SENIOR EXECUTIVES ASSOCIATION

The voice of career federal executives since 1980

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May 3, 2018

The Honorable Jeff T.H. Pon, PhD
Director
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415-9700

Dear Director Pon:

Thank you for your commitment to modernizing the human capital and talent management practices across government. Based on ongoing conversations with you and your staff, the Senior Executives Association (SEA) sees many opportunities for collaboration on shared goals.

One issue we would like to bring to your attention is the current practice some agencies are engaging in with their Executive Resources Boards (ERBs). You are likely aware of the questionable practices highlighted in a recent Inspector General report at the Department of Interior. Given the lack of standard business and operating practices surrounding ERBs, it is not surprising that they are being used inconsistently and suboptimally.

As you may know, the ERB is created by law (5 U.S. Code § 3393(b)) to oversee merit staffing for the Senior Executive Service. This includes initial staffing decisions, but nothing in the statue limits the practice to initial hires. SEA has long had proposals (both statutory and regulatory) to strengthen ERBs. In fact, SEA sent a letter to the OPM Director in 2010 requesting that the regulations be amended (see enclosure) to ensure that the scope and function of ERBs be more clearly delineated.

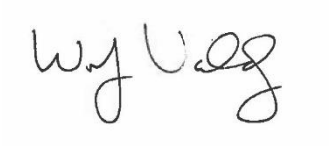
Following the IG report at Interior, SEA has heard from several agencies seeking help in better utilizing their ERBs and in updating ERB governance frameworks to institute best practices. We recently met with Deputy Secretary of Interior Bernhardt and were pleased to learn that the Department has made significant improvements to its ERB practices in recent months. Moreover, SEA has received bipartisan interest from Members of Congress for proposals clarifying and strengthening the use and practice of ERBs, as well as providing for greater transparency surrounding ERB decisions. SEA will be pursuing these avenues.

However, before doing so, we would like to work with OPM and the CHCO Council to explore current practices across agencies, identify promising practices, and identify potential avenues for policy and regulatory updates.

With your consent, SEA proposes a joint working group consisting of SEA staff, OPM staff, and CHCO Council members to develop recommendations and paths forward.

Please have your staff contact SEA Executive Director Jason Briefel (briefel@seniorexecs.org) if you have any questions or would like to discuss this proposal in further detail. We look forward to working with you and the rest of your team to promptly address this issue.

Sincerely,



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Senior Executives Association

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May 19, 2010

The Honorable John Berry
Office of Personnel Management
Theodore Roosevelt Building
1900 E Street NW
Washington, DC 20415

Dear Director Berry:

This letter is in response to a discussion we had during our March 17th meeting with you regarding OPM regulations and the scope of Executive Resources Boards (ERB) as they apply to the Senior Executive Service. Per our discussion, and at your suggestion, we would like to propose areas for consideration in expanding the regulations governing ERBs.

As we have addressed with you, both in a letter dated January 5, 2010 and during our meeting, 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)

Below is a framework for proposed OPM regulations that addresses several areas that SEA believes fall within the scope of an ERB. 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. Finally, any new regulations should clarify that "merit staffing," as that term is used in the applicable statute, includes all aspects of staffing, not just initial appointments to the SES.

By statute (5 U.S.C. 3393(b)), each agency is directed to establish:

> One or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency.
>
> The boards shall, in accordance with merit staffing requirements established by the

> Office, conduct the merit staffing process for career appointees, including (1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and (2) making written recommendations to the appropriate appointing authority concerning such candidates.

OPM regulations (5 C.F.R. §317.501) govern the merit staffing process only as it applies to *initial* career SES appointment. 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.

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

SEA proposes the following areas for inclusion in the regulations for Executive Resources Boards.

Areas of ERB Oversight:

- The designation of those positions in an agency that are in the Senior Executive Service.
- Reassignments (especially geographic relocations), with particular attention to ensuring that any Senior Executives reassigned are being moved to positions appropriately designated as being in the SES.
- Any restructuring of jobs as they relate to the SES within an agency, and in particular, final review and recommendations concerning major restructuring.

Oversight Actions:

- The role of an ERB in oversight of merit staffing issues should be specifically defined to include the items discussed below.
- Specific ERB responsibilities of oversight should allow ERBs to oversee all areas of management of the SES corps in that agency or in the part of the agency that is within the purview of the ERB; should allow the ERB to delegate oversight on certain areas and then conduct a final review; and, should provide for final recommending authority over merit staffing.
- "Merit staffing," as used in the statute, should be interpreted to provide for ERB input into the decision concerning which jobs are in the SES and who gets placed in them.

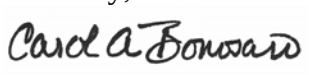
Specific ERB Practices:

- OPM should craft a consistent government-wide policy governing the practices of ERBs.

- Such practices include maintaining minutes and following an agenda.
- Regulations should ensure that at least one career appointee serves on each ERB.
- OPM regulations should provide guidance concerning when a department should have sub-units that have their own ERB, particularly for departments that are large or have numerous components.

SEA appreciates your consideration of this issue, and we believe that an expanded role for ERBs would serve to ensure that Senior Executives are treated fairly throughout the merit staffing process. We encourage you to pursue revised regulations and look forward to working with you on this critical issue, including suggesting specific language for such regulations.

Sincerely,



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