



May 17, 2017

The Honorable Johnny Isakson  
Chairman  
Committee on Veterans Affairs  
Washington, DC 20510

The Honorable Jon Tester  
Ranking Member  
Committee on Veterans Affairs  
Washington, DC 20510

Dear Chairman Isakson, Ranking Member Tester and Members of the Committee:

On behalf of the Senior Executives Association (SEA) and its members, who are career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions, including those serving at the Department of Veterans Affairs (VA), I write in regret to convey our **opposition to S. 1094**, which strikes at the heart of the career-run merit based civil service system by empowering the VA Secretary and political appointees to conduct wholesale political firings of VA senior executives. Enacting such a provision is not in veterans' best interest.

The specific provision of concern is at Title II, Section 201, 713(c) which, if enacted, would not apply the provisions of Section 3592(b)(1) of title 5 to actions taken under the provisions of the section. This language would eliminate essential protections provided by Congress to career federal executives and enable undue or politically influenced terminations of dedicated VA senior executives. Coupled with provisions to provide direct hire authority for medical center directors and VISN directors, this legislation could trigger a return to the spoils system of patronage that was a hallmark of the federal civilian workforce prior to the passage of the Pendleton Act of 1883, and its modernizing legislation the Civil Service Reform Act of 1978 (CSRA).

While it might seem logical to assert that the elimination of appeal rights to the quasi-judicial independent Merit Systems Protection Board (MSPB) for VA senior executives will improve accountability and agency culture, it makes less sense when one considers MSPB's history and record. Historically, in both Republican and Democratic administrations, the MSPB has had an average 85% affirmation rate of agency decisions, meaning agency personnel actions were upheld. We have no reason to believe that this outstanding record would not be maintained in 2017.

Congress specifically created the MSPB in the CSRA as a specialized independent agency of subject matter experts who could adjudicate federal personnel cases so the federal courts did not need to, except upon appeals, as demonstrated by an [MSPB flowchart](#). Is it really the most efficient use of our under-resourced federal judiciary to charge it with taking on individual federal employee personnel cases? The SEA believes it does not and could prove ultimately harmful to everyone's overall goal of creating a 21st Century workforce at VA and throughout the federal government.

Provisions in this legislation focused on improvements in workforce management, accountability and incentive structures are welcome, but do not address the core issues affecting management and accountability of the VA workforce, such as non-statutory negotiated employee review processes. Veterans deserve a substantive and comprehensive workforce management, accountability, and incentive structure that not only focuses on how to hold VA employees accountable, but that also contains provisions to ensure the success of VA employees. This legislation does little to improve or invest in the VA workforce's ability to execute its mission.

We believe this legislation, and Congress' actions to reform the civil service in general, should reflect fact-based studies, not alarmist anecdotes. According to a [recent MSPB study](#), Federal supervisory employees report that agency culture (80%), the degree of support given by managers and leaders above (77%), and the quality of service provided by my human resources office (76%) are their top three barriers to addressing employee misconduct. On a list of 19 of the most difficult tasks they faced as managers, addressing serious misconduct ranked 14<sup>th</sup>. Getting a pool of quality candidates to hire from came in first. The same study revealed misunderstanding by management employees about procedures and burdens of proof required to hold employees accountable, a finding that is not addressed by the inclusion of comprehensive supervisory training provisions in the legislation. Nor does this legislation address the manner in which supervisory employees are selected or developed as leaders, which could help address issues with whistleblower protection and retaliation.

Passage of this legislation can only serve to exacerbate VA's hiring woes, further straining its ability to attract talent to over 45,000 vacant positions at the agency. The VA has struggled to fill critical positions due to systemic issues that have plagued the agency and created a toxic and unmanageable environment. It is unclear how the creation of a new political appointee, the Assistant Secretary for Accountability and Whistleblower Protection, even if Senate-confirmed, will provide the leadership capability and management stability to drive sustained effort to improve VA's workforce culture. A term appointment of five years or longer would provide better stability and independence to the position.

A 2016 [survey](#) of VA senior executives, conducted by SEA, unveiled the most significant threats to retention among career senior executive leaders, with nearly three in four respondents saying that unfair media and congressional scrutiny, lack of agency leadership support, and diminished or complete inability to be considered for performance-based awards were causing them to consider leaving the VA. Those same factors continue to obstruct the VA's ability to attract and retain the best career senior leaders, with 97% of respondents saying they were concerned about the ability of the agency to fill crucial roles.

SEA would welcome an opportunity to work with the Committee to develop a forward-thinking accountability framework that accomplishes both goals: holding all civil servants accountable for misconduct or poor performance, while investing in the development and capability of civil servants to achieve an agency's mission and incentivizing them to complete work in the most effective and efficient manner possible. We believe developing such a framework is possible and would have many positive effects. SEA is committed to the continued improvement of the federal government and the services we provide to the American people.

We fully understand that there are serious challenges facing the VA, and that the need to address those problems is immediate. Unfortunately, this legislation is not the solution.

Thank you for considering SEA's views. If you have any questions or comments, please contact SEA's Executive Director Jason Briefel at 202-971-3300; [briefel@seniorexecs.org](mailto:briefel@seniorexecs.org).

Sincerely,



BILL VALDEZ  
President

CC: Members of the Senate Committee on Veterans Affairs;  
The Honorable Marco Rubio