|---|---|
| Answers to questions for the record from Carol A. Bonosaro, submitted by Chairman Farenthold | 50 |
| Answers to questions for the record from Mr. Stephen Shih, submitted by Chairman Farenthold | 53 |

# OVERSIGHT OF THE FEDERAL WORKFORCE: THE VIABILITY OF THE SENIOR EXECUTIVE SERVICE

---

**Friday, July 11, 2014**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE, AND THE CENSUS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
*Washington, D.C.*

The subcommittee met, pursuant to call, at 9:29 a.m., in Room 2154, Rayburn House Office Building, Hon. Blake Farenthold [chairman of the subcommittee] presiding.

Present: Representatives Farenthold, Walberg, and Lynch.

Staff Present: Melissa Beaumont, Assistant Clerk; Will L. Boyington, Deputy Press Secretary; Molly Boyl, Deputy General Counsel and Parliamentarian; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Jennifer Hemingway, Senior Professional Staff Member; Laura Rush, Deputy Chief Clerk; Andrew Shult, Deputy Digital Director; Peter Warren, Legislative Policy Director; Jaron Bourke, Minority Director of Administration; Lena Chang, Minority Counsel; Julia Krieger, Minority New Media Press Secretary; Mark Stephenson, Minority Director of Legislation; and Katy Teleky, Minority Staff Assistant.

Mr. FARENTHOLD. Good morning. The Subcommittee on the Federal Workforce, U.S. Postal Service, and Census will come to order.

I would like to begin this hearing by reading the mission statement of the Oversight Committee, as we normally do.

We exist to secure two fundamental principles: First, Americans have a right to know what the money Washington takes from them is well spent. And, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizens watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

And we'll start with my opening statement.

It is critical and challenging questions surround the future of the Senior Executive Service. The SES was created in 1979, was envisioned as a mobile executive corps with a broad view and ability

to manage across the Federal Government. The Office of Personnel Management, the OPM, was charged with administering the program and assisting agencies in selecting, developing, and managing the most experienced segment of the Federal workforce.

More than a decade ago, changes to the SES pay system were implemented to alleviate pay compensation and better focus—I'm sorry—pay compression and better focus compensation based on performance.

Despite these statutory requirements, the committee's oversight work has shown that the government continues to lack the quality executive leadership necessary to administer key governmental services and programs. We have seen scandals like an senior executive relaxing in a hot tub with a glass of wine on the taxpayers' dime, while another refuses to cooperate with Congress despite her admission that her employing agency targeted conservative organizations for applying to tax-exempt status.

Data from the OPM shows career SES employees received, on average, approximately $62 million in performance awards each year for the last 5 fiscal years, that's 2009 through 2013. At some agencies, 90 percent or more of the career SES folks received bonuses.

Questions about the viability of SES also come to mind when thinking about the Department of Veterans Affairs. The VA became embroiled in a scandal where employees falsified waitlists and made veterans wait for months for needed care while VA executives took more than $2.8 million in bonuses. That was in fiscal year 2013. Clearly, they were failing to deliver on the agency's promise to our Nation's veterans.

These are just some examples of the many points that need to be addressed to restore public confidence in government by increasing accountability and performance within the executive corps.

So today's hearing is an opportunity to take a detailed look at the SES, from the assignment of SES positions to the accountability and compensation of individual leaders. It is a chance to discuss how we can institute a system that allows agencies to more quickly and fairly remove poor leaders whose appointments do not have time limitations while guarding against politically-motivated actions.

Some will argue the government has all the laws, regulations, and tools in place to fire people. Yet in May, the House agreed on a need for a higher standard and overwhelmingly passed legislation to make senior executives at the VA at-will employees. One year ago, the House passed legislation to place SES workers on unpaid leave for misappropriation of funds, neglect of duty, or malfeasance.

I look forward to discussing how these and other reforms can help us ensure the government hires, compensates, and manages the executive workforce to meet the needs of their taxpayer-funded mission.

At this point, I will now recognize the distinguished ranking member, the gentleman in Massachusetts, Mr. Lynch, for his opening statement.

Mr. LYNCH. Thank you, Mr. Chairman. I would like to thank you for holding this hearing and the purpose of examining issues con-

cerning performance, management, and accountability in the Senior Executive Service.

I'd also like to welcome our witnesses. Thank you for your willingness to help this committee with its work.

Recent reports concerning unacceptable patient wait times and inappropriate scheduling practices at facilities within the Department of Veterans Affairs healthcare system have again underscored the importance of enacting meaningful reform. In addition, allegations of wrongdoing by senior officials at the Phoenix VA Medical Center and several other VA clinics nationwide have given rise to the question of whether we must also reform the current system under which Federal Government agencies evaluate and compensate their senior executive personnel and hold them accountable for poor job performance.

In the context of VA, Congress has recently undertaken a series of bills that seek to strengthen department management of Senior Executive Service personnel. Including among these efforts is H.R. 4031, the Department of Veterans Affairs Management Accountability Act, which passed the House of Representatives by a vote of 309 to 33.

This legislation would authorize the Secretary of Veterans Affairs to remove an individual from Senior Executive Service at will, as the chairman has noted, upon the Secretary's determination that the performance of the individual warrants such removal.

Most recently, Senator Kelly Ayotte of New Hampshire and Senator Claire McCaskill of Missouri have introduced Senate bill 2545, legislation to require the Secretary of Veterans Affairs to revoke bonuses to any employees involved in the manipulation of electronic patient waitlists.

I would note that these measures are largely based on the management issues that have been cited as specific to the Department of the VA. As noted by White House Deputy Chief of Staff Rob Nabors in his June 27th report to the President on issues impacting timely care at the VA, "a corrosive culture has led to personnel problems across the Department that are seriously impacting morale and by extension the timeliness of health care. The problems inherent within the agency with an extensive field structure are exacerbated by poor management and communication structures. Distrust between some VA employees and management, a history of retaliation toward employees raising issues, and a lack of accountability across all grade levels."

While I am positive that that is not the case in all VA facilities, and we did a very stem-to-stern review of the three VA hospitals in my district, and they received 5-star rating on review, and I do not want to impugn all VA employees, I do strongly believe that we must make every effort to hold accountable those senior agency personnel who are found to be complicit in wrongdoing at the VA.

It is my understanding that some of my colleagues across the aisle may now be considering legislation that seeks to dramatically impact the Senior Executive Service across the board in all agencies, even those that are doing very well, including a proposal that would subject Senior Executive Service personnel at every Federal agency to at-will determination without notification, due process, or the right of appeal.

I would urge my colleagues to exercise caution and due diligence before taking such a severe step. I want to remind my colleagues that such a reform would eliminate one of first and most significant Federal laws to prevent political patronage and corruption, the Pendleton Act, passed back in 1883. And thanks to the Pendleton Act, the great majority of our nearly 7,400 career reserves and general members of the Senior Executive Service and dedicated—are dedicated and effective nonpartisan public servants.

With that, I would just like to close and say I—that I look forward to hearing the testimony of our witnesses.

Thank you. I yield back.

Mr. FARENTHOLD. Thank you very much.

Mr. FARENTHOLD. Just as a matter of housekeeping, we do have early votes in the House today. Hopefully, we will get finished before the votes. If not, we will recess and come back and complete immediately following the votes.

And also, members will have 7 days to submit opening statements for the record.

Now we will recognize our panel. Mr. Stephen Shih is Deputy Associate Director of Executive Resources and Employee Development at the United States Office of Personnel Management. Welcome sir.

Mr. Samuel Retherford is a Principal Deputy Assistant Secretary of the Office of Human Resources and Administration at the United States Department of Veterans Affairs. Welcome to you, sir.

And Ms. Carol A. Bonosaro is president of the Senior Executives Association. Welcome, Ms. Bonosaro.

Pursuant to the committee rules, all witnesses will be sworn in before they testify. Would you please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record reflect all witnesses have answered in the affirmative.

Please be seated. Thank you very much.

Again, we're going to follow the normal rules of the committee, where you will have—each have 5 minutes to make your opening statement, and then we will rotate through the panel up here with a 5-minute rounds of questions.

So let's go ahead and begin with Mr. Shih. You are recognized for 5 minutes, sir.

## WITNESS STATEMENTS

### STATEMENT OF STEPHEN SHIH

Mr. SHIH. Thank you, Chairman Farenthold.

Chairman, Ranking Member Lynch, and distinguished members of the subcommittee. Thank you for holding this hearing and for inviting me to speak today about the Senior Executive Service and the United States Office of Personnel Management's role in managing the SES. I appreciate your interest in ensuring the Federal Government is doing everything possible to enable and hold accountable an effective senior leadership corps.

Members of the SES are front and center in managing the challenges that come with operating in a budget-constrained environment where Federal agencies are often asked to continue to carry out their critical missions, and in some cases, increased requirements with reduced resources.

SES members are responsible for providing leadership within agencies and across agencies to meet the changing needs and priorities of the American people, and to provide consistency in leadership across administrations.

SES members are directly accountable for individual and organizational performance. Their compensation is based upon their performance, and they are subject to removal from the SES for performance or from Federal service entirely for misconduct and other reasons.

The responsibilities for human capital management of the SES have been divided by statute between agencies and OPM. And this division reflects a balancing of the important needs of individual agencies and the important needs of the entire Federal Government.

On one hand, agencies strongly need direct operational control and flexibility to apply their expertise in best addressing their mission and agency-specific requirements. On the other hand, the Federal Government in our entire Nation have a strong interest in ensuring that agencies operate consistently and efficiently, accomplished through the centralized leadership, government-wide standards, and oversight for which OPM is responsible.

For example, OPM is required, in consultation with OMB, to review requests from each agency to allocate a specific number of SES positions for each agency. And this responsibility helps ensure appropriateness and consistency in the establishment of SES positions. In this way, OPM also helps ensure appropriate numbers of senior executive positions are in place within each agency and across the Federal Government to enable effective and continual operations of government agencies and programs.

Agencies have authority to recruit, assess, and hire SES employees. Specifically, agencies make career SES appointments through a competitive merit staffing process that includes requirements to ensure fair and open competition and selection based upon merit.

OPM is required to establish one or more Qualifications Review Boards, QRBs, to certify the executive qualifications of agencies' proposed candidates for initial appointment to the SES cadre.

OPM also has reserved the authority to review agencies' proposed career SES appointments to ensure that they comply with all merit staffing requirements and are free of any impropriety.

Agencies also have the authority to determine, in accordance with OPM criteria, initial pay for SES members, and then to determine additional compensation through salary adjustments and performance awards. These are a combination of tools for the overall compensation of the Senior Executive Service members based on performance.

OPM annually reviews data on agencies' SES performance ratings, pay adjustments, and performance awards to assess whether agencies differentiate pay based upon performance, including appropriately granting SES performance awards to encourage excel-

lence in performance. Again, this is OPM's responsibility to help provide appropriateness and consistency across the Federal Government.

Each agency is required to develop one or more performance appraisal systems for SES members subject to OPM standards and the agency's appointing authority. Typically the agency head issues final performance ratings and determines correlating compensation for SES members in the agency.

OPM is responsible for reviewing the agency's SES performance appraisal system for compliance with government-wide requirements of law, regulations, and OPM standards to determine appropriateness for OPM approval of the system. This approval allows the agency to implement the system. Subsequently, OPM may review the agency's implementation of the system to determine adherence to government-wide law, regulations, and standards.

Based upon this review, OPM may, with OMB concurrence, then certify the system, and the certification enables the agency to access the higher rates of pay to recruit and compensate their senior executives.

Agencies have the authority and responsibility, and in specific situations, are required by law to address poor SES performance by reducing pay, reassigning or transferring SES members, or removing them entirely from the SES.

Agencies also have the authority and responsibility to address SES disciplinary matters, including misconduct, neglect of duty, or malfeasance, by taking actions against the SES members, such as reductions in pay, suspensions lasting more than 14 days, or removal entirely from the Federal service.

OPM takes seriously its responsibilities pertaining to the SES and remains committed to providing centralized leadership and oversight on the management of the SES members across the government. Thank you for inviting me here today, and I am happy to answer any questions you may have.

Mr. FARENTHOLD. Thank you very much, Mr. Shih.

[Prepared statement of Mr. Shih follows:]

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**STATEMENT OF**
**STEPHEN T. SHIH**
**DEPUTY ASSOCIATE DIRECTOR**
**SENIOR EXECUTIVE SERVICES AND PERFORMANCE MANAGEMENT**
**U.S. OFFICE OF PERSONNEL MANAGEMENT**

**before the**

**SUBCOMMITTEE ON FEDERAL WORKFORCE,**
**U.S. POSTAL SERVICE AND THE CENSUS**
**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**
**UNITED STATES HOUSE OF REPRESENTATIVES**

**on**

**"OVERSIGHT OF THE FEDERAL WORKFORCE: THE VIABILITY OF THE SENIOR EXECUTIVE SERVICE"**

**July 11, 2014**

---

Chairman Farenthold, Ranking Member Lynch, and Members of the Subcommittee:

Thank you for inviting me to speak with you today about the Senior Executive Service (SES) and the U.S. Office of Personnel Management's role in managing the SES. I very much appreciate your interest in ensuring we are jointly doing everything possible to enable and hold accountable an effective senior leadership corps.

We are presently in an extremely challenging period for the Federal Government. We are operating in a budget-constrained environment where Federal agencies are often asked to continue to perform the same workload – or, in some cases, an increased workload – with a lower level of resources. Consequently, Federal agencies need to ensure the optimal and appropriate management of resources – including our senior executive resources – to successfully meet increased and increasingly-complex mission requirements in the most effective and economical way. And we must always ensure we remain good stewards of taxpayer dollars so our citizens receive the best value for their money.

Members of the SES are also front and center in managing these challenges. SES members are responsible for providing leadership within agencies and across agencies as needed to meet the changing needs and priorities of the American people, and to provide consistency in leadership across administrations. SES members frequently have primary responsibility and visibility for

directing the implementation of sizable programs that provide services to the public and that are highly publicized and scrutinized by stakeholders. SES members are directly accountable for individual and organizational performance. Their compensation is based upon their performance, and they are subject to removal from the SES for performance (as well as removal from Federal service for certain conduct and other situations, described below). SES members may be more readily assigned or reassigned to any position in the SES for which they are qualified, within any agency, and may also be transferred across agencies with the executive's consent.

**Background**

Congress established the SES, through the Civil Service Reform Act of 1978 (CSRA; P.L. 95-454, 92 Stat. 1111), to provide a Government-wide, mobile corps of managers within Federal agencies. The SES, comprised of mostly career appointees who are chosen through a merit staffing process, provides a strong interface between the politically-appointed heads of agencies and the career civil servants within those agencies. The SES constitutes a cadre of senior-level managers in the Government who provide effective management of agencies across administrations and oversee the implementation of Government programs to ensure continuous productivity and efficiency.

Consequently, the responsibilities for human capital management of the SES have been divided, by statute, between agencies and OPM, and this division reflects a balancing of the important needs of individual agencies and the entire Federal Government. On one hand, agencies strongly need direct control and flexibility, for example, with respect to pay-setting and making selections for appointments, to best address their mission and their agency-specific requirements, and their success depends on having appropriate autonomy to apply their expertise in determining the best way to perform their specialized operations. On the other hand, the Federal Government – and our entire Nation – has a strong interest in ensuring that agencies operate consistently, efficiently, and in accordance with merit system principles and applicable law, which is accomplished through centralized leadership, government-wide standards, and oversight, and for which OPM is responsible.

**Agency Authorities**

**1. Recruitment and Hiring**

By statute, agencies have authority to recruit, assess, and hire SES employees. Agencies make career SES appointments through a competitive merit staffing process that includes a number of requirements to ensure fair and open competition and selection based upon merit. Generally, an agency Executive Resources Board (ERB) directs recruitment for each career appointment to an agency SES position. Under the ERB's direction, an agency publishes a job announcement and rates and ranks eligible applicants. The ERB identifies and recommends the best qualified applicants to the appointing authority. The appointing authority makes the selection for each SES position. If the selectee has not been previously appointed to the SES, the agency must submit the executive qualifications of the candidate to OPM for review and certification by an OPM-

administered Qualifications Review Board (QRB). Following QRB certification of the candidate's executive qualifications, the agency may appoint the candidate to the SES position.

By statute, agencies are authorized to fill an SES position by reassigning a career SES member within the agency who is qualified for the position to which he/she is being reassigned. By statute, agencies are further authorized to transfer an SES member from one agency to a position in another agency for which the appointee is qualified with the agreement of the executive and receiving agency.

Initial career appointees to the SES are required to serve a one-year probationary period, during which an appointee's supervisor may take action to remove the individual from the SES for unsatisfactory performance or other reasons. After the one-year probationary period, an SES career appointee may be removed from the SES by the agency for less than fully successful performance. SES members may also be removed from Federal service for a number of reasons.

### 2. Compensation

By statute, agencies have the authority to determine, in accordance with OPM criteria, initial pay for SES members and then determine subsequent compensation levels through salary adjustments and performance awards based upon individual performance.

The current pay system for SES members includes statutory changes, resulting from the Homeland Security Act of 2002 and the Fiscal Year 2004 National Defense Authorization Act, that strengthened the pay for performance system to provide stronger performance incentives to SES members, and also provided an incentive for agencies to make meaningful distinctions based upon relative performance in evaluating the performance of senior executives and other senior level staff. An agency may seek OPM certification that its SES performance appraisal system makes meaningful distinctions and also adheres to other sound performance management criteria, and such certification enables the agency to access higher rates of SES salary.

By statute, agencies are also responsible for paying performance awards to career SES appointees to encourage excellence in performance. SES performance awards range from a minimum of 5 percent of an individual's rate of basic pay to a maximum of 20 percent of basic pay. Currently, the Administration has placed administrative limitations on agencies' spending on awards, including imposing a spending cap that restricts each agency's annual spending on SES performance awards to no more than a total of 5 percent of its aggregate SES salaries (this cap was further reduced to 4.8 percent due to reductions in discretionary spending).

### 3. Performance Management

By statute, each agency is required to develop one or more performance appraisal systems for SES members, subject to OPM standards. Through the administration of these performance appraisal systems, and within basic standards provided by OPM, agencies are responsible for: establishing performance requirements; evaluating SES performance; providing performance

appraisals to SES members; and determining performance awards for SES members. The appointing authority issues final performance ratings for SES members in the agency.

For probationary SES members, agencies have the authority to immediately remove individuals from the SES for poor performance after receiving written notice. A formal performance rating is not required, and the individual does not have an appeal right.

For non-probationary career SES members, agencies are required to reassign or transfer within the SES, or to remove from the SES, any senior executive who receives an unsatisfactory rating. Agencies are required by statute to remove from the SES any senior executive who receives two unsatisfactory ratings in any period of five consecutive years. Agencies are also required by statute to remove from the SES any senior executive who twice in any period of three consecutive years receives two less than fully successful ratings. The underlying statute requires an agency to notify a career appointee in writing before taking such action, and provide the appointee with an opportunity to request an informal hearing before the U.S. Merit Systems Protection Board (MSPB) (the hearing does not constitute an appeal and need not delay the removal). By OPM regulation, the required notice period is at least 30 calendar days before the effective date of the action.

**4. Actions for Misconduct and other Issues**

By statute, agencies can address misconduct; neglect of duty; malfeasance; failure to accept a directed reassignment; or failure to accompany a position in a transfer of function by taking actions against SES members –after affording the procedural rights established in the statute— such as removal from Federal service, reduction in pay, and suspensions lasting more than 14 days. Generally, an agency must provide at least 30 days' advance written notice, and the affected individual has the right to an MSPB appeal.

**5. Training and Development**

Agencies have been delegated broad responsibility by OPM for planning, establishing, implementing, and evaluating training and career development programs for their employees, including for SES members. This approach has provided agencies with helpful flexibility on determining the appropriate learning and development programs to provide to their SES members – particularly giving agencies an opportunity to tailor training programs to meet their specific missions and needs. Because of this decentralized approach, however, SES members in different agencies receive different developmental opportunities and experiences – sometimes impacted by the specific budgetary situation and other factors in each agency.

**Statement of Stephen T. Shih**
**U.S. Office of Personnel Management**
---
**July 11, 2014**

**Role and Functions of OPM**

**1. Allocations**

By statute, OPM is required, in consultation with the U.S. Office of Management and Budget (OMB), to: (a) review requests from each agency submitted during each even-numbered calendar year, for a specific number of SES positions for each agency for the two fiscal years beginning after the calendar year, and (b) to authorize a specific number of SES positions for each agency for each of the two fiscal years covered by the requests. OPM's responsibilities in determining SES allocations help ensure appropriateness and consistency in the establishment of SES positions, and also helps ensure an appropriate level of senior executive positions are in place across the Federal Government to ensure effective and continual operations of Government agencies and programs.

**2. Appointment**

OPM has reserved the authority to review agencies' proposed career SES appointments to ensure they comply with all merit staffing requirements and are free of any impropriety. OPM may require agencies to take any action necessary to correct an action contrary to any law, rule, or regulation.

By statute, OPM is required to establish one or more QRBs to certify the executive qualifications of agencies' proposed candidates for initial appointment to the SES. An agency may only make an initial appointment of a candidate to the SES after an OPM-administered QRB has certified the candidate's executive qualifications. This QRB review and approval provides a whole-of-Government assurance on the leadership capabilities of initial appointees, applicable across agencies, and helps ensure consistency in the executive core qualifications of the SES corps and adherence to merit staffing procedures in SES selection.

**3. Compensation**

OPM annually reviews data on agencies' SES performance ratings, pay adjustments, and performance awards to assess whether agencies differentiate pay based upon performance and grant SES performance awards to encourage excellence in performance. Upon request, OPM also reviews agencies' SES performance appraisal systems, for the purpose of determining whether to provide the certification that enables agencies to access the higher rates of pay for their SES members.

**4. Performance Appraisal System Approval and Certification**

By statute, OPM is responsible for reviewing agencies' SES performance appraisal system for basic compliance with the requirements of law, regulations, and OPM policy, and approving their implementation by agencies. If OPM finds that an agency system does not meet the

requirements and intent of law, OPM will direct the agency to take corrective action, and the agency must comply.

By statute, OPM is also responsible for reviewing approved agency SES performance appraisal systems upon an agency's request to determine – with OMB concurrence – the appropriateness for certification. To receive OPM certification, agency systems must satisfy OPM certification criteria, including the requirements that they make meaningful distinctions based on relative performance, provide accountability, and provide pay differentiation. If OPM determines an agency's certified system is no longer in compliance with certification criteria, OPM may – with OMB concurrence – suspend the certification.

### 5. Training and Development

By statute, OPM is responsible for establishing programs for the continual development of SES members or requiring agencies to establish such programs, and OPM has delegated broad authority to agencies to administer programs for the training and development of their employees. OPM provides policy and guidance to agencies on training, including for SES members, and also offers enterprise training programs and products.

OPM also specifically requires each agency to establish one or more programs for the continuing development of senior executives in compliance with OPM criteria. OPM provides assistance to agencies in the establishment of these executive development programs and reserves the authority to monitor the implementation of the programs. OPM has the ability to require an agency to take corrective action necessary to bring the program into compliance with OPM criteria.

Additionally, OPM is responsible for reviewing agency SES Candidate Development Programs (SESCDP) for compliance with OPM criteria, and approving the implementation of these SESCDPs. SESCDPs are training programs designed to develop the executive qualifications of employees with strong executive potential to qualify them for and authorize their initial career appointment to the SES. An agency with an OPM-approved SESCDP may submit graduates of their program to OPM for QRB review of the graduates' executive qualifications independent of any application for a particular position. A graduate certified by a QRB may subsequently receive an initial career SES appointment without further competition to any position for which he/she meets the professional and technical requirements, just as an existing senior executive can.

### 6. SES Reform and the President's Management Agenda

As described in the 2015 President's Budget, employee performance and human capital management are core components of the President's Management Agenda. Under the People & Culture pillar of the Agenda, OPM is working to create a culture of excellence and engagement to enable higher performance, to enable agencies to hire the best talent from all segments of society, as well as to enhance our world-class management team, starting with the SES.

We are currently examining the SES hiring process to help agencies better anticipate and plan for vacancies, as well as to identify efficiencies and effective processes for hiring the best executive talent. For example, we are working to help agencies identify, project, and prioritize among SES vacancies, particularly for critical positions. We are also exploring means to streamline the recruitment, application, and selection processes, with a focus on removing barriers to and the successful hiring from diverse and inclusive applicant pools, including from the private sector. This includes exploring means to help agencies complement USAJobs.gov postings with more active recruitment and outreach strategies to reach all qualified talent and modifying requirements for applicants to submit lengthy written executive qualifications statements, resumes, or other application materials.

We are also seeking to expand the experience base of our executive corps. We are developing a stronger SES onboarding program, so our leaders can more effectively transition into organizations, hit the ground running, and understand the high standards that are expected of them from the beginning. We are developing SES leadership and engagement training opportunities that emphasize diversity and the changing needs of a 21st Century workforce. This includes expanding management development opportunities for SES and SES candidates by linking and coordinating existing cross-agency and cross-sector leadership initiatives.

Finally, we are developing personnel analytics that our SES can use to drive decision making, and means to better integrate personnel analytics to improve the SES performance appraisal system.

**Conclusion**

In general, members of the SES are exceptionally dedicated to public service and are working extremely diligently, under very challenging circumstances, to provide leadership so the Federal Government may successfully operate and accomplish increasingly complex and important missions for the American people. SES members have remained committed to public service while taking on more responsibilities with significantly-reduced resources and negligible increases in compensation, if at all.

OPM takes seriously its responsibilities pertaining to the SES and remains committed to providing centralized leadership and oversight on the management of SES members across the Government – respecting and empowering the expertise, discretion, and autonomy of Federal agencies to determine the best use of their executive resources to accomplish agency-specific needs, while providing Government-wide policy, guidance, assistance, and accountability to ensure Federal agencies manage their SES members in a manner to optimize the success of the Government and our Nation. Thank you for inviting me here today, and I am happy to answer any questions you may have.

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
1900 E STREET NW, WASHINGTON, DC 20415

BIOGRAPHY

# Steve Shih

Steve Shih serves at the U.S. Office of Personnel Management (OPM) in the position of Deputy Associate Director for Executive Resources and Employee Development. In this capacity, Mr. Shih leads OPM's office responsible for managing the overall Federal personnel program relating to the Senior Executive Service (SES) and other senior professionals (i.e., Senior Level (SL) and Scientific and Professional (ST)). Mr. Shih is responsible for the development and implementation of regulations and policies, as well as providing day-to-day oversight and assistance to agencies on the selection, development, performance management, and recognition of Federal executives and senior professionals. Mr. Shih is also responsible for providing Government-wide leadership to agencies for all other Federal employees with respect to performance management and awards. Prior to his appointment at OPM, Mr. Shih was employed at the U.S. Department of Homeland Security from August 2008 to October 2010, where he served in the position of Deputy Civil Rights and Civil Liberties Officer for EEO and Diversity Programs, and also served in an acting capacity as the Officer for Civil Rights and Civil Liberties. From October 2004 to August 2008, Mr. Shih served as the EEO Director at OPM. From November 1993 to August October 2004, Mr. Shih was employed at the U.S. Equal Employment Opportunity Commission's Washington Field Office, where he served as an Administrative Judge and later as the Chief Administrative Judge.

Mr. Shih received a Bachelors of Science degree from Duke University and a Juris Doctors degree from the Washington University School of Law. Mr. Shih is a member of the Bar Associations for both Virginia and Washington, DC.

Mr. FARENTHOLD. Mr. Retherford, you are now recognized for 5 minutes for your opening statement.

**STATEMENT OF SAMUEL RETHERFORD**

Mr. RETHERFORD. Thank you. Chairman Farenthold, Ranking Member Lynch, distinguished members of the subcommittee, thank you for this opportunity to appear before you today.

I would like to express on behalf of the VA workforce our commitment to serve veterans. To accomplish this mission, we must recruit and retain the best talent, many of whom require special skills in health care, information technology, and benefits delivery. In general, VA requires talented executives to manage the complex set of VA facilities and programs. We are competing in tough public and private labor markets, and to remain competitive, we rely in part on incentives and awards that attract and retain talent and recognize superior performance.

I want to highlight that awards are part of the SES pay structure. As outlined in the statute, awards were designed to be part of SES compensation. That is the premise of pay for performance. Failure to recognize performance puts VA at risk of losing our most effective senior talent.

Most critical to applying higher salary and performance awards is having an OPM-certified appraisal system. Without OPM certification, salaries are restricted and awards are not permitted. The OPM process is rigorous and requires that performance distinctions must be made. VA has such an executive appraisal position approved by OPM.

That said, we definitely recognize that we must do better in holding our leaders accountable. Fundamental to obtaining accountability is rigorous implementation and oversight of performance plans that align organizational goals to executives.

To have a good program, we must improve our performance management capabilities. The VA leadership must also more thoroughly engage in managing SES performance plans to include setting and verifying outcomes and documenting shortcomings.

Performance management has many challenges. By its nature, it is very subjective and complex. It is used to identify superlative and poor performers, and it is the foundation of development, mentoring, and accountability.

Our senior executives must know how to craft good outcome-focused objectives. They must fully understand the process and know how to document deficiencies so that decisions on performance will be defensible and prevail during the due-process steps that follow those decisions.

In the evaluation of performance, the process VA uses is only in the second year. It is described in my written testimony, but I would like to touch on a few points.

First, we use the OPM-approved government-wide form and the five rating standards. Executive performance objectives are assembled into five OPM-critical elements or competencies and are weighted by VA with the heaviest weightings of 40 percent on the results-driven element and 40 percent in the two elements for lead-

ing. With more experience with the new system, we believe there will be greater consistency and clarity.

Second, I want to point out that VA's performance appraisal system goes beyond minimum OPM standards. VA added a reviewing official, which is not required, as part of the rating process and added performance review committees that conducted initial review of appraisals prior to review by the VA Performance Review Board.

These new features provide four levels of scrutiny: rater, reviewer, committee, and the board, prior to recommendation to the Secretary.

Third, VA added our I Care Values of integrity, commitment, advocacy, respect, and excellence to leading people. We are currently working to add standards of conduct to our SES appraisal system.

And lastly, we are working towards moving away from paper towards information technology solution. This is our first year of an automated system. Automating our performance management system will enable visibility and oversight of the process, allow full and timely review of performance plans as they are being developed, and to provide a repository for documentation. We are also working to automate talent management, which will allow visibility of requirements and the skill sets of our executives.

In closing, I am a recent addition to VA, having arrived last January. I have read the reports, assessed many of our systems and capabilities, and noted areas of concern. We are working hard on solutions, which includes revising policies, establishing new executive training, and applying information technology.

The Acting Secretary is committed to use all authorities to enforce accountability, restore trust, and change the VA culture. I believe our efforts in improving performance management in the VA will set many of the conditions for the new VA culture.

Thank you for this opportunity to appear before you today. I look forward to answering your questions.

Mr. FARENTHOLD. Thank you, Mr. Retherford.

[Prepared statement of Mr. Retherford follows:]

**STATEMENT OF**

**MR. SAM RETHERFORD**
**PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR HUMAN RESOURCES AND ADMINISTRATION**

**DEPARTMENT OF VETERANS AFFAIRS (VA)**
**BEFORE THE**
**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**
**SUBCOMMITTEE ON THE FEDERAL WORKFORCE, U.S. POSTAL SERVICE, AND THE CENSUS**
**U.S. HOUSE OF REPRESENTATIVES**

**JULY 11, 2014**

Chairman Farenthold, Ranking Member Lynch, Distinguished Members of the House Committee on Oversight and Government Reform, thank you for this opportunity to appear before the Committee to discuss performance plans and awards. My testimony will review the policies and procedures that govern VA's senior executive performance management system.

Before I describe the technical aspects of performance plans and awards, I would like to express, on behalf of the VA workforce, our commitment to the Department's mission to serve Veterans. To accomplish this mission, we must recruit and retain the best talent, many of whom require special skills in health care, information technology, management and benefits delivery. In particular, VA requires talented senior executives to manage the complex set of facilities and programs that VA is responsible for administering. We are competing in tough labor markets for skilled personnel, both in the public and private sector. To remain competitive in recruiting and retaining the best personnel to serve our Veterans, we must rely on tools such as incentives and awards that recognize superior performance. We also recognize that we must hold our employees, and our leaders, accountable. Performance plans are the foundation of accountability not only for the senior executives but for the entire workforce. Senior leadership engagement in managing executive performance plans, including counseling and mid-year assessments, also serves as the model for the general schedule workforce.

There are two separate authorities available to VA to recruit and hire senior executives. Title 5 of the United States Code (U.S.C.) sets forth the Government wide regulations that are applicable to all Federal agencies. In addition, the Secretary of Veterans Affairs has separate hiring authority for health care and health care-related occupations under title 38, which applies to many senior executives serving in the Veterans Health Administration. Although VA utilizes two hiring authorities, VA uses uniform guidance and authority for evaluating and recognizing title 5 and title 38 senior

executive performance. Thus, the VA uses a single senior executive performance management and appraisal system.

Public Law 108-136, passed by Congress and signed into law on November 24, 2003, established the performance-based pay system for members of the title 5 Senior Executive Service (SES) throughout the Federal Government. Agencies must demonstrate adherence to this law in the evaluation of senior executives and subsequent distribution of performance awards (5 U.S.C. 5307(d)) in order to receive biennial certification from the Office of Personnel Management (OPM). Agencies must also make meaningful distinctions based on performance for senior executive evaluations to receive certification. An OPM-certified agency may apply the maximum annual rate of pay as well as pay adjustments and cash awards as part of the executive's compensation. Presently, VA has an OPM-certified senior executive performance appraisal system. This certification allows VA to establish a higher level salary cap, which enhances our ability to recruit and retain the most qualified and high-performing senior executives. The statutory maximum executive pay for SES in an OPM-certified system is EX Level II ($181,500), while the cap is at EX Level III ($167,000) if an agency's performance system is not certified. Although the OPM certification applies only to the title 5 senior executives, it is this system that VA applies to all VA senior executives including title 38. However, title 38 physicians and dentists have additional statutory pay that allows salary to exceed the senior executive caps.

VA uses VA Form 3482, Senior Executive Performance Agreement, dated June 2012, to record critical elements of the performance plan and the rating assessment. We use five rating levels: Outstanding, Exceeds Fully Successful, Fully Successful, Minimally Satisfactory, and Unsatisfactory. Performance standards for these five ratings are included on the form. As required by OPM, performance requirements for each senior executive are assembled in the five Critical Element categories: Leading Change, Leading People, Business Acumen, Building Coalitions, and Results Driven. The particular discretionary weights to ratings applied to these Critical Elements in VA are: 20 percent, 20 percent, 10 percent, 10 percent, and 40 percent, respectively.

VA puts a higher value on "Results Driven" than other Critical Element categories. The requirements for each Critical Element are determined by organizational goals and strategies, and through discussion between the senior executive and his or her rating official. Additionally, there are Secretary-approved VA-wide foundational requirements in the five Critical Elements that all VA senior executives must strive to attain. This form also captures performance remarks from rating officials, narratives from the Performance Review Boards (PRB), and calculation of performance awards. More specific guidance on the process, the form, duties of the rating and reviewing officials, and the process used by the Performance Review Committees (PRC) and PRBs are contained in VA policy (Handbook/Directive 5027, Senior Executive Service, Part V).

VA's performance appraisal system is more rigorous and goes beyond the minimum standards set by OPM in 5 CFR for planning, monitoring, evaluating and rewarding executive performance. In 2011, VA added a reviewing official, which is not required,

as part of the rating process for most senior executives. This reviewing official is responsible for summarizing accomplishments, commenting on values, highlighting any areas of disagreement with the rating official, and providing a second, more senior review of accountability and accomplishment.

After completion of the performance plan by the rating/reviewing official at the end of the fiscal year, performance appraisals are then reviewed by PRCs that conduct an initial collective review of performance appraisals prior to the review by the PRB. The PRCs are discretionary and provide perspectives and assessments, which enable the PRB to more efficiently and effectively evaluate the contributions of each senior executive. Typically, the PRC and PRB conclude their deliberations in early December. The Secretary of VA, advised by the two rating panels, is the final authority on all executive ratings and ensures ratings appropriately reflect the executive's attainment of organizational goals and objectives. Once the rating is signed by the Secretary, there is no appeal allowed under 5 CFR section 430.308.

In 2014, VA added more rigor and discipline to this performance management and appraisal system by requiring and providing direction to the employee and the review panels on the direct linkage to VA's strategic goals and objectives and values. Also, critical to our ability to provide oversight and monitor the process, VA mandated electronic processing of all SES performance plans for fiscal year (FY) 2014. Automating the processing and management of our senior executive performance plans will increase our ability to ensure plans are timely, that mid-year reviews are accomplished, that rating and reviewing officials are designated properly, and that we have visibility on all goals and objectives throughout the rating year.

Our progress in making rating distinctions is evident in the chart below. VA has steadily made progress in evaluating and rating our senior executives using the five rating levels. The absence of ratings in the lowest two categories is not uncommon for most agencies and demonstrates that VA monitors and addresses performance on an ongoing basis. In all of Federal Government, there were only 12 senior executives rated Minimally Satisfactory and 3 rated Unsatisfactory in FY 2012.

| Rating | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|---|---|---|---|---|
| **Outstanding** | 35% | 32% | 25% | 21% |
| **Exceeds Fully Successful** | 38% | 43% | 48% | 57% |
| **Fully Successful** | 18% | 19% | 26% | 19% |
| **Minimally Satisfactory** | 0% | 0% | 0% | 0% |
| **Unsatisfactory** | 0% | 0% | 0% | 0% |

Guidance covering senior executive performance awards is set forth in 5 U.S.C. 5384, which states senior executive performance-based awards must be paid. There are specific parameters and restrictions in the law. These are the most significant:

- In accordance with 5 CFR 534.405(a)(1-2), the senior executive must have held a career appointment at the end of the performance appraisal period, or have previously held such an appointment and retained career rights.

- In accordance with 5 CFR 534.405(b)(1)(i), no more than 10 percent of aggregate salaries of all career senior executives can be utilized as the dollar amount for award pool; however, for FY 2013, this amount was capped by OPM at prior year's spending, and for FY 2011 and FY 2012, the caps provided by OPM were not to exceed 5 percent of aggregate salaries. A snapshot of senior executives' salaries is taken annually, as of September 30, to establish award pool funding using the statutory criteria or that provided by OPM.

- In accordance with 5 CFR 534.405(c), senior executive performance awards must be a minimum of 5 percent and no more than the maximum of 20 percent of the senior executive's salary.

Once final rating decisions have been made by the Secretary, modeling calculations are made to determine the fairest, most equitable and transparent approach to recognize performance. There is no deliberate attempt to "spend every dollar," nor is there a "pre-determined" approach to assigning ratings or awards in VA. As mentioned previously, agencies must show distinctions in ratings, which means there must be a correlation between the rating and award amount. A lack of correlation creates the perception of unfairness and lack of transparency, and can place our OPM certification at risk. Therefore, until it is known how many ratings are at each performance level, there is no way of knowing how many awards, and in what amounts, can or should be paid.

At the end of the rating process, before final rating decisions are released, or performance awards are processed, name checks are requested to ensure no final ratings are released for any senior executive who is the subject of any administrative, Equal Employment Opportunity, or Office of Inspector General investigation, review or audit. While no presumptions are made regarding the outcomes of any such investigation, review, or audit, the rating decisions are not released and performance awards are not processed for senior executives subject to such activity.

Performance awards are part of SES employees' pay structure, and are awarded only after a rigorous and diligent review of executive achievements against both organization and Department performance goals. Performance awards are not bonuses; they are awards to promote excellence, and are given to the senior executives who perform the best. Performance awards, as outlined in the statute and CFR, are designed to be part of their compensation – that is the premise of "pay for performance" law passed by Congress. Failure to recognize value and performance puts VA (and any organization) at risk of accelerating the retirement, resignation and transfer to other agencies or the private sector of some of the Department's most experienced and effective senior managerial and professional talent.

Since FY 2010, our performance ratings demonstrate that VA is exercising due diligence in administering performance awards. VA spent less than the statutory agency aggregate limit on performance awards for career SES since 2008. See chart below:

SES Awards (Performance and Dollars Spent)

| Fiscal Year | Total % Outstanding | Total Dollars Spent on Awards |
|---|---|---|
| 2010 | 35% | $4,735,725 |
| 2011 | 32% | $3,683,204 |
| 2012 | 25% | $3,391,410 |
| 2013 | 21% | $2,707,597* |

*Note: FY 2013 totals as of June 13, 2014

VA continues to improve on performance management and evaluation of senior executives and is presently updating directives and handbooks to codify procedures from lessons learned last year.

In closing, I want to reiterate that VA must remain competitive to recruit and retain the best executives to serve our Veterans. Our ability to allocate performance awards to our highest performers is vital to hiring and retention. Equally vital is that VA must do better holding our executives and employees accountable for poor performance. VA recognizes that we face many challenges with performance management and we have much work to do in ensuring that our senior executives receive frequent and better training on the performance process and the guidelines for confronting poor performers.

The key here is rigorous and precise implementation and management of all performance plans whether for senior executives or general schedule employees. Performance plans are the foundation of accountability for poor and high performance and for individual professional development. Thank you for this opportunity to appear before you today. I look forward to answering your questions.

Mr. FARENTHOLD. Ms. Bonosaro, you are up for 5 minutes.

**STATEMENT OF CAROL A. BONOSARO**

Ms. BONOSARO. Chairman, Ranking Member Lynch, and members of the subcommittee. Thank you for the opportunity to testify today.

The Senior Executives Association represents nearly 7,000 career members of the SES. For several years, we have been sounding the alarm about the challenges facing the SES in areas of needed reform. Many of these issues have now become critical in the face of problems at the Department of Veterans Affairs. So I would like to make just two points:

First, with regard to the state of the SES. A strong SES is critical to effective agency operations and workforce management. Yet there are serious risks to both the short- and long-term viability of the senior career executive system.

Career SES are highly qualified professionals who oversee sizeable agency budgets and complex programs, have a large span of control, and are often also technical experts in their fields, and face a rigorous selection process to enter the SES. They are in a completely different personnel system with no locality pay, all pay adjustments and awards based on performance and entirely discretionary with the agency, and they have no effective appeal rights.

The perception seems to be that a certain number of executives must be poor performers and that the ratings of many are inflated. If a large number of senior executives were not working at the "fully successful" or better level, it would indicate an ineffective selection process.

Where there are poor performers, sufficient remedies exist to hold them accountable with relative ease. And let me make clear, SEA believes that they should and must be held accountable.

A February survey of our membership found 51 percent of respondents rating overall morale among the SES at their agencies as low or very low. The rate of retirement of current SES is up 40 percent since 2009. And talented, able GS–14s and 15s are declining to go into the SES. Thus the service may well become a place of last resort as high-performing employees take their skills to the private sector.

What's led to this situation? An essentially broken pay-for-performance system, the pay freeze, substantial reduction in performance awards, a suspension of the Presidential Rank Awards in 2013, ever increasing challenges to do more with less. But also, a series of punitive legislative proposals to penalize all senior executives, regardless of their performance and an atmosphere which inhibits risk-taking and innovation because failure is unacceptable and in which too many executives facing investigations have been treated as guilty until proven innocent.

SEA recommends some essential reforms for the SES. Outlined—they are outlined in our written statement. And we stand ready to work with the subcommittee in a comprehensive review of the system to ensure reforms that promote fairness, transparency, and efficient government management. The continued viability of the SES depends on such reform.

My second point has to do with the serious allegations regarding operations at the VA. And we fully appreciate Congressional concerns regarding those allegations. However, the focus on career leadership is wrong. The systemic issues at VA will remain, irrespective of changes in the personnel system. Because these are systemic issues, they are ones which political leadership has repeatedly failed to address. Political leadership, not career executives, call the shots, to use the vernacular. Tools exist to fire senior executives with ease, and it is total nonsense to suggest that they don't. If they are not being used, it is for one of two reasons: Either the executive isn't actually accountable, or political leadership isn't willing to use the tools.

To provide just one example, falsifying government records is a criminal act. If someone is believed to have falsified records, a case can and should be referred to the IG, and upon verification the case should be referred to the Department of Justice for prosecution.

Punishing all VA senior executives by banning performance awards, irrespective of performance, or creating at-will employment in the SES which could enable a new administration to clean out the Department and bring in ill-qualified candidates, will do more harm than good.

The best current executives will retire, excellent candidates will refrain from applying. And who will be left to provide the care and services which veterans need and deserve?

What has been proposed will create more harm than good. But what SEA is suggesting is not a quick or easy fix. But if we care about ensuring that taxpayers have the best career leadership corps necessary to provide quality programs and services, then the focus should be turned to needed reforms to the SES system and to holding political leadership accountable.

Mr. FARENTHOLD. Thank you very much, Ms. Bonosaro.

[Prepared statement of Ms. Bonosaro follows:]

the voice of career federal executives since 1980
77 K Street N.E., Suite 2600 • Washington, D.C. 20002 • (202) 971-3300 • Fax (202) 971-3317 • www.seniorexecs.org

TESTIMONY

of

CAROL A. BONOSARO

President

SENIOR EXECUTIVES ASSOCIATION

Before the

HOUSE SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE and the CENSUS

On the

"OVERSIGHT OF THE FEDERAL WORKFORCE: THE VIABILITY OF THE SENIOR EXECUTIVE SERVICE"

July 11, 2014

Chairman Farenthold, Ranking Member Lynch and Distinguished Members of the Subcommittee:

Thank you for the opportunity to testify before this Subcommittee on the career Senior Executive Service and, specifically, regarding the management of the system, including identifying and compensating Senior Executives.

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 effective government. In doing so, SEA has advocated for a strong SES system to ensure that the Federal government can attract and retain the best career leadership possible.

The Senior Executive Service is comprised of the approximately 7,000 men and women who are critical to a high performing government and are crucial 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 and a majority who hold advanced degrees, who 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 par with executives in Fortune 500 companies. Those Senior Executives that have received Presidential Distinguished Rank Awards exemplify the work of the career leadership corps, with the 46 award winners in 2012 saving the government an estimated $94 billion.

The Senior Executive Service was created by the Civil Service Reform Act (CSRA) of 1978 to change the General Schedule "super-grades" into a government-wide cadre of upper level managers to provide consistent leadership across administrations and to serve as a link between political appointees and the rest of the federal workforce. *The SES was crafted to provide 1) a careful balance of risk and reward (though that formula has eroded over the years) and 2) political leadership with greater ability to assign executives where they are most needed.*

The Bush Administration proposed amending the CSRA in 2003 to base all pay adjustments on performance and to eliminate locality pay; that change was enacted in 2004. Agencies have broad discretion over both pay adjustments and performance awards and can choose to deny both, even in the case of outstanding performance.

Along with a separate pay system, Senior Executives are also subject to fewer job protections under the law than their General Schedule counterparts – including the ability of agencies to remove them for performance with no effective appeal rights. Furthermore, they are subject to mandatory geographic reassignments (failure to accept can result in removal from Federal service). This provision is often used as a mechanism to push out Senior Executives and encourage their retirement, rather than being used as the private sector does, namely, as a means to ensure the right employees are in the right positions.

Senior Executives face long hours, heavy workloads, and are directly affected by the changeover in political appointees. It is difficult to be selected into the SES and the job is not for the faint of heart, especially in these challenging times of budget constraints and overwhelming scrutiny. Despite media assertions to the contrary, the overwhelming majority of Senior Executives are highly qualified individuals who have chosen a career in government service because they are dedicated to the missions of their agencies and to public service.

Instead of the punitive measures being considered by Congress, SEA does believe that there are areas for reform within the system that will create a more fair and transparent SES system that better serves both employees and the American taxpayer.

**Identification and Selection of the SES**

To gain entry into the SES, candidates must go through a rigorous selection process and demonstrate comprehensive executive qualifications, as well as substantive expertise in their fields. Although many groups have lately suggested that Senior Executives need to be general executives, able to function in any executive role, many agencies require a high degree of technical expertise in order to ensure that missions are met and resources and programs are managed appropriately.

*SES Hiring Process*

Discussions on reforming hiring have centered on the general hiring process as overly burdensome, opaque, and time consuming and a deterrent to the best applicants. While sharing some of the same problems, the system for filling SES spots is generally quite different from other systems.

Applicants must meet a set of Executive Core Qualifications (ECQs). Often the applicants outline their qualifications in a written submission, but recently OPM has encouraged the use of a resume based system which relies on agencies to ferret out the qualifications from the resume and structured interviews. When a selection is made, the candidate's information is then given to a Qualifications Review Board (QRB), run by the Office of Personnel Management, which reviews the information and determines whether the candidate is qualified. This rigorous process is necessary to ensure that the selection process is not politicized and that the most qualified candidates are chosen to become Senior Executives.

SEA understands that the complexities of the SES hiring process can be a deterrent to some applicants, especially those applying from outside government. The move to a "resume only" requirement for applicants appears designed to attract candidates from outside the government. SEA is primarily concerned that the resume only method not diminish the need for careful ascertainment that the applicant to the SES does actually possess executive capabilities. However, SEA would also like to share a note of caution that, while the push to bring in executives from the private sector should be part of a hiring equation, it is not always

appropriate for a private sector executive to be brought in at the SES level. Certain agencies and programs require technical and institutional knowledge and would be better served by identifying current federal employees with the necessary executive and technical qualifications.

One issue that has come to SEA's attention is the hiring of retired military officers to fill SES positions. Retired military officers have an advantage when compared to civil service candidates due to the leadership training provided by the services. In past practice, DoD Secretary Rumsfeld waived the six month waiting period before entrance to the civil service is allowed following retirement of the military. That, added to the ability of retired officers to now keep their full military annuities while receiving civilian pay, has made SES vacancies extremely attractive to them. While many of these retired military officers are highly qualified, SEA cautions that, given current trends, they could easily become the majority of an agency's SES corps and further inhibit qualified civilian applicants, as well as dilute civilian control of the department.

Perhaps of even more concern to SEA is the suggestion that agencies abolish their Qualifications Review Boards (QRBs). Critics claim that QRBs add more time to the hiring process and are a burden to applicant approval. SEA believes that QRBs are an integral part of the hiring process. During a QRB meeting, three Senior Executives assemble at OPM and study each candidate's case files in order to assure that candidates are well-qualified and are not chosen primarily for political reasons. Careful QRB consideration of SES selections is a very important part of the Civil Service Reform Act, designed to ensure that merit principles are followed. In the legislative history, numerous members of Congress voiced their concerns regarding possible politicization of the SES, and there were frequent references to "independent" QRBs administered by OPM as providing a counter check to such politicization. Furthermore, OPM has found that QRBs add at most two weeks to the hiring process.

Often the lengthiest part of the process stems from a delay by agencies in issuing the job announcement. Keeping overburdened personnel offices on top of managing paperwork and staying on top of the hiring process can also lead to delays, as can higher level sign-offs. Agencies can meet the shorter processing time if they are encouraged to make hiring a priority.

Putting aside the current problems related to attracting applicants to the SES, SEA believes that the SES hiring process generally fulfills its aim of selecting qualified SES applicants.

*Candidate Development Programs & Succession Planning*

Candidate Development Programs (CDPs) are the important first step in providing training to potential Senior Executives. CDPs are by no means uniform government-wide, and some agencies rarely conduct CDPs, making it difficult to groom aspiring candidates to the SES. Given the declining interest of GS-14s and GS-15s in joining the SES, it is imperative that agencies identify possible candidates, disseminate information regarding service in the SES, communicate CDP opportunities, and build a culture of opportunity for qualified candidates to enter and complete a CDP.

Many small agencies do not have the resources to run CDPs on a regular basis. And they are further disinclined to actively identify potential candidates by engaging in what could be viewed as "pre-selection." However, if agencies do not take an active role in building the candidate pipeline and ensuring funding for CDPs, qualified candidates will not necessarily be inclined to enter a CDP.

Should an aspiring candidate complete a CDP, problems remain. Some agencies conduct programs that place all of their graduates in SES positions, while other programs leave many of their graduates without prospects for receiving an SES appointment. *More effort needs to be channeled into selecting the right candidates for the programs, assessing CDPs to understand why graduates are not being placed within the SES if they are well-qualified and looking to CDP graduates when SES vacancies occur.* SEA supports legislation or regulation to encourage agencies to consider already certified candidates (those GS employees who have successfully completed a CDP, but have not yet been selected for a position) before sending more employees into a CDP. Doing so would constitute a cost-conscious process that allows the government to capitalize on the investments it has made in its promising GS-14 and 15 employees.

*In addition, SEA encourages this committee to take up legislation to establish an onboarding program- focusing on agency mission, individual and organizational performance objectives, and other criteria- for newly appointed career and non-career Senior Executives.* The first year in the SES is a probationary year, and greater effort needs to be made to help new executives to succeed.

*Agencies also need to prioritize succession planning.* Having such plans in place will allow agencies to identify needed positions before they become vacant, allowing them time to broadcast vacancies and identify qualified candidates, thereby speeding up the hiring process.

To facilitate bringing aboard well qualified candidates and furthering succession planning, agencies should be encouraged to hire SES candidates without regard to an existing vacancy. This is often done in private industry, and agencies can request temporary SES allocations from OPM to further this process.

*Reforming Executive Resources Boards*

Although ERBs are often thought of in context of initial hires, SEA believes their role can and should be more expansive. SEA has received disturbing accounts of reorganization actions affecting Senior Executives being taken by agencies without input or oversight by an ERB.

In examining existing OPM regulations and the statute governing ERBs, it appears that OPM regulations have addressed only the scope of an ERB's role in merit staffing as it relates to initial appointments to the SES. (5 C.F.R. §317.501) However, the statute appears to give ERBs oversight responsibility of the entire merit staffing process, which we believe includes

reassignments and determining which positions are designated as SES. It is reasonable to infer that Congress used the term "staffing" as it is generally accepted for all areas in Human Resources functions that fall under hiring, transfers, or reassignments as they relate to either competitive or non-competitive processes. Essentially, "staffing" is that process that determines which person should go to a particular job. Merit staffing is, in our view, the process by which a particular executive is placed into an executive position by application of merit system principles. Our information is that some ERBs operate under this broader charter.

Since 2010, SEA has encouraged OPM to address the ERB role in regulation, and barring that, has pushed for statutory reform. Specifically, SEA recommends that OPM encourage ERBs to be run in a business-like manner, including using an agenda, keeping minutes and making bylaws publicly available. Further, ERBs should have oversight responsibilities to review all SES positions to ensure they are SES level, to exercise oversight over reassignments to ensure they have a business-purpose, and to utilize their authority to make recommendations concerning major reorganizations of the SES.

Given the complex nature of the SES system, and the ability of agencies to make staffing decisions with minimal oversight, SEA believes that firmer guidance regarding the scope of ERBs, through OPM regulations or statute, is necessary to ensure that staffing decisions are made in a manner that is transparent and fair and helps an agency more effectively meet its goals.

**Recruitment & Retention Challenges**

One barrier to identifying and hiring the next generation of Senior Executives is the SES system itself. Since completing a survey in 2009 of GS-14 and GS-15 employees regarding their views of the attractors and detractors to serving in SES and SP positions, SEA has been extremely concerned that the SES is increasingly becoming less attractive to qualified GS employees.

Responses to the survey ("Taking the Helm,"www.seniorexecs.org) confirmed that there is a brewing recruitment problem. GS-14s and GS-15s are losing interest in joining the SES and the attractors of the system (e.g. the chance to contribute to the agency's mission, increased responsibility, and greater opportunity for innovation) are outweighed by the detractors (e.g. skewed work-life balance, increased job risks, lack of assured pay, and the possibility of geographic reassignment).

In the years since the survey, the detractors to serving in the SES have increased dramatically. Pay compression and overlap has grown, with on average 25 percent of GS-15s making more than their SES supervisors, even as the ability of Senior Executives to receive fair consideration for pay adjustments and performance awards has declined. SEA has also been made aware that some major agencies have appointed GS-15s to SES positions, or offered them SES positions, without increasing their pay from their previous position.

A related disincentive is that potential candidates to the SES know that the SES system may entail mobility, yet *agencies are increasingly declining to pay relocation expenses when career executives have the opportunity to apply for a position in a different geographic area*; in fact, SEA has received reports of instances where agencies have encouraged executives to apply for such positions rather than exercise their right to transfer them – thus avoiding the need to pay relocation expenses. Unfortunately agencies are viewing mobility and relocation as budgetary and procurement functions rather than a key human capital element designed to encourage recruitment and retention of a high caliber workforce.

Compounding the detractors at the SES level is a related, emerging trend – the lack of succession planning and reduced bench strength. There is a growing reality that many agencies, due mostly to budgetary and workload pressures, have not done a particularly good job of succession planning or otherwise preparing the next generation of replacements for key career SES executives who are becoming retirement eligible. For example, the number of formal agency SES Candidate Development Programs (CDPs) is declining due to current budgetary constraints and increasingly restricted replacement hiring into SES positions.

Other leadership training, executive coaching and mentoring programs that otherwise would contribute to increased succession readiness are also being cut for the same reasons. In addition, training and executive development provided to employees already in SES positions is also being cut, making it more difficult for current executives to meet emerging technical and managerial challenges or to take on broader responsibilities.

On the other side of the coin are retention challenges as nearly two thirds of the current SES corps is eligible to retire within the next five years. Already the retirement rate among the SES has increased from 5.7% in FY 2009 to 8.0% in FY 2013 – a 40% increase. The challenges listed at the beginning of this testimony will only serve to accelerate retirements among the current SES corps. This turnover of executive leadership is costly for agencies as it results in brain drain and loss of institutional capability at a time when government most needs career executive leadership, expertise, and commitment.

One of the drivers leading to turnover has been sequestration. Due to budgetary pressures, many agencies are choosing not to backfill key executive positions when vacancies occur. This often results in managerial work being shifted from the vacant position to a filled SES position in a related program area. The added workload and managerial pressures can result in insufficient attention being paid to key programmatic and organizational activities – and also increased executive stress, overload, and burn-out – all of which further contribute to costly and ill-timed turnover as well as increased risk in program management and oversight.

*While the issue of budget cuts and sequestration is not likely to be addressed in the near term, SEA calls on Congress to focus on the positive incentives that will reverse current recruitment and retention trends. For current Senior Executives, addressing fairness in performance management and righting the skewed risk to reward ratio would be a good first step.*

Another driver leading to executive turnover has been the increasingly negative rhetoric about Senior Executives and the lack of public support and recognition from the Administration and Congress of the achievements of the career leadership. Recognition of key achievements is one of the most treasured rewards for federal career executives. Recent actions by the Administration culminating with the cancellation of Presidential Rank Awards for FY 2013 have raised concerns about the Administration's willingness and commitment to recognize the significant contributions of career Senior Executives.

Even prior to this "penny-wise and pound foolish" approach, the White House had delayed the review and selection process for the FY 2012 SES Rank Award winners (including those from the Intelligence and Foreign Service communities) to a point where awardees began to wonder whether their achievements were truly valued. Since the outset of the Obama Administration, the number of Distinguished Rank Award winners has dropped each year from 75 in FY 2009 to 46 for FY 2012 (39% drop). Even more drastically, the number of Meritorious Rank Award winners has dropped from 269 in FY 2009 to 78 in FY 2012 (65% drop). Further, OPM currently does not publish the names of the awardees (SEA does) and agencies have been under instructions to do nothing to identify them publicly. *This is in sharp contrast to previous Administrations; prior recognition included President Reagan presenting the awards personally and OPM publishing booklets highlighting Rank Award winners.*

The perception created by the lack of recognition and the lack of action to address many of the detractors of the SES system have exacerbated the trend of increased executive turnover.

**SES Pay and Performance Management**

Along with hiring and selection of qualified candidates into the SES, another important aspect of the system is the performance management and compensation of career Senior Executives. As the Subcommittee is well-aware, this system has come under much Congressional scrutiny over the past few months. *Although SEA has long called for reforms to the current pay and performance management system, SEA does caution against the quick, "scandal" driven solutions currently being considered.*

The current SES pay and performance management system is the main alternate pay system covering senior level employees. It was created by statute in 2003 and implemented in 2004. There has now been sufficient time and experience to examine how well the system works. SEA believes the system needs to be modified to ensure that quality applicants will aspire to the SES and those already in the SES will want to stay. The large number (upwards of 50 percent at some agencies) of Senior Executives eligible to retire makes a review of the SES system even more imperative.

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 facing the SES. SEA has become aware of a perception among an increasing number of federal managers that the SES is not a desirable career goal. This is due in large part to the skewed risk

and reward ratio that Senior Executives face. Senior Executives take on more duties and work longer hours, yet are not eligible for locality pay or annual comparability pay raises, all of which are a part of the compensation system for General Schedule (GS) employees, along with compensatory time.

While there are many 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. While pay was not selected as a major detractor in our 2009 survey, pay was frequently mentioned in the over 3500 written comments submitted by respondents. The point was that the increased responsibility, lack of work/life balance, and possibility of geographic relocation was not worth the potential small increase in pay.

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.

In the SES, all pay adjustments are based on performance, and performance awards were included in the 1978 legislation establishing the corps, as well as Presidential Rank Awards. Along with the current rhetoric surrounding federal pay, less than satisfactory agency administration of the SES pay system and the Administration's reduction in the pool available for performance awards is degrading the pay for performance concept. Yet performance awards are an essential part of SES compensation and they are made on the basis of 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.

Moreover, there has been pressure on agencies to limit performance awards as well. In FY 2011 the Administration reduced the percentage of SES compensation available in agency performance award pay out pools from a statutory maximum of 10% of aggregate salary to a maximum of 5% - a 50% reduction in available pay for performance funding. This guidance has been repeated for FY 2012 and FY 2013. Some agencies (DoD most noteworthy) have further reduced the amount in SES performance awards pools to as little as 1%, resulting in drastic reductions in the number and amounts of awards granted – to the point where many SES executives rated as "Outstanding" are not receiving awards.

Along with efforts by the Administration to suppress performance awards, Congress has also passed or considered bills to limit or ban performance awards. OPM regulations governing SES performance management require making meaningful distinctions in rating and paying SES employees based on performance' the focus is on measurable results. Moreover, cancelling

performance awards may have the effect of putting in jeopardy OPM certification of agencies' SES performance management systems – which would further weaken pay for performance.

Given this situation, SEA conducted a survey of its members in February 2014 to determine attitudes about the pay and performance management system and to identify how it is being implemented. (The full report on the survey can be found at www.seniorexecs.org). The survey results paint a troubling picture of a broken performance management system, including eroding morale due to a deteriorating pay for performance system and lack of respect for the SES, as well as a performance appraisal process seen as slow, burdensome, and not transparent. In fact, a majority (51%) of survey respondents rated overall morale among Senior Executives and Senior Professionals at their agencies as "low or very low."

Underpinning any pay for performance system is the concept that excellent performance is recognized and rewarded. Currently, there is no guarantee that an outstanding rating will result in either a pay adjustment or performance award. When the main tenet of pay for performance is broken, the system becomes a disincentive to motivating and engaging employees. That is especially true of bills which have been introduced to withhold performance awards from all Senior Executives in an agency or department, no matter how well they have performed.

*On top of the pay issue, the survey highlights areas that SEA has long raised of fairness and transparency in ratings.* According to the survey, one quarter of respondents had not received an FY 2013 performance rating several months into the next performance cycle. Other respondents reported a lack of performance plans (by which individual goals are set and by which SES performance is measured) although the new performance cycle had already begun. Still other respondents commented on the lack of information and transparency by agencies, actions by OPM and OMB on funding awards, timing of ratings and final decisions, and a lack of accountability by the political appointees overseeing the process to ensure timeliness, fairness and accuracy. As is true at all levels of the federal workforce, fair and effective performance systems directly and positively impact both organizational and individual accomplishment.

For the past several years, SEA has sounded the alarm that the risk to reward ratio originally expressed in the statute creating the SES is becoming increasingly skewed. The premise of the SES system is that Senior Executives face greater risk (including no effective job protections and the possibility of geographic reassignment) for greater rewards (including performance awards and, for a very few, a Presidential Rank Award). Given the erosion of the pay for performance system, the risk remains but the reward is fading. The system has many disincentives for current Senior Executives and those in the pipeline. SEA is not advocating for "Wall Street bonuses" – which is a total misnomer for SES performance awards and Rank Awards - and the reality is that Senior Executives serve in the government due to a dedication to the missions of their agencies and the ability to serve the public – not for high levels of pay.

<u>What SEA urges is for Congress and the Administration to restore the concept underpinning pay for performance, and encourage agencies to provide performance awards to high performers; this would put some measure of stability back in the system. This could be further</u>

accomplished by restoring locality pay to the SES and providing an annual adjustment to Senior Executives rated fully successful or higher. Such an adjustment would be tied to the average annual pay increase of the General Schedule in order to ease pay overlap. Furthermore, each new Senior Executive, who has come from a General Schedule or equivalent position, should receive a salary adjustment that is at least 5% greater than the salary he or she made as a GS employee directly before joining the SES.

SEA also believes that OPM needs to continue to promote a unified performance appraisal system that it rolled out in 2012 and to ensure that agencies implement the process with timely ratings and performance plans and transparency in decision-making. To facilitate this work, SEA encourages Congress to codify the SES Performance Management Office at OPM.

**Overview of Key Challenges Facing the Career SES**

Along with the challenges and reforms noted above, SEA believes that the career SES, along with the federal workforce as a whole, is at a crossroads; without sustained attention and thoughtful reform, the best candidates will be deterred from entering government and current qualified employees will be driven out. This will result in a government that does not meet its mission or the needs of the American public.

Federal career executives are currently facing unprecedented challenges as they attempt to effectively administer large scale government programs under exceedingly constrained and uncertain financial circumstances. Added to these fiscal realities are growing weariness, circumspection, caution and fear that the difficult decisions they are tasked with making could be subject to second guessing and retribution by Members of Congress. Further, there is a growing sense among career executives that Administration political appointees are underutilizing their talents, undervaluing their contributions, questioning their expertise and judgment, and not being fully supportive during these difficult times.

It is no secret that federal employees are being debased on many fronts – in the media, in Congress, and perhaps most importantly, in the public eye. Several so-called "scandals" have surfaced and the entire federal workforce (and in particular the SES corps) is bearing the brunt of poor judgment and damaging actions committed by a few. Regrettably, there has been limited visible support emanating from the Administration or Congress in defense of federal workers, especially Senior Executives, despite their selfless service and noteworthy accomplishments.

The cumulative effect of these circumstances, coupled with the deterioration of their pay for performance system, is becoming apparent. With increasing frequency many career senior executives are concerned about making the right decisions and taking risks as opposed to making "safe decisions;" that is, they sometimes see the right decisions or risk taking as being potentially career-damaging or career-ending in the current climate. Unfortunately, avoiding the more difficult and critical issues (and the tough decisions associated with them) diminishes opportunities for breakthroughs in technological innovation and productivity, increased cost

savings and efficiencies, process and program enhancements, and improved resources utilization. Moreover, *avoiding risk and choosing safe vs. right decisions ultimately does a disservice to the American public who, as taxpayers, deserve our government's best –as opposed to just "good enough."*

The loss of key staff due to retirements and resignations and eroding employee morale have also added to pressures on career executives who continue to work tirelessly to manage mission essential programs across the government. On top of these challenges, career executives have increasingly been subjected to Inspector General and congressionally-mandated investigations into the propriety of their management actions and decisions – to the point where many feel they are being treated as "guilty until proven innocent."

*Congressional oversight is a critical aspect of effective government, yet when such oversight and accompanying legislative action is taken to the point of micromanagement and punitive legislation, effective government becomes a difficult if not impossible goal to accomplish.*

In the midst of these challenges, executives have witnessed a series of recent events and decisions by the current Administration and Congress that have shaken their faith in the fairness and intent of the government's policies and practices impacting their pay, recognition and employment security. *With greater frequency, high performing Senior Executives themselves are choosing to retire or seek employment in the private sector rather than continue in a system they believe does not support or reward their efforts – and in some cases seems to denigrate their value as critical front-line leaders of the most important and impactful federal programs that affect all Americans. As time passes, the situation is getting worse and not better.*

Nowhere is this situation more apparent than at the Department of Veterans Affairs (VA). SEA continues to be concerned that legislation to fire Senior Executives with no due process and to ban or rescind performance awards will make the situation worse, not better, and will result in an agency that is less able to provide the services that veterans deserve.

Rather than restating arguments that SEA has made over the past few months as events at the VA have unfolded, I have included at the end of this testimony a recent letter to the House Veterans' Affairs Committee regarding the SES pay and performance management system at the VA.

**Conclusion**

As the Subcommittee considers the state of the career Senior Executive Service, the challenges outlined above highlight the critical need for reform in order to ensure a strong executive corps that can continue to focus on innovation and efficient government operations. At a time when the President has issued a management agenda with an emphasis on employee engagement, the current state of the SES system is a barrier to achieving that goal. Despite the negative rhetoric emanating from some in Congress and the media, the vast majority of Senior

Executives are committed, highly qualified and experienced professionals whose leadership is integral to the effective functioning of government. An engaged and fully utilized career senior leadership corps is essential to any high-performing company. If a private company treated its Senior Executives the way federal career Senior Executives are treated (or frankly, the way the federal workforce as a whole has been treated), the company would fail.

SEA urges Congress to work with stakeholders and focus on reforming the SES to right the risk to reward ratio. As SEA's report on the member survey concludes: *"The beneficiaries of a properly balanced system are not only executives themselves, but government as a whole that benefits from their innovation, creativity and dedicated service to the nation. Unfortunately, this balance has eroded to a point where low morale, growing turnover, and increasingly dysfunctional human resources policies and practices are jeopardizing the administration of important agency programs and national goals."*

Thank you for your attention to these critical issues. SEA stands ready to work with you on addressing these issues and identifying fair, meaningful reforms.

Mr. FARENTHOLD. And I will begin with the first round of questions.

Mr. Retherford, you testified that the bonus structure was actually, you know, part of the compensation package, I believe—I don't remember your exact words. But you said it is used as consideration of the part of overall compensation package. When that's the case, then, is there—doesn't that create a reluctance to not award the bonuses when, in fact, it hasn't been earned, or there hasn't been exceptional performance?

Mr. RETHERFORD. Chairman, not necessarily so. The performance plans are evaluated through a various—the four levels I mentioned, the rate, review, official review committees, and the board. And recommendations go to the Secretary.

We make distinctions in evaluation. Our highest level, the "outstanding" rating, we only had 21 percent this year. And I think at the next level, we had—I don't have the exact numbers. But government-wide, the "outstanding" rating is much higher than that. But the awards, performance awards are only given to the highest performers who clearly exceed their performance objectives and their performance plan.

Mr. FARENTHOLD. Now, you talked about rolling out a system of automated metrics for determining bonuses. My concern with that is in the recent scandal that we have seen with the VA, it was like that system was being gamed. Rather than entering appointment requests into the computer system, you saw pressure on folks at the VA to keep separate paper lists.

So the automated metrics system then wouldn't have caught those delays. What actions are being taken to ensure the system—other automated metrics aren't being gamed in the same fashion?

Mr. RETHERFORD. Thank you, Mr. Chairman. The information technology system I referred to will automate all the SES performance plans across the VA. We have over 501 senior executives. Right now it is all paper. This was the first year we required performance plans to be put into an automated system. Therefore, we can look and see what the performance objectives are. We can review all the performance plans at the essential level. Not only that, we can make sure they are all done within the first 30 days of the rating period. We can make sure counselings are done. And will have an audit trail of documents of mid-year assessments and identification of shortcomings. Prior to that, we had no ability at an organization as large as the VA

Mr. FARENTHOLD. Mr. Retherford, I don't mean to sound like I'm picking on you, but one of my big concerns is the VA. We have a responsibility to keep the promises we have made to our veterans. So I am a little bit worried.

And then the committee has learned that in 20—fiscal year 2011 and 2013, 339 SES employees at the VA charged an average of 90 days' administrative leaves for various reasons, as compared to a government-wide average of 4 days per SES employee during the same time period for various reasons.

Would you explain the reasons behind the VA high average use of administrative leave by SES?

Mr. RETHERFORD. Mr. Chairman, I don't have the information on that. I would like to take that for the record.

Mr. FARENTHOLD. Would you please get back to us on this?

Mr. RETHERFORD. I will.

Mr. FARENTHOLD. Can you tell us what some of the reasons or activities SES employees are allowed to use administrative leave?

Mr. RETHERFORD. Administrative leave is used for a variety of reasons. In the current system, we can't tell exactly what the reasons are. But they are for investigations; a person will be put on administrative leave when they can't perform duties in the VA where it is just too inconvenient or present a bad——

Mr. FARENTHOLD. I'm quickly running out of time and I do have some questions about the SES overall.

So, Mr. Shih, what, if any, impediments are there to terminating poorly performing SES employees across the Federal Government and within the VA?

Mr. SHIH. Thank you, Mr. Chairman. I appreciate the question.

The current system, the SES statute and regulations by OPM provide tools for agencies to quickly address poor performance by Senior Executive Service members and also misconduct and all other types of wrongdoing.

With respect to performance, I'd like to make a couple of quick points. It is very important for agencies to pay close attention to performance during the first year, which is a probationary period of SES's initial appointment to the SES, because there are great flexibilities here for agencies to be able to immediately remove poorly performing probationary SESers from the Senior Executive Service.

Following the probationary period, there are strong flexibilities. Agencies can reduce pay, based upon poor performance. One unsatisfactory performance rating requires an agency to reassign, transfer, or remove the senior executive from the SES. All that's required is a written notification 30 days before the effective date. There is no right of an MSPB appeal. There is the availability of an informal hearing before the MSPB within 15 days, but that informal hearing is not binding and it doesn't hold up the effective action.

Two unsatisfactory ratings in a period of 5 consecutive years requires to the agency to remove the senior executive member. Same notification, same appeal rights, which is only an informal hearing before of the MSPB.

And then two, less than "fully successful" ratings in a period of any 3 consecutive years requires the agency also to remove the SESer.

Then on the conduct side, again, there are stronger flexibilities for an agency to deal with probationary SESer. And so my recommendation is, again, for agencies to have very strong scrutiny of their senior executives' performance and conduct during that probationary period.

Following the conclusion of the probationary period, for any reasons related to misconduct, neglect of duty, malfeasance, or other reasons, agencies can take a number of actions, including reduction in pay, removal from Federal service, or suspension greater than 14 days.

What's required is 30 days' advanced written notice, a few other procedural rights, 7 days for the senior executive to respond, and then that executive does have the right to file an MSPB appeal.

Mr. FARENTHOLD. All right. I am out of time. I will follow up on that if we get around to a second round of questions.

Mr. Lynch, we will recognize for you your questions.

Mr. LYNCH. Thank you, Mr. Chairman.

Again, thank you for being here.

I think we are all familiar with the problems at the VA regarding the treatment delays for our veterans. And also, falsified wait times that were used to determine awards and also salary increases.

I also understand that the inspector general and the VA have not completed their investigations and audits in order to determine the employees who were responsible for these unacceptable practices.

But I do think it makes sense to go after those who need to be held accountable, who made these decisions. And I want to find out from our discussion whether the VA has the tools to do what they need to do, whether they need additional authorization from Congress to hold people accountable.

At a very basic level, these veterans have earned, earned this right to excellent health care. They have served. We have an obligation now to step up and meet our obligation to make sure that these veterans and their families are cared for. It is a very, very high bar. This is a—when you think about the way our military works, we're asking people to put their lives aside, to put on that uniform, to serve our country. And so that's a very deep and abiding obligation that they have taken here. And what we are promising, what this Nation has promised is that we will meet that obligation and we will honor that service. And one part of how we honor that service to those veterans is to provide decent health care. And in this case, we have dropped the ball. We have failed in our obligation as a nation. And that's serious, that is dead serious. And so we need to—we need to take a good hard look at this.

Mr. Retherford and Mr. Shih, does the VA currently have the authority to rescind or claw back the performance awards that have been rendered to senior executives who may be culpable in this case?

Mr. RETHERFORD. Congressman Lynch, currently we do not have the authority to go back and rescind an award. The performance plan, once done, is final.

Mr. LYNCH. Okay. So what are the parameters and—what's the timetable that—well. You're saying you have no recourse currently?

Mr. RETHERFORD. That's correct, sir.

Mr. LYNCH. Okay. So we need to pass legislation.

Mr. RETHERFORD. Sir, if legislation was there, the VA would use all authorities to enforce accountability.

Mr. LYNCH. Okay. Would—I'm going to ask you, would each of you be supportive of legislation that would allow the VA to downgrade the performance evaluations and rescind the bonus awards for those who were found to be culpable in either falsifying or, you know, perpetrating this fraud upon our veterans and their families?

Mr. RETHERFORD. Congressman Lynch, we would use all authorities granted.

Mr. LYNCH. But would you support the legislation? That's what I'm asking.

Mr. RETHERFORD. The legislation to allow us to go back and change ratings once we find—once investigations are completed and we found that there was wrongdoing?

Mr. LYNCH. Yes.

Mr. RETHERFORD. We have indicated that, yes, sir, we would use all authorities.

Mr. LYNCH. Because I intend to introduce legislation in the House here that would revoke the bonuses paid to VA employees in the manipulation—that were culpable in the manipulation of appointment wait times but also ensure that the performance of these employees are downgraded accordingly.

You know, we're going to have to recognize the due process rights. As I said, you know, in my own inspection, going to the VA hospitals in my district, talking to the patients, talking to the families, meeting with the administrators, we found a very high level of performance. So I am interested in focusing like a laser on those individuals who were culpable in this case. And getting back those—those bonuses. And also—and also putting that out as a marker to those in the future who might think about manipulating the process in a way that harms our veterans.

So I appreciate the witnesses' testimony. And look forward to working with you.

Mr. FARENTHOLD. And if you will give me a copy of that legislation, I would like to read it and possibly sign on as a cosponsor. I agree with the principles there a hundred percent.

Mr. Walberg, you are now recognized for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And thanks to the witnesses for being here today.

Mr. Retherford, how many SES employees have been removed from their positions this year?

Mr. RETHERFORD. I am not aware of the number this year. I do have the number for last year.

Mr. WALBERG. What about the past 5 years?

Mr. RETHERFORD. Past 5 years, I don't have. I will take that for the record.

Last year, we removed six employees, six executive employees.

Mr. WALBERG. Six executives. Okay.

Records that I have here for fiscal years 2010, 2013 indicate that all 470 VA senior executives received performance ratings of "fully successful" or higher. In fiscal year 2010, 76 percent of the VA SES received bonuses averaging $15,000. In fiscal year 2011, 74 percent of the VA SES received bonuses averaging $11,500. In fiscal year 2012, 54 percent of the VA SES received bonuses of $12,000. In fiscal year 2013, 78 percent of VA senior managers had performance ratings that exceeds "fully successful" or "outstanding." And more than 2.8 million was paid out in bonuses to executives.

Is it likely and realistic that all 470 senior executives would receive the same "fully satisfactory" rating today?

Mr. RETHERFORD. It is not. The data do not tell the whole story. The VA is at fault for not completing many of the performance

evaluations once we remove an executive. For example, the six we removed last year, we should have rendered performance appraisal on them. They had 90 days at the job.

The administration, after the action to remove, whether it was performance or misconduct, was not completed, not reflected. We find that is the case in many of the years that we looked at.

The administration never caught up, the unsatisfactory performance was never captured, and therefore——

Mr. WALBERG. And again, the main reason for not capturing that, catching up with the problem?

Mr. RETHERFORD. Failure to adhere to our policies and process. The information technology will help us a long way in monitoring this type of administrative details.

Mr. WALBERG. Did the bonus system help lead to this problem?

Mr. RETHERFORD. I don't think the performance award system led to this problem. The performance awards in 2013 were greatly reduced down to an average of about 9,000 to about 5.5 percent of base salary. So it has been coming down.

Mr. WALBERG. You testified that the absence of ratings in these two lowest categories is not uncommon for most agencies. Adding that in all of the Federal Government, there were only 12 senior executives rated "minimally satisfactory" and three rated "unsatisfactory" in fiscal year 2012. Do you really believe that almost 100 percent of career senior executives were successful in their jobs?

Mr. RETHERFORD. I do not. And I don't believe the data tell the whole story. Like I said, reports were not rendered after actions were taken. And, additionally, poor-performing senior executives tend to depart and resign and leave before appraisals are submitted. But it is a matter of administration. You still have to complete the performance plan.

Mr. WALBERG. And clean up with what is left behind.

Mr. RETHERFORD. Absolutely. Absolutely. That has not been done.

Mr. WALBERG. We have certainly seen that with the VA and the IRS. We could talk about that all day here as well. The supervision that went on that allowed destruction of emails and the like, a real problem.

Let me ask a general question for all of you, if you'd care to answer. What, if any, impediments are there to terminating poorly performing SES employees across the Federal Government and at the VA? And I'm open to answers from anyone.

Mr. RETHERFORD. I think we have all the authorities to do our job and hold folks accountable, executives accountable. The hardest part is performance management, and evaluation is subjective. It's hard. You have to document. You have to know what you're doing to be defensible in the due process steps that follow. So you have to have a good system. You have good objectives aligned to the executive. You have to track them, you have to counsel, you have to document. Because at the end, you have to defend your decision. I think that's the hard part. Executives knowing how to confront poor performance.

Mr. WALBERG. Ms. Bonosaro?

Ms. BONOSARO. I would argue that I think what Mr. Retherford has suggested would be what would be fair; in other words, to

make perfectly clear the executive, here is what we expect from you, we're going to hold you to it. The trick is to be certain you have a good enough system that really is—enables to you evaluate that.

But the fact of the matter is that the agency, the Department does not have to put on a major defense if they decide to fire a senior executive. And that's a matter of spine. It is called take the action when it's appropriate. Because that executive has no effective appeal right if they are fired for poor performance. They can go to the MSPB. And if the MSPB agrees with them that their firing was inappropriate, it's only a recommendation to the agency. And which the agency or department can ignore. So it's not as though there is a major bureaucratic effort that one has to go through. And it is quite true that many executives who have not done well, in fact, will retire or get the message and move on out.

Mr. WALBERG. Thank you. My time has expired. Yield back.

Mr. FARENTHOLD. Thank you very much. And I've got just a couple more questions, and we'll give Mr. Lynch an opportunity to ask any questions that he may still have.

So Mr. Shih, it's my understanding that a senior executive removed for performance can retain his or her SES pay if placed in a position with lower pay, such as a GS–15.

Can you help me understand why we would allow executives removed from their position for performance to retain their pay if placed in a new position?

Mr. SHIH. Chairman, thank you very much for your thoughtful question. It is a question that I believe is open to discussion.

The point that I would have emphasize is the SES statute, all of its purposes are intended to foster, support, and enable the recruitment and retention of top executive talent into the Federal Government. The purpose of the statute is to provide conditions of employment, including compensation and civil service protections that would make the Federal Government an attractive employer and make the Federal Government an attractive place to work.

And so all of these provisions that we have been discussing today relating to performance, relating to compensation, relating to due process and also protections such as the fall-back position and safe pay are intended again to foster an environment where we can recruit the top talent.

Mr. FARENTHOLD. Do you think that one of the unintended consequences of that is you create a situation where if you can check all the boxes, you're fine, and you can hang on to your job, and there's no real incentive to innovate and for excellence. I mean, you look at your system for rating employees. You'd expect there to be a bell curve with, you know, satisfactory and slightly above satisfactory being the high point in the bell curve. But we see practically no folks getting unacceptable reviews. And a very high percentage at the very top.

Mr. SHIH. Thank you, Chairman. I believe that with respect to any type of personnel system, including a performance appraisal system, the effectiveness of that system depends greatly on the implementation of that system. And so some of the proposals that have been discussed in terms of providing new tools and new flexibilities and more control for agencies to be able to address situa-

tions, I think the answer still is going to remain the same, which is that the success of any of those new tools or new systems is going to depend on the implementation.

The other point I'd like to add to that very briefly is that following up on Representative—Ranking Member Lynch's comments regarding actions that employers can take to deal with poor performance, I'd also like to remind the subcommittee that agencies have the authority to address some of these issues after the fact, not only through performance, but also through conduct, malfeasance, neglect of duty, and even law enforcement proceedings.

Mr. FARENTHOLD. Great. And let me visit with you for a second, Ms. Bonosera; I didn't mean to ignore you throughout this whole hearing.

In the past you've—and in some of your testimony, you've expressed concerns that several so-called scandals have surfaced. As a result, the SES is bearing the brunt of poor judgment and the damaging actions of a few.

My frustration is that it seems with each oversight hearing that we have and each oversight review and each ID report, we see an example of poor performance and misconduct.

Yesterday, the Commerce Department inspector general found that high ranking executive in the U.S. Patent and Trademark Office improperly used her position to ensure the hiring of the live-in boyfriend of an immediate family member. The IG investigated after receiving a whistleblower complaint and found not only did the executive exert undue influence in the hiring process, but the applicant was not among the most qualified candidates, as determined by the PTO hiring officials.

In fact, to the applicant was twice rejected. The executive then interviewed and created an additional position specifically for the applicant.

That intervention doesn't seem proper to me.

The senior executive threatened to the sue the inspector general for making the report publicly available.

It is these examples that have damaged and shaken the faith that Congress has in the leadership.

What is the SES doing to tighten up its ranks? And do you think this is acceptable behavior?

Ms. BONOSERA. Of course that's not acceptable behavior, and it should be dealt with appropriately.

You know, I think that's the really sad part of this. We've got so many executives that are doing a phenomenal job. And then we have some who have behaved egregiously. And when they do, they should be dealt with, up to and including, where it is appropriate, criminal prosecution. Because I go back to the point, if senior executives are found to have ordered or falsified records, government records, that includes their own results for performance reviews, for waiting time, whatever, that is a criminal act. And all we need to do is refer it for prosecution when it has been found to have been determined——

Mr. FARENTHOLD. But you don't have to suggest that for us to terminate an executive it has to rise to the level of criminal offense. There have got to be other——

Ms. BONOSERA. No. But the point is that those are criminal acts. And I think a few instances of prosecution, where it is found that that has been done, will send the message pretty clearly. I mean, we are talking about making the entire Senior Executive Service at will, with all of the tremendous dangers that that poses, instead of dealing with specific cases that very much deserve to be dealt with.

Mr. FARENTHOLD. Do you think the system is perfect as it is?

Ms. BONOSERA. No.

Mr. FARENTHOLD. Or do you come up with some tweaks?

Ms. BONOSARO. Absolutely not. I mean, we've got—apart from what you do vis-a-vis the SES itself, for example, we think you need far more training and a straightforward handbook for managers on dealing with poor performance and problem employees. We think agencies have to limit their use of administrative leave to ensure it is used appropriately. We are well aware of cases that have dragged on, people are put on administrative leave for months and months and months. We're also aware of agencies that are ignoring IG recommendations, which are appropriate and based upon their investigation. So there are a lot of issues here that are contributing to this situation.

Mr. FARENTHOLD. Thanks so much. I am way over on my time. We are about to run up on votes. I do want to give Mr. Lynch and Mr. Walberg, if they have additional questions, an opportunity.

Mr. LYNCH. Mr. Retherford, under the standards that are in place right now, you can remove somebody for malfeasance; right?

Mr. RETHERFORD. For misconduct—yes. Yes. You can.

Mr. LYNCH. Why can't we do that? Why can't we, you know, go after these employees? I mean, would part of that—would part of that—look, if an employee conceals that they're—that they're manipulating the wait times and hurting our veterans, that would seem to qualify as malfeasance and misconduct. We can fire them.

Are you saying that even if we fire them, having done that, and concealed that from their evaluators, we can't take back the bonus? Is that what you're saying?

Mr. RETHERFORD. We don't have the authority—we don't have the authority, Congressman Lynch to do that right now.

Mr. LYNCH. All right. Thank you, that is good to know.

Ms. Bonosera, thank you for your help this morning.

Some of my colleagues are suggesting that we apply an at-will standard for all employees across the SES. The problem I have with that is the last time we tried that, every time the administration changed, a new president would come in. If he was a Democrat, he would fire all the Republicans and put all Democrats in. And if the Republican President got elected, he would fire all the Democrats and put all Republicans in. So—and it really—it stopped the government from working even closely to what we would expect.

I don't want to go back to that point. I don't want to go back to that point. And I don't think applying an at-will standard, you know, so that you serve at the will of your boss, you know, the President of the United States, and they can kick whoever they want, whether they are doing a good job or not, I don't think that's

the way we should go. But I'd like to hear your thoughts on this idea that we go to and at-will standard across the board.

Ms. BONOSERA. Well, we're terribly worried about it. We know already that there are a good number of very talented, able GS–14s and 15s who would make terrific SES candidates who aren't interested. They look at this situation, they look at the broken pay system, pay for performance, they look at the pressure on these senior executives, they look at the current atmosphere of guilty till proven innocent, they look at having to deal with political appointees, be on call 24/7. Say, you know what? I don't need that. I'm very happy where I am.

So we are terribly concerned about the next generation.

I think if we go to at-will employment, I am really fearful for what we're going to see by way of candidates and with the number of executives retiring government-wide. It is a real concern. I mean, if we want the taxpayers to get the quality career leadership they deserve, I think we've got to be far more thoughtful about the kind of reforms we do to the Senior Executive Service.

Mr. LYNCH. I agree. And I yield back.

Mr. FARENTHOLD. Thank you very much. They have just called for votes in the House, but we—we're close enough and have the subway across here from Rayburn that we'll be able to allow Mr. Walberg one more round of questions.

Mr. WALBERG. I thank the chairman, and I'll be brief.

Ms. Bonosera, let me just go back to the issue of compensation. You stated that the balance of risk and reward within the SES has eroded over the years because they are being asked to take on more duties and work longer hours without the same compensation given to general schedule workers.

Ms. BONOSARO. Well, that's part of the erosion. It's not without the same compensation.

What we've seen happen is that there are an awful lot of senior executives who are supervising those in the general schedule who are earning more than they do. And that creates part of the disincentive, when a talented, able GS–14 or 15 looks at the idea of moving into the SES, why would I do that?

Mr. WALBERG. Of course, why would I do that would be the opportunity to lead. Opportunity to set policy, opportunity to expand, to encourage people to do a better job.

You know, I'm thinking that an average $161,000 per year, plus when you add the potential of salaried bonuses to about $233,000, and then benefits, approximately $70,000, in other words, total compensation potential of $300,000, and the ability to lead, to direct, to establish policy, to expand the capabilities, wow.

Ms. BONOSARO. Well, I absolutely agree in terms of the ability to have an impact on the mission, to lead, to innovate, et cetera.

The problem is that GS–15 is already getting those benefits, and they are probably, in many cases, earning very close to what that senior executive is earning. So the additional responsibility, plus the additional—the tremendous risk, I've often said it's like having one foot on a banana peel, no matter how well you do, is what's dissuading a lot of them. And it's not—my concept is what they're saying themselves. And I think that that's very worrisome.

Mr. WALBERG. Well, it is worrisome. And I guess I can understand that feeling.

But, Mr. Chairman, as we—as we hold these hearings, I mean, we're talking about a much broader issue then.

We have public servants that are serving at the will of the people expressed through us in establishing departments, in establishing agencies, establishing thrusts are necessary for the ongoing of this government. It is a special duty. They, indeed, could go out in the private sector, some of them, some of them. And I have met some of them that could make a better living. However, they've chosen this service. We need to perform it as honestly, uprightly, effectively, and as low cost as humanly possible and still giving credit where credit is due.

And so I don't think it's a selling point to say that GS–15s, 14s don't want to go in because they don't make any more money at that level when they would have the opportunity to do good public service for the people, establish a pattern, expand the opportunities to impact of this government.

And, yes, if we did follow due process, if we did give incentives to continue serving well and also make it very clear that if you don't, it's not automatic that you stay, it might encourage some of these lower level—well, at the top of the pay grade until they go to that SES—encourage them with the fact that I can make an impact. I won't make any more income, maybe, I can make an impact.

Having said that, Mr. Chairman, I think there's a problem that goes in attitude as well that responds in action. And I yield back.

Ms. BONOSERA. May I just say one thing in response? And that is that it isn't just the money. They are concerned, which they have expressed, has to do with they are subject to being geographically reassigned. They are—the younger ones are far more concerned about work/life balance, being available to their families.

So the money is just one of the factors. So that there is not a sufficient attraction above and beyond. There is for a good number of them.

Mr. WALBERG. I understand that only 3 percent—forgive me for breaking in there—but only 3 percent have been reassigned to other agencies. I mean, we are talking pretty good security there, a lot better security than most of us people at this rostrum right now.

Mr. FARENTHOLD. Every 2 years, we have a job review.

Thank you very much. You know, it is disappointing, in summation, that you've had these scandals specifically at the VA where everybody is looking for our veterans to be taken care of. And hopefully this is exception but not the rule. And we will continue on this committee our diligent oversight work over the entire Federal Government.

I would like to thank our witnesses for being here. We were able to wrap this up in time for us to get to votes. We'll let you get back to your day job serving the taxpayers as well. Thank you for your participation, and we're adjourned.

[Whereupon, at 10:29 a.m., the subcommittee was adjourned.]

# APPENDIX

Material Submitted for the Hearing Record

the voice of career federal executives since 1980

77 K Street N.E., Suite 2600 • Washington, D.C. 20002 • (202) 971-3300 • Fax (202) 971-3317 • www.seniorexecs.org

August 1, 2014

The Honorable Blake Farenthold
Chairman
Subcommittee on Federal Workforce, U.S. Postal Service and the Census
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Farenthold:

Thank you for the opportunity to testify regarding the viability of the Senior Executive Service (SES) on July 11, 2014. Thank you also for the further opportunity to continue this dialogue through the additional questions you provided to the Senior Executives Association (SEA) following the hearing.

I look forward to answering any additional questions you may have and to working with you and your staff to address issues and areas of reform regarding the SES. My responses follow:

*Q.1 – Did SEA agree with this change (elimination of locality pay) as part of the compromise in granting access to a higher salary range for its members?*

SEA disagreed with the elimination of locality pay. At the time, there were no hearings held in either the House or the Senate on the proposal offered by the Bush Administration to change the SES to its current version of a pay for performance system, including the elimination of locality pay. Although SEA weighed in on the proposal with the Administration as well as individual Members of Congress, there was no opportunity to affect the proposal which was ultimately passed as part of the National Defense Authorization Act of 2004.

Since that time, SEA has continued to receive reports that the elimination of locality pay has affected the ability of agencies to attract candidates for positions in high cost areas and to geographically reassign SES members. Therefore, we believe that restoring locality pay is an essential part of reforming the SES system.

*Q.2 – What is the appropriate pay range for public servants holding management positions?*

It is difficult to answer this question generally. There are wide ranges of executive and management pay schemes in different industries in the private sector. What does appear to be the case is that often comparable private sector jobs pay a far greater salary than is afforded to

federal career Senior Executives. In fact, in the 1990's, SEA contracted for several years with the Hay Group to do a head to head comparison of specific positions with their precise counterparts in the private sector. At that time, the pay gap was 25-40 percent depending on the level of the Senior Executive and the total compensation gap was 22 percent. Because the results were consistent over time, we discontinued the project. Because of Executive Schedule pay freezes (which have affected SES pay) over the last 15 years we believe the gap has grown. In fact, if the SES had received the same pay increases as the General Schedule during the period 1991-2011, their pay cap would stand at $248,600, not $179,700 (numbers as of 2012 – does not include current year and cap).

As is commonly recognized, Senior Executives serve in the federal government out of a sense of public service and a desire to work to fulfill an agency's mission; they are not motivated by pay, however, pay can be a significant demotivator and we know that the lack of a sufficient pay differential between the General Schedule and the SES deters many well qualified candidates from aspiring to SES positions. We also know that many current Senior Executives can earn far more in the private sector – and they do when they leave government or retire.

What would make a difference in the pay range would be to ensure that it is sufficient to differentiate the SES from the General Schedule. Currently there are many Senior Executives who make equal to or less than their GS subordinates. As we outlined in our written testimony, pay often is a detractor to potential applicants when combined with the other issues skewing the risk to reward ratio. Providing new Senior Executives a five percent increase in pay upon ascending to an SES position from the General Schedule would help alleviate pay overlap. It would also be appropriate to ensure that no Senior Executive supervises any employee making more than the Senior Executive. You do not find employees in the private sector supervising employees making more than they do, and this should not be the case in the public sector either.

*Q.3 – Do you believe performance standards are being uniformly applied across the federal government?*

Over the past two years, the Office of Personnel Management has created a uniform system for SES performance management; however, agencies are not required to adopt it, although it is SEA's understanding that most of them have. This new system was meant to create a level of standardization and transparency that was lacking by allowing agencies to have individually created systems.

Regardless of the system in place, although Performance Review Boards make recommendations regarding performance awards and ratings, the decision to approve the initial rating and award recommendation ultimately rests with the head of the agency. Clearly, some agency heads are more conservative than others with regard to granting performance

awards; for example, the Secretary of Defense recently dropped the percentage of aggregate SES pay available for performance awards to 1 percent when 5 percent is permissible under Administration guidelines.

Despite the move to create a standardized system, SEA has found through a recently conducted member survey (February 2014) that concerns remain about the fairness and transparency of the system. SEA heard from members at numerous agencies that when ratings are downgraded it is unclear what criteria merited the downgrade, and that the timeliness of performance ratings and feedback, as well as the completion of performance plans, is seriously lacking. It appears form the survey that the system is still unevenly applied and that more attention to making it straightforward, transparent, and timely would be helpful.

*Q.4 – Please share more information about these actions (disturbing accounts of reorganization actions).*

The reorganization actions to which SEA referred were in context of the Executive Resources Boards (ERB) and SEA's proposals for reform. Over the years, SEA has written to OPM and requested that it take regulatory action to reform ERBs. SEA provided a summary of these reforms in our written testimony and continues to believe that Congressional action would be helpful.

SEA believes that the statute governing ERBS has been too narrowly construed by OPM to give ERBs oversight only of initial hires, instead of an agency's SES corps as a whole. One of the reasons SEA has proposed statutory reform is that agencies have broad latitude to reassign or geographically relocate Senior Executives. SEA has learned of these options often being used to punish Senior Executives by moving them to undesirable locations or jobs with very little executive responsibilities in order to force them to retire or move to a different agency. ERB oversight of such reorganizations would ensure that Senior Executives are moved for business purposes and that positions are appropriately staffed. Should agency leadership believe that a Senior Executive has performance problems, then, as I emphasized in my oral statement, they should be held accountable rather than the agency using reassignments and relocations as a surrogate for appropriate action.

Sincerely,

Carol A. Bonosaro

CAROL A. BONOSARO
President

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Questions for Mr. Stephen Shih
U.S. Office of Personnel Management

Chairman Blake Farenthold

Hearing on "Oversight of the Federal Workforce: The Viability of the Senior Executive Service"

July 11, 2014

---

1. **In 2012, almost half of career SES employees who received performance reviews were rated at the highest level of performance, resulting in those employees receiving bonuses averaging $10,000 on top of salaries of $168,000.**

    a. **Do you believe there is performance inflation within the SES?**

There is no evidence that there is widespread performance inflation within the Senior Executive Service (SES) or that the statute establishing the parameters for performance awards for the SES is not operating as intended. The statute states that its purpose is "[t]o encourage excellence in performance by career appointees." Career senior executives, like other employees, are assessed against the pre-existing performance requirements established for the period, and not each other.

The U.S. Office of Personnel Management (OPM) provides direction and guidance to agencies so they may design rigorous SES performance appraisal systems. These systems are subject to OPM standards and approval, and OPM subsequently reviews the implementation of these systems to determine if there has been appropriate implementation. By statute and regulations, these systems must meet a number of requirements, including enabling agencies to: accurately evaluate performance; encourage excellence in performance; and provide a basis for making decisions regarding retention, reassignment, development, removal, pay adjustments, and performance awards.

For an agency to have authority to provide higher levels of pay for their senior executives, OPM regularly reviews the agency's SES performance appraisal system or systems to determine appropriateness for certification, in adherence to a number of criteria, including whether the system or systems make meaningful distinctions based on relative performance and whether the performance expectations and results of SES members align with the performance goals and results of the agency. In Fiscal Year (FY) 2012, 47.8 percent of aggregate SES members across the Federal Government received a performance rating at the highest level; however, different agencies had different SES performance ratings distributions, and some agencies rated less than 28 percent of their senior executives at the highest level. This variation is to be expected across agencies since different agencies have different organizational goals and varied levels of

organizational performance to which their senior executive performance goals and ratings are expected to align.

In January 2012, OPM and OMB issued a Basic SES Appraisal System template that provides a common approach that could be used across agencies for assessing executive performance; establishes consistent rigorous performance standards; and would result in the establishment of individual executive performance requirements in the Results Driven element that are specifically aligned to agency strategic and organizational plans and based on measurable results. OPM expects the growing application of this system to have an impact on the overall ratings received by executives although it will take a few years to see any consistent results.

**b. What impact did the contributions of these employees have on the performance of the federal government?**

By law, each agency is required to develop and implement its own SES performance appraisal systems with performance requirements appropriate to each position; therefore, questions relating to individual performance would best be addressed by the employing agencies.

**2. How often does a poorly performing senior executive resign or retire instead of being fired or terminated?**

Even if parameters of "poor performance" and time frame close to retirement were established in this question, OPM would not be able to predict which employees would have otherwise been separated from service. Questions relating to individual employees' performance would best be addressed by employing agencies.

**3. How frequently do agencies use administrative leave to allow an executive to qualify for retirement rather than face adverse action for their misconduct or performance?**

OPM does not have this information. OPM maintains general data on agencies' use of administrative leave but does not track the individual circumstances of each use of that authority by an agency head or the agency head's delegee. Questions about individual agency use of excused absence would best be addressed by the individual agency.

**4. An adverse action is removal from the civil service, and can be appealed to the Merit Systems Protection Board. However, as indicated in the OPM Guide to the Senior Executive Service, following removal from the federal service, an agency may subsequently as a separate action appoint the individual to a position outside the SES (such as a GS-15 position). How many executives were removed from the civil service and reassigned to positions outside of the SES over the last 5 years, by agency and year?**

An adverse action could have a variety of outcomes, including, among others, removal from the SES (with reassignment to a non-SES position) or removal from the civil service. We are unaware of any situation in the last five years, however, where an executive who was the subject of an adverse action was reassigned to a position outside of the SES.

5. **I understand that OPM collects payroll data which includes the amounts of administrative leave used by federal employees government-wide.**

    a. **Do agencies, including VA, use administrative leave to keep employees out of the workplace pending investigations into personnel matters, such as allegations of wrongdoing or other conduct issues?**

As noted above, questions about individual agency use of excused absence would best be addressed by the individual agency. We do note, however, that, as with any individual who is the subject of a potential adverse action, an agency has the authority to keep the individual from the workplace if the agency head or his or her delegee believes that keeping the individual from the workplace or preventing the individual from having access to agency systems is in the best interests of the agency.

    b. **Are there any time limits or other restrictions for the use of administrative leave for investigating personnel matters?**

By law, these matters have been left to the discretion of the head of each agency. The President or OPM may advise agency heads on the use of excused absence. Excused absence may apply to individuals or to group dismissals or closures of activities.

More specifically, OPM advises granting excused absence only when the employee's absence, in the agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria:

- the absence is directly related to the agency's mission;
- the absence is determined to be in the interest of the agency or the Federal Government;
- the absence is requested or recommended by the President;
- the absence will clearly enhance the professional development or skills of the employee in his or her current position; or
- the absence is approved for other reasons as determined by the head of the agency.

    c. **Do OPM and the agencies monitor the use of administrative leave, specifically related to its use during investigations into personnel matters? If so, how does OPM monitor its usage?**

No. OPM collects data on total numbers of hours used, not the individual bases for such use. Questions about individual agency use of excused absence would best be addressed by the individual agency.

**d. How many senior executives are on administrative leave pending investigations into personnel matters and what is the average amount of days these employees are using administrative leave?**

As noted above, information about the number of senior executives on administrative leave pending investigations into personnel matters and the average amount of days these employees are using administrative leave would be best obtained from each individual agency.

**e. Is there more that OPM can do with respect to providing guidance and collecting data on the use of administrative leave to help ensure agencies use it appropriately and efficiently?**

As noted above, OPM does provide guidance, and such guidance is not intended to be all-encompassing but rather serve as a guide to promote good judgment and consistency in the administration of excused absence, while supporting the need for individual agencies to exercise their operational discretion and expertise to make decisions involving excused absences.

**6. In written testimony, Ms. Bonosaro suggests that geographic reassignments are often used as a mechanism to push out senior executives and encourage their retirement, rather than being used as the private sector does to ensure the right employees are in the right positions.**

**a. Do you agree?**

OPM is unable to address a general anecdote or suggestion. Any concerns about the improper use of a geographic reassignment should be referred to the affected individual and his or her employing agency.

**b. How many senior executives were subject to mandatory geographic reassignments last year? Over the last 5 years?**

OPM's data does not reveal whether a senior executive's geographic reassignment was mandatory or voluntary.

**c. If it is the case that agencies are using the mobility requirement to avoid taking responsible performance actions, what is OPM doing to ensure accountability?**

OPM has not received any reports or observed any evidence of agencies using any mobility requirement to avoid taking responsible performance actions.

7. **Under the current Administration's Cross Agency Priority (CAP) goal relevant to the federal workforce, there is an initiative to "Build a World-Class Federal Management Team Starting with the Senior Executive Service (SES)."**

    a. **What is the Administration's vision for the government's executive corps? How does that compare to the current corps?**

Employee performance and human capital management, including of the SES, are core components of the President's Management Agenda, implemented across the Federal Government as a Cross Agency Priority goal. Under the People & Culture pillar of the Agenda, OPM is working to foster a culture of excellence and engagement to: enable continuously improving performance; enable agencies to both hire the best talent and hire from all segments of society; and enhance our world-class management team, starting with the SES. For example, we are exploring means to streamline the SES recruitment, application, and selection processes, with a focus on identifying and removing any barriers to successful hiring from diverse and inclusive applicant pools, including from the private sector. We also are focused on strengthening recruitment practices to ensure we are able to attract and bring in the best possible talent, developing an onboarding process for new SES and ensuring continued development of SES including encouraging and identifying opportunities for increased interagency rotations. Finally, this Administration has placed a greater emphasis on accountability of senior executives for leading people through the Administration's initiatives around employee engagement.

As our vision for SES reform is developed into concrete milestones and action plans, they are made available quarterly on Performance.gov.

    b. **To what extent are the initiatives the Administration is planning aimed at addressing some of the accountability and leadership issues that have occurred across the government, including at the VA?**

The VA is in the best position to address any questions about its accountability mechanisms and leadership. Through the President's Management Agenda, we are currently examining the SES hiring process to foster agencies' ability to successfully recruit and appoint top executive talent, including those with strong leadership experience and skills and who possess high levels of ethics and integrity. We are developing a stronger SES onboarding program, so we may help our leaders more effectively transition into their SES roles and so we may clearly communicate and emphasize the high standards that are expected of them from the beginning of their SES appointments. We are also seeking to expand the experience base of our executive corps, through rotational opportunities, and by linking and coordinating existing cross-agency and cross-sector leadership initiatives.

Additionally, we are encouraging the use of the Basic SES Appraisal System, issued in January 2012, across agencies and helping agencies mature their implementation of this system to achieve improvements in holding senior executives accountable for performance. We are also working with agencies to help ensure that, in assessing senior executives against the performance requirements for the rating period, the rater appropriately takes into consideration any misconduct that has affected such performance, and to help agencies understand the processes that are available to hold senior executives accountable for misconduct, neglect of duty, or other malfeasance.

Again, as our vision for SES reform is developed into concrete milestones and action plans, they are made available quarterly on Performance.gov.

**c. What specific steps are agencies and OPM expected to take to achieve OPM's vision for the SES?**

OPM will continue to coordinate interagency efforts to identify and implement improvements in the management of the SES. These cross-agency efforts will be aimed at applying efficiencies and best practices to foster a consistent, high-quality, and economical enterprise approach to recruiting, hiring, developing, enabling, holding accountable, and retaining excellent senior executives. Initially, OPM will be working with agencies to design and implement an enhanced SES onboarding program – the initial implementation is expected to begin in FY 2014 and continue through FY 2015. OPM is also working with agencies to identify potential improvements in recruitment, hiring and development practices for the SES. In FY 2015, we anticipate that OPM will work with agencies to identify and implement potential new approaches for SES performance management. Additionally, OPM will work with agencies in FY 2015 to begin exploring a new leadership development framework, in addition to the possible guidance and curricula to support such a framework, to foster a consistent, effective approach for all Federal agencies to develop their current and aspiring senior executives.

**d. When do you expect to see some results, and how will you gauge your progress?**

In FY 2015, agencies implementing a new model SES onboarding program will be able to evaluate and gather information on the successes and lessons learned from their pilot programs; OPM will help share this information across agencies to help inform their decisions. We hope to encourage further piloting by other agencies that may eventually produce a more consistent approach across agencies. In FY 2015, we anticipate OPM will be able to conclude collaborations with agencies on SES performance management, leading to a set of recommendations on improving both SES performance management implementation by agencies as well as OPM's SES performance appraisal system certification process. Agencies will be able to plan and prepare to implement these recommendations for the FY 2016 performance appraisal

cycle. OPM has also begun collaborative cross-agency discussions with a number of agencies to identify and implement improvements to the SES recruitment and hiring process. We anticipate that OPM will facilitate agencies' use of these improvements and assess results in FY 2015, and these results will be made available for other agencies to consider implementing similar improvements that will enable broader results in FY 2016. Finally, agencies should be able to immediately implement a new enterprise leadership development framework, guidance, and curricula, once these products are completed in FY 2015 – enabling some evaluative data most likely in FY 2016.

8. **OPM is required to biennially review agency requests for their SES positions.**

    a. **When meeting this statutory responsibility, does OPM take a zero-based approach and determine whether or not existing SES positions are justified? Why or why not?**

Under 5 U.S.C. 3133, agencies are required during each even-numbered calendar year to examine their SES position needs and submit a written request to OPM for a specific number of SES positions for the two succeeding fiscal years. OPM, in consultation with OMB, is required to review the request of each agency and authorize, for each of the two fiscal years at issue, a specific number of SES positions for each agency. At any time, OPM may adjust the number of positions authorized for each agency. This biennial allocation process enables OPM and OMB to review organizational missions, plans and structures and to assess agencies' current use of executive resources. If an agency is requesting additional allocations, they are required to submit a justification which includes an analysis on the continuing need and priority of their previously-granted allocations.

    b. **Should OPM use the Executive Resources Board to facilitate this review, as suggested by Ms. Bonosaro?**

Agencies already have the flexibility to have their Executive Resources Boards facilitate the review of their SES allocations. If this suggestion relates to centralization and senior leadership involvement in agency decisions relating to SES allocations, the suggested approach theoretically will foster consistency and improved decisions within agencies; however, the effectiveness of this approach will ultimately depend on each agency's commitment to the approach rather than on a mere change in process.

9. **Agencies are required to establish development programs from executives, managers and supervisors, as well as candidates for those positions, and to regularly update those programs. These executive development programs must be designed in**

**accordance with an agency's strategic plan, foster a corporate perspective of government, and provide for initial training, continuing learning experiences, and systematic development of candidates for advancement to higher-level management positions.**

**A February 18, 2011, memo to agencies from the Office of Personnel Management and Office of Management and Budget put renewed emphasis on career development through steps such as a government-wide leadership development approach, networking opportunities, and rotational assignments for senior managers with potential to move into the executive ranks.**

**A September 30, 2011, memo to agencies provides guidance on "onboarding" programs to integrate newly hired SES members. Such programs may address both short-term and longer-term strategies on subjects ranging from operational matters to issues of agency culture.**

**The President's FY2015 budget states that the Administration will take administrative actions to produce a Federal executive corps with a broader, stronger experience base.**

**a. When should we expect to see some results?**

OPM understands the significant investment of resources required to implement effective development programs and the consequent need to ensure a measurable return on investment. For this reason, OPM is placing an emphasis on the integration of evaluation methods for all learning and development initiatives, to enable the measurement of progress and program effectiveness. For example, OPM's work with agencies on the design and implementation of a new SES onboarding program includes the development and use of detailed evaluation plans to gather data on impact and value; this data will enable agencies to demonstrate results as they pilot the onboarding programs in FY 2015 and implement permanent programs in FY 2016. As agencies begin to implement a new enterprise leadership development framework, guidance, and curricula, once these products are completed in FY 2015, agencies will be able to gather evaluative data – most likely in FY 2016. Additionally, OPM is working with a number of agencies to design an interagency SES rotation program to encourage members of the SES to serve in temporary assignments outside their agencies to deepen and diversify their experience, perspectives, and leadership skills. These new initiatives, and their integration of program evaluation methods, will enable agencies to obtain data to drive program accountability and improvements, and to achieve cost-savings and positive organizational outcomes.

**b. How is OPM gauging progress on current efforts, and how did this work inform the call action in the President's FY2015 budget?**

OPM has begun gathering data from the original group of agencies that piloted SES onboarding programs in FY 2012. This data will enable OPM and agencies to assess the successes and lessons learned from the implementation of these pilot programs. OPM has also been administering for the past two years an Interagency Rotations program for Federal employees at the GS 13-15 grades, and will continue to gather data from this rotations program to inform new potential rotations or mobility programs for SES members. Additionally, OPM recently issued a Training Evaluation Field Guide that provides agencies with tools and direction on regularly evaluating their training programs to determine how well their programs contribute to mission accomplishment and organizational performance goals; OPM will work with agencies in FY 2015 to integrate this product into their training plans and programs to evaluate program effectiveness and results.

10. **SES members earn 13 days of sick leave per year. They earn annual leave at the rate of 26 days per year regardless of their years of service. Also, compared with most federal employees, SES members can carry over higher amounts of unused annual leave to a new leave year – 90 days. Does OPM believe the SES leave and accumulation policy is appropriate?**

These benefits are an important recruitment tool to attract and then retain top SES talent, including to offset the long hours senior executives regularly work without additional compensation. Additionally, the annual leave carryover provision provides greater flexibility in the use of such leave, so that SES members are not compelled to take annual leave more frequently each year to avoid losing the leave at a time when it would be preferable for them to attend to critical work.

11. **The law permits sabbaticals for SES workers, between 3 and 11 months during any ten year period. The purpose of the sabbatical is to contribute to the development and effectiveness of individual SES employees through study or work experience. While on sabbatical, SES members continue to receive salary and leave benefits, and agencies may authorize travel and living expenses. SES workers are generally eligible after 7 years of service and must complete two years of service after return.**

    a. **How many SES employees have been approved for sabbatical in the last five years, by agency?**

| | |
|---|---|
| FY2010 | 0 |
| FY2011 | 4 |

| | |
|---|---|
| FY2012 | 6 |
| FY2013 | 0 |
| Oct-Dec2013 | 0 |
| Jan2014-present | 0 |
| Total | 10 |

All ten of these employees were from the Federal Bureau of Investigation.

**b. What is the cost to the taxpayer of the cumulative number of sabbaticals?**

Questions about the costs of sabbaticals would best be addressed by the employing agency.

**c. Have the SES employees returning from sabbatical met the requirement for two years of additional federal service?**

Questions about the completion of outstanding agency obligations by employees who completed an SES sabbatical would best be addressed by the employing agency.

**d. What has been the impact of SES sabbaticals on agency performance?**

Questions about the impact of SES sabbaticals on agency performance would best be addressed by the employing agency.

**12. A senior executive removed for performance can retain his or her SES pay if placed in a new position with lower pay, such as a GS-15.**

**a. What is the justification for allowing executives removed from their position for performance to retain their pay if placed in a new position?**

This provision was established by statute. But OPM does believe that it constitutes an important recruitment tool to attract and then retain top SES talent, because it encourages high performers to compete for the SES, by ensuring that those appointees to the SES who do not succeed in their senior executive positions may fall back to a position at a level at which they formerly excelled. This approach also helps preserve the agency's long term investment in retaining an employee that can be reasonably expected to excel in a non-SES position despite not succeeding at the SES level. However, OPM is first committed to ensuring that agencies are able bring on the right talent for SES positions, and then properly support and develop these leaders to ensure their success. This is why we are working closely with our partners as part of the President's Management Agenda, to help streamline and improve the effectiveness of the recruitment and hiring processes, and ensure onboarding and continual training opportunities for our senior leaders across government.

But senior executives can be removed from the civil service entirely if the agency can demonstrate "cause," that is, misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function and if that remedy is properly justified. For career appointees, disciplinary removal procedures and rights are similar to those for competitive service employees, except that the standard for action is "misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function." The executive must generally receive 30 days' notice of a proposed removal, has the right to reply, and may appeal to Merit Systems Protection Board, but has no placement right to a GS-15 position, which is unique to a career executive removed during the probationary period or for performance reasons.

For noncareer and limited appointees, removal is at the discretion of the agency head. The law does not specify procedural requirements for noncareer, most limited term appointees, limited emergency appointees, and reemployed annuitants. Thus, such appointees may be removed under established agency procedures. Appointees under these circumstances do not have appeal rights to MSPB. Some executives on limited term appointments have placement rights.

**b. How many former senior executives have been removed for performance but placed in a new job at their former rate of pay?**

Mr. Stephen Shih
Page 12

The following is from data available from OPM's Enterprise Human Resources Integration Statistical Data Mart:

SES Removals Due to Performance
Executive Branch (some exclusions)
Fiscal Years 2009 through January 2014

| | FISCAL YEAR | | | | | |
|---|---|---|---|---|---|---|
| AGENCY | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| DEPARTMENT OF AGRICULTURE | 1 | - | - | 2 | - | - |
| DEPARTMENT OF DEFENSE | 1 | 1 | - | - | - | - |
| DEPARTMENT OF ENERGY | - | 1 | 1 | - | 1 | - |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | - | - | 1 | - | 2 | 1 |
| DEPARTMENT OF HOMELAND SECURITY | 1 | 1 | 3 | 1 | - | - |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | - | - | - | - | 1 | - |
| DEPARTMENT OF LABOR | - | - | - | 1 | - | - |
| DEPARTMENT OF THE ARMY | - | - | - | 2 | - | - |
| DEPARTMENT OF THE INTERIOR | 1 | - | - | - | - | - |
| DEPARTMENT OF TRANSPORTATION | - | 1 | - | - | - | - |
| DEPARTMENT OF VETERANS AFFAIRS | - | - | - | 1 | - | - |
| EQUAL EMPLOYMENT OPPORTUNITY COMMISSION | - | 1 | - | - | - | - |
| GENERAL SERVICES ADMINISTRATION | 1 | - | - | - | - | - |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION | 1 | - | - | - | 1 | - |
| NATIONAL SCIENCE FOUNDATION | - | 1 | - | 1 | 1 | - |
| NUCLEAR REGULATORY COMMISSION | - | - | - | 1 | - | - |
| SMALL BUSINESS ADMINISTRATION | - | 1 | - | 2 | - | - |
| TOTAL | 6 | 7 | 5 | 11 | 6 | 1 |

○