

On page 3, in the paragraph titled “Changes from FY 2016,” make the following revision:

It terms of federal staffing allotments, the Office of the General Counsel (OGC) is not requesting any additional positions, but has determined there is a current need for five attorneys. Therefore, ~~one vacant administrative slot was reverted to an~~ the deputy general counsel position will be converted to a GS-15 attorney position if and when the position is next filled and the total office allotment remains at eight positions. Under this new alignment the senior staff attorney will be a GS-15 attorney, and that individual will serve as the deputy general counsel. If and when the deputy general counsel position becomes vacant during FY 2017, the position description will be updated accordingly and this staffing change will take effect.

On page 9, make the following revisions:

Current OGC Profile		
POSITION TYPE	ON BOARD	TO BE FILLED
EXECUTIVE	2*	0
ATTORNEY	3	2*
ADMINISTRATIVE SUPPORT	1	<del>0</del> 1
<b>TOTAL</b>	<b>6</b>	<b><del>3</del>3*</b>
* One executive to be converted to an attorney if and when next filled, total will not exceed 8.		

Justification

Two members of the Senior Executive Service to supervise six subordinates is excessive and unnecessary.

Since the beginning of September 2012, a period spanning 50 months, there has been two SES in the OGC office for 9 months, 1 SES for 23 months, and zero SES for 18 months. There was no demonstrated improvement in performance of the office during the limited periods where two SES were in the office.

**AFFIRMATION OF BOARD VOTING RECORD**

**SUBJECT: Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-300-038, FY 2017 Staffing Plan**

**Doc Control#2016-300-038A**

The Board, with Board Member(s) Sean Sullivan, Bruce Hamilton *approving*, Board Member(s) Joyce L. Connery, Jessie H. Roberson *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) Daniel J. Santos *not participating*, have voted to disapprove the above document on November 4, 2016.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11/04/16
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11/03/16
Sean Sullivan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11/04/16
Daniel J. Santos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/03/16
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11/03/16

\*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.

  
Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members  
OGC  
OGM Records Officer  
OTD

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**NOTATIONAL VOTE RESPONSE SHEET**

**FROM:** Joyce L. Connery

**SUBJECT:** Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-300-038, FY 2017 Staffing Plan

Doc Control#2016-300-038A

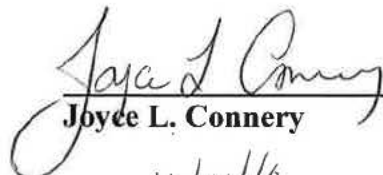
Approved \_\_\_\_\_ Disapproved X \_\_\_\_\_ Abstain \_\_\_\_\_

Recusal – Not Participating \_\_\_\_\_

**COMMENTS:** Below X Attached X None \_\_\_\_\_

Not having two SES-level attorney's in the Office of General Counsel has hampered the office's ability to deal with a number of issues, including employment law cases, and has resulted in the Agency having to rely on outside Counsel. In addition to what I have observed, the General Counsel provided input from his point of view as to the significant effects he as observed as a result of the absence of a Deputy General Counsel. Both my own observations and the General Counsel's input directly refute the justification provided by the Board member who did not see a demonstrated improvement in the Office during the time (9 months) in which there were two SESes in that office. The focus on the limited 9 month time period is misplaced. Instead of drawing conclusions from a period of significant change in the Office of General Counsel, the focus of the question should be on whether, going forward, the position duties for the Deputy warrant an SES grade level, and whether, as the General Counsel describes, the Office and the agency will benefit from additional senior executive level leadership. OPM has reviewed the position of Deputy General Counsel and has classified it as an SES. I do not believe the Board has the authority to re-classify this position, and even if it did, I would not do so based on the volume of senior executive level work that I project only to increase as we work to comply with Federal compliance issues on a number of fronts.

With regard to the need for the office to have an additional attorney, I believe the timeliness issues previously raised by my colleagues, the planned work briefed to us by the General Counsel, and the need to support developmental opportunities within the office provide sufficient justification for an additional position within the office.

  
\_\_\_\_\_  
Joyce L. Connery  
11/4/16  
\_\_\_\_\_  
Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**  
**NOTATIONAL VOTE RESPONSE SHEET**

**FROM:** Jessie H. Roberson

**SUBJECT:** Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-300-038, FY 2017 Staffing Plan

**Doc Control#2016-300-038A**

Approved \_\_\_\_\_

Disapproved

Abstain \_\_\_\_\_

Recusal - Not Participating \_\_\_\_\_


**COMMENTS:**

Below

Attached \_\_\_\_\_

None \_\_\_\_\_

I believe it is premature to consider this action.

  
\_\_\_\_\_  
Jessie H. Roberson

Nov 3, 2014  
\_\_\_\_\_  
Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**NOTATIONAL VOTE RESPONSE SHEET**

**FROM:** Sean Sullivan

**SUBJECT:** Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-300-038, FY 2017 Staffing Plan

**Doc Control#2016-300-038A**

**Approved**   X                        **Disapproved**                             **Abstain**       

**Recusal – Not Participating**       

**COMMENTS:**      **Below**   X        **Attached**                             **None**       

The amendment directs the conversion of the Deputy General Council position from Senior Executive Service to General Schedule classification when it next becomes vacant.

The Office of the General Counsel has a total of eight positions. Two members of the Senior Executive Service to supervise six subordinates is excessive and unnecessary. Since the beginning of September 2012, a period spanning 50 months, there has been two SES in OGC for 9 months, 1 SES for 23 months, and zero SES for 18 months. There was no demonstrated improvement in office performance during the limited periods where two SES were in the office.

The direction sought by the amendment is unquestionably within the authority of the Board. The statute plainly provides that the Board may hire such staff as considered necessary. While the executive functions of employee appointment are assigned by statute to the Chairman, the division of responsibilities between the Chairman and the Board is well settled. The Chairman advertises, screens applicants, selects particular individuals for hire and otherwise administers the appointment process. The Board determines the appropriate number and classification of staff. The vehicle for the Board's determination is the staffing plan.

The Board has repeatedly used the staffing plan to make these determinations, although every instance to date has resulted in the enlargement of the staff. It is absurd to suggest that the Board may enlarge the staff but not reduce it.

          //s//            
**Sean Sullivan**

          11/4/16            
**Date**

**Lotus Smith**

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**Subject:** Notational Vote: Doc#2016-300-038A Amendment by Board Member Sean Sullivan to  
Yellow Folder Doc#2016-300-038, FY 2017 Staffing Plan

**From:** Daniel J. Santos  
**Sent:** Thursday, November 03, 2016 12:22 PM  
**To:** Lotus Smith <[REDACTED]>; Shelby Qualls <[REDACTED]>  
**Subject:** RE: Notational Vote: Doc#2016-300-038A Amendment by Board Member Sean Sullivan to Yellow Folder  
Doc#2016-300-038, FY 2017 Staffing Plan

Not Participating.

**From:** Lotus Smith  
**Sent:** Thursday, November 03, 2016 12:09 PM  
**To:** Bruce Hamilton <[REDACTED]>; Daniel J. Santos <[REDACTED]>; Joyce Connery  
<[REDACTED]>; Sean Sullivan <[REDACTED]>  
**Cc:** ExSec <[REDACTED]>  
**Subject:** Notational Vote: Doc#2016-300-038A Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-  
300-038, FY 2017 Staffing Plan

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting  
electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD  
NOTATIONAL VOTE RESPONSE SHEET**

**FROM: Members of the Board**  
**SUBJECT: Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-300-038, FY 2017  
Staffing Plan**

**DOC#2016-300-038A**

Office Directors have provided their input

**Approved** \_\_\_\_\_  
**Disapproved** \_\_\_\_\_  
**Abstain** \_\_\_\_\_  
**Recusal – Not Participating** \_\_\_\_\_

**COMMENTS:**  
**Below** \_\_\_\_\_  
**Attached** \_\_\_\_\_  
**None** \_\_\_\_\_

Lotus Smith  
Executive Secretary  
Office of the Chairman

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**  
**NOTATIONAL VOTE RESPONSE SHEET**

**FROM: Bruce Hamilton**

**SUBJECT: Amendment by Board Member Sean Sullivan to Yellow Folder Doc#2016-300-038, FY 2017 Staffing Plan**

**Doc Control#2016-300-038A**

**Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_**

**Recusal – Not Participating \_\_\_\_\_**

**COMMENTS: Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_**

This Amendment directs the Chairman, by way of the FY2017 Staffing Plan, to convert the Deputy General Council position from Senior Executive Service to General Schedule classification when it next becomes vacant.

A plain and straightforward reading of the Board’s enabling statute shows that the Board has the authority to direct the Chairman to effect such a change.

42 U.S.C. § 2286 (c) (2) states (with emphasis added):

“... the Chairman shall be the chief executive officer of the Board and, *subject to such policies as the Board may establish*, shall exercise the functions of the Board with respect to---

“(A) the appointment and supervision of employees of the Board ....”

Further, 42 U.S.C. § 2286b (b) (1) states:

“The Board may, for the purpose of performing its responsibilities under this subchapter-  
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“(A) in accordance with section 2286(c)(7), hire such staff as it considers necessary ... but not more than ... 130 full-time employees.”

While Section 2286(c)(7) provides that the Chairman *must* obtain Board approval to appoint or remove the three office directors, the statute does not in any way *preclude* the Board, should it choose to do so, from directing the Chairman in the hiring or removal of *other* employees or the creation, re-classification, or elimination of other positions, in this case through a Board-

approved Staffing Plan. Had Congress intended the Chairman to have complete and unconstrained authority over these personnel matters, it would not have included the words, "... subject to such policies as the Board may establish ...," or it would have established a single administrative head in lieu of a Board.

Making this conversion will require administrative effort to re-define the duties, responsibilities, and qualifications of the Deputy General Counsel in order to be consistent with OPM (5 U.S.C., Part III, Subpart D, Chapter 51). The Board has the authority to direct the Chairman, through the Staffing Plan, to perform such an effort, and a reasonable interpretation of this Amendment is that it so directs.

As to the question of whether the Deputy General Counsel *should* be a member of Senior Executive Service, the answer is arguably subjective, but for an organization of only eight people serving an Agency as small as is DNFSB, prudence would dictate that one SES leader is sufficient and optimal.

I therefore approve.

  
Bruce Hamilton

3 NOV 2016  
Date