



CHAPTER 5.1:

Sustaining the SES in Difficult Times

By the Honorable Robert F. Hale, former Comptroller and Chief Financial Officer for the U.S. Department of Defense

Introduction

While serving for more than 12 years as a political appointee in the DOD, I have worked closely with many members of the SES, both as a supervisor and colleague. Members of the SES have been enormously helpful to me in carrying out my responsibilities in the Department and, in my view, have contributed substantially to maintaining our national security. Sustaining a strong senior executive corps is key to maintaining an effective government.

Today's senior executive corps faces problems, including problems getting good people to join the SES ranks. This chapter argues that we can help sustain a strong senior executive corps by reforming rules for the civil servants they supervise, especially speeding hiring and making it easier to terminate poor performers. In my experience, SES members spend too much time handling the relatively small numbers of poor performers. We also need to encourage SES members to maintain their in-depth technical skills while also broadening their backgrounds. In a recent EO, President Obama took a step toward requiring broadening, though I believe some of the provisions in the EO need to be altered. Finally, we need to increase the incentives to join the SES. While large pay increases seem highly unlikely anytime soon, Congress and the next administration might be able to agree to expand merit-based pay, perhaps going beyond the first steps in the recent EO. We can also help make SES service rewarding by doing a better job of telling SES members that, in many cases, they are doing excellent work.

Introduction: Why we need a strong senior executive corps

I recall numerous times when SES members were helpful, but one event stands out. In 2013, the law imposed substantial budget cuts (known as "sequestration") on the DOD and many other Federal agencies. Because the cuts occurred mid-year, and because of issues related to funding for wartime needs, DOD faced a 30-percent reduction in its non-war operating

funds during the second half of fiscal year (FY) 2013. Departmental leaders, including many senior executives, scrambled to come up with plans to meet the legally required cuts while minimizing harm to national security.

As DOD's Comptroller, I coordinated much of the Department's efforts, and one of my senior executives took the lead in coordinating our response with senior personnel throughout DOD. The Department's response included unpaid furloughs for DOD civilians, including many of the SES members who were working to accommodate these extraordinary cuts. Even while being "rewarded" with unpaid furloughs, SES members worked tirelessly and successfully to accomplish the required cuts while minimizing mission degradation.

No sooner had the government completed accommodating the 2013 sequester than lack of agreement on the budget for FY 2014 forced a 16-day shutdown of government operations, beginning on October 1, 2013. Again, many senior executives and civil servants trudged home on furloughs. And, again, members of the SES (including a number on my staff) led efforts to maintain critical aspects of the Department's activities when they were permitted to work. Without their help, I couldn't have carried out my responsibilities to coordinate the shutdown activities.

Critical though they are to the functioning of government, the SES today faces serious challenges. Some members of Congress castigate civil servants and the SES, seemingly treating them not as valued employees but as symbols of a government they believe is too large. SES members themselves are becoming frustrated with budget limits that do not permit them the staff or the budgetary stability needed to meet mission needs. Perhaps of greatest concern, anecdotal evidence suggests that some of the best senior civil servants are not interested in serving in the SES.

If government is to meet national needs effectively, we must sustain a capable senior executive corps. This chapter offers three examples of important and much-needed changes.

Reform the civil service to help the SES

While this book focuses on the SES, it must do so in context. SES members manage the civil service. Based on my experience, improved accountability and flexibility in the civil service, as well as streamlined hiring, would reduce the time SES members spend on hiring and firing. This would allow them more time to focus on improving government, which should both help improve government and assist in sustaining the SES.

Accountability and flexibility

Compared to the civil service as a whole, SES members can more readily be held accountable for their actions. At a minimum, managers have the authority to transfer senior executives to new jobs without extensive paperwork, hearings, or appeals.

Unfortunately, that level of accountability and flexibility often does not extend to civil servants below the SES level. At levels below the SES, the best solution for sustained poor performance may be termination of the employee. That gives the employee a chance to start over in a new environment, and the government can hire someone who can perform more capably.

But experts agree that firing a civil service employee is difficult.¹⁸⁵ The poor performance must be extensively documented. The employee has the right to appeal any termination decision, which results in still more workload for the supervisor. Termination actions can sometimes morph into accusations of favoritism and violation of equal opportunity laws, which engenders still more paperwork and angst. I found that my SES members spent an inordinate amount of their time handling poor performers, who often were the same employees who filed equal opportunity or other complaints.

Congress recently took some incremental actions to allow the DOD to hold employees more accountable. In the National Defense Authorization Act for Fiscal Year 2016,¹⁸⁶ Congress extended the probationary period for new DOD employees from 1 to 2 years. Congress also required that DOD take performance into account when accommodating reduction-in-force actions.

The government should go further and institute regular review points throughout a career, where performance is assessed and managers have greater flexibility to terminate poor performers. At these review points, termination would primarily be a management determination, with appeals limited to demonstrable bias in the formulation of personnel reviews along with discriminatory or political motivations. The presence of clear review points might provide more incentives to managers to document poor performance, which does not always occur today. The right for appeal on selected grounds would help maintain the apolitical nature of the civil service.

Greater flexibility to terminate poor performers would help SES members who must manage personnel and attend to the always-difficult problem of handling poor performers. Improved flexibility would also help the Federal civil service as a whole.

Hiring

Changes that streamline civil service hiring practices, including sharp reductions in the time required to hire, would help nurture and sustain the SES as well as aid the civil service as a whole. Improvements in hiring practices have been discussed for years. Nevertheless, in a 2014 statement, the Director of OPM noted that there was still a need to untie the knots in the Federal hiring process.¹⁸⁷

¹⁸⁵ Holan, A. D. (2007, September 5). Firing Federal workers is difficult. *PolitiFact*. Retrieved from <http://www.politifact.com/truth-o-meter/article/2007/sep/05/mcain-Federal>

¹⁸⁶ National Defense Authorization Act for Fiscal Year 2016, H.R. 1735, 114th Cong. (2015).

¹⁸⁷ Metzenbaum, S. H. (2014, May 29). Untying the knots in the Federal hiring process [Web log post]. Retrieved from <https://www.volckeralliance.org/blog/2016/jun/untying-knots-Federal-hiring-process>

My experience as the DOD's Comptroller made me aware of the problems with Federal hiring. As Comptroller, I oversaw two large defense agencies, both of which hire many new college graduates. One of these agencies, the Defense Contract Audit Agency (DCAA), hires several hundred college graduates annually. Many are accounting majors, who are in demand in the private sector. By 2014 the civil service had gone 3 years without a pay raise, the government had experienced the turmoil of sequester cuts and shut-down, and Congress continued to criticize the Federal civil service.

I recall asking the DCAA Director whether he was still able to hire high-quality graduates in view of all these problems. He reported that he generally could and that pay and budgetary turmoil did not seem to be discouraging high-performing college graduates from considering service with DCAA. The time required to complete the hiring process, however, was a problem. Private companies would often hire within weeks, whereas government hiring often required months. Sometimes promising graduates were simply not able or willing to wait.

OPM has made efforts to improve Federal hiring, but more needs to be done. Improvement could include better use of fellow and intern programs, more short-term hires from outside government, and the sharing of promising candidates among Federal agencies. Improvements would help the SES and government as a whole.

Increase SES breadth of experience while maintaining depth

Today's Federal government increasingly faces challenges that require interagency solutions. For example, cyber issues are on everyone's mind in the Federal government, particularly after the serious breach at OPM. Some agencies, including the DOD and the U.S. Department of Homeland Security (DHS), have special expertise that can be useful in meeting cyber challenges. Tapping this expertise requires interagency leadership and management.

There are many other issues that demand interagency efforts. Examples include integration of diplomatic and military initiatives involving the DOD and the U.S. Department of State (DOS), integration of healthcare between the DOD and the VA, and creation of shared approaches to reduce costs for services such as payroll.

To be effective at leading and managing interagency issues, SES members need breadth of experience as well as the inclination to manage on an interagency basis. Yet a 2014 study by the Partnership for Public Service and Booz Allen indicated that more than 80 percent of those promoted to the SES came from within their own agency and only 8 percent moved to a different agency once in the SES.¹⁸⁸ The study recommends creation of a corps of "enterprise executives" who have the inclination and breadth of experience

¹⁸⁸ Partnership for Public Service & Booz Allen Hamilton. (2014). *Building the enterprise: A new civil service framework*. Washington, DC: Partnership for Public Service.

to lead and manage interagency issues effectively. Service in multiple Federal agencies, and in the private sector, would be one criterion for entrance to this enterprise corps. This proposal makes sense to me as a way to improve the management of critical interagency issues.

However, there is also an important role for SES members who have depth of knowledge in functional areas, coupled with the skill and stature necessary to lead. For example, there are thousands of rules governing the use of appropriated funds that are codified in financial management regulations. Violation of these rules can cause employees to run afoul of the Anti-Deficiency Act.¹⁸⁹ Willful violations of this act can result in criminal penalties; even inadvertent violations often lead to administrative penalties that damage careers.

For me the dark days of the 2013 government shutdown underscored the importance of SES members who know the fiscal laws and the rules that derive from those laws. During a government shutdown, employees are prohibited from engaging in any activities other than those required to ensure safety of life and protection of property. Conducting any other activities while the government is shut down, even including handling emails other than those related to life and property, may violate the Anti-Deficiency Act.

During the 16-day government shutdown in 2013, and in my coordinator role, I chaired regular late-afternoon meetings of senior defense leaders (including many senior executives) to review the detailed implementation of the shutdown in order to steer clear of legal violations while also minimizing harm to the Department's mission. We dealt with a wide variety of issues, many that were of great concern to military and civilian leaders. Issues included what to do during the shutdown regarding personnel away from home on training (most had to come home and then go back), how to handle military academic athletic events that contributed to morale and training (most had to be canceled but some were funded by nongovernmental groups and could continue), and whether to continue military funerals (they continued, but it was a close legal call that engendered considerable discussion).

During these afternoon debates, I was grateful for the senior executives who participated—especially the lawyers, personnel experts, and financial managers. They knew the rules, which was critical to keeping the Department (and me) out of legal trouble. But they also understood what actions would most harm the DOD's mission. And they knew how to make decisions and make sure they were carried out. Finally, they had the stature to get quick access to their own most senior leaders to keep them informed and bring their views back to the group.

The events of the 2013 shutdown are seared in my memory, but there are many other issues that demand a combination of technical skill and ability to lead and manage. These include managing complex acquisitions, handling complex contracts, and dealing with financial and program audits.

¹⁸⁹ Anti-Deficiency Act, 31 U.S.C. § 1341 et seq.

Senior executives with technical and leadership skills may be especially important in the DOD. Military officers fill many leadership roles in the Department, often serving as acquisition program managers and financial leaders at military bases and echelons above them. But these military officers rotate frequently—2 years is a common tenure for military in senior positions. Their successor in a particular job may have breadth of experience, but he or she usually lacks knowledge of what has been done in the past and how well it worked. Senior executives, who often act as deputies to military officers or lead in related functional areas, usually stay longer in a job and can provide much-needed corporate memory.

For all these reasons, I believe that a substantial portion of the SES should combine leadership with in-depth technical knowledge. They should remain in jobs long enough to provide corporate memory. The Partnership for Public Service study agrees that some SES members should move among agencies, although it is not clear how many senior executives the study would recommend as functional leaders.

Identifying SES members with strong technical skills, and permitting them to remain in jobs for significant periods, does not mean that breadth of experience is unimportant. All SES members should have some diversity during their careers. As a senior manager in the Office of the Secretary of Defense, which had oversight of activities in the military services and defense agencies, I found that senior executives who had worked in the military services or defense agencies provided better advice. They had “walked in the moccasins” of the organizations they oversaw and understood how to provide useful guidance and make it stick.

In a 2015 EO, President Obama sought to increase breadth of experience.¹⁹⁰ The EO requires that some senior executives rotate for a minimum of 120 days to different departments, agencies, subcomponents, functional areas, or non-Federal partners. Agencies were required to put a plan in place by May 31, 2016, that establishes a goal of rotating 15 percent of their senior executives in FY 2017.

While the intent of this EO is good, timing is a key problem.¹⁹¹ By the time individuals become members of the SES, they should be leading and managing the government rather than broadening their backgrounds. Federal agencies should encourage prospective members of the SES to broaden their backgrounds earlier in their careers—probably starting when they are serving as GS-13s.

The length of rotations is also problematic. Rotations of 120 days are not likely to result in valuable work or meaningful learning experiences. But a

¹⁹⁰ Exec. Order 13714.

¹⁹¹ For more discussion of this and subsequent points, see Hale, R., & Sanders, R. (2016, January 26). Developing civilian leaders in DoD. *Defense News*. Retrieved from <http://www.defense-news.com/story/defense/commentary/2016/01/26/developing-civilian-leaders-dod/79055042>

120-day rotation may be long enough to disrupt the employee's current work, especially if his or her position is backfilled during the rotation by someone equally out of place. However well intended, short rotations may result in performance issues—both individual and organizational. In my view, individuals who aspire to the SES should hold one or more assignment(s), each of approximately 1 year in length, leading to diversity of experience while also allowing them to contribute in their new roles. Consistent with the approach in the EO, many types of assignments should qualify as broadening experiences.

Given the importance of broad experience within the SES ranks, Congress should consider requiring rotations as a prerequisite for service in the SES. There is precedent for such a requirement. In the 1980s, Congress felt that military officers lacked needed experience in joint (that is, multiservice) positions. Yet military officers, especially the best officers, saw little career benefit in serving in joint positions because this duty took them away from the service that controlled their promotions. So, in the Goldwater-Nichols legislation passed in 1986,¹⁹² legislators required military officers to have a multiservice tour in order to be eligible for promotion to general or admiral. This provision has significantly increased interest in joint duty among fast-track military officers.

Congress took similar action in the U.S. Intelligence Community (IC) following the 9/11 terrorist attacks. Noting the failure of intelligence leaders to “connect the dots,” Congress required the Office of the Director of National Intelligence (ODNI) to implement a requirement for joint duty as a precondition for promotion of any civilian to senior executive rank in the IC.

My bottom line: Senior executives should have both depth of knowledge and breadth of experience. The White House has raised the right issue with regard to experience, and Congress may want to require diversity of experience as an additional prerequisite for promotion to SES. But civil servants should meet the prerequisite *prior* to becoming members of the SES.

Provide more incentives to join and remain in the SES

Anecdotal evidence suggests that some of the best employees do not want to join the SES. During my tenure as Defense Comptroller, a person I thought was highly qualified chose not to apply for a vacant SES position on several occasions. The individual cited the desire to avoid personnel management issues and increased stress.

Many factors contribute to this troublesome trend, but there are also a number of changes that might help reverse the trend. I offer two examples—one requires legislation, one does not.

¹⁹² Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433 (1986).

Lessen pay compression

Today, a person at the top of the General Schedule (GS) may well earn the same or even more than members of the SES. GS personnel receive locality pay allowances. In the area including Washington, DC, where many senior civil servants work, a GS employee at the top of the scale (GS-15 at pay step 10) earns \$160,300 a year as of January 2016 when locality pay is included. Annual pay at the top step exceeds \$150,000 in most locations. Under the January 2016 scale, and prior to the 2015 EO, SES pay ranged from \$123,000 to \$185,000. It was difficult just to match the pay for someone who accepted a promotion to the SES, let alone offer a substantial increase in salary.

The obvious solution is to restructure SES salaries so that they are significantly higher—perhaps starting at the current ceiling of \$180,000 and going up. This would not seem out of line with senior management salaries in major private sector companies. Upward restructuring should be kept in mind when there is a major overhaul in the civil service system. Such an overhaul might create a political environment more conducive to permitting significant pay increases.

Currently, however, a significant upward restructuring of SES pay seems highly unlikely. Especially during a period when anti-government sentiment abounds in Congress and the country, Congress almost surely would not support big salary increases for members of the SES. Moreover, a major increase would put many SES salaries above those for most members of Congress (\$174,000 in 2016).

While fundamental restructuring that increases SES pay seems unlikely, first steps can be taken. The President's 2015 EO took such a step. The EO directs agencies to ensure that senior executives earn salaries at least equal to the salaries, including locality pay, of the GS employees they supervise. So now an SES in the Washington, DC, area would earn a minimum of \$160,300. But a top-level GS employee might still receive no raise, or only a small raise, when he or she becomes a member of the SES, even though responsibilities increase substantially.

Merit pay offers another option for improving incentives. The 2015 EO took an important step in that direction, telling agencies to increase the maximum amounts available for SES bonuses from about 5 percent today to as much as 7.5 percent. So more SES bonuses may be available or they may become larger.

Congress and the administration could go further, increasing bonuses substantially for the most capable SES members by increasing the number who are eligible for presidential rank awards. Today, members of the SES are eligible for prestigious presidential rank awards either at the meritorious level (a one-time cash payment equal to 20 percent of salary, with up to 5 percent of all SES eligible) or at the distinguished level (one-time cash