

Testimony

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Let me thank the committee for the opportunity to testify today on the important issues facing our nation's veterans and the care they're earned from the Department of Veterans Affairs. It is always a great privilege to speak before a congressional committee. It is an even greater privilege to speak about such an important issue.

I am Donald F. Kettl, a professor at the University of Maryland School of Public Policy. I have devoted my professional career over the last 40 years to exploring how best we can ensure that government serves our people. I have written and researched extensively on issues of public management. I have consulted broadly for government agencies in the United States and abroad, and I have chaired two blue-ribbon commissions in Wisconsin. I want to draw on that experience today to explore how we can best serve the nation's veterans.

In my testimony before you today, I want to speak in support of S, 1856, "The Department of Veterans Affairs Equitable Employee Accountability Act." It provides a strong and sensible strategy for solving many of the VA's most important problems. Before speaking directly to the act's provisions, however, let me first talk about the broad problems of performance that the VA faces.

There is one thing on which we can all agree: The Department of Veterans Affairs is not now performing at the level that we—the nation and its veterans—expect. As the Government Accountability Office has repeatedly documented, the VA's health care system is struggling to deliver timely, high-quality, cost-effective health care. Those problems, in fact, have put the VA's health care system on the GAO's list of 32

high-risk programs especially prone to fraud, waste, abuse, and mismanagement.¹ The problems are large. They must be solved.

Some reform proposals have focused squarely on the VA's managers, both at the highest levels and at the department's middle levels. These proposals have begun with a singular diagnosis of the problem—that the VA is troubled by the poor performance of these managers—and a singular solution to the problem—that Congress must make it easier for the department to fire poor-performing managers and that Congress should then pressure the Department to ensure that this happens. The department has certainly been troubled by serious management problems, and poor performing managers certainly should be fired. More broadly, the nation's human capital system, for both political appointees and civil service, has fallen out of sync with the challenges it faces, and the system needs fundamental reform.

Before examining the legislation pending before this Committee, we need to step back and ask three questions. First, how many of the VA's problems would be solved by making it easier to fire poor-performing managers? Second, would proposals focusing solely on making it easier to fire these managers actually help? Third, what other steps can we take to improve care for veterans.

Understanding the VA's Problems

No one knows for sure just how many of the department's problems flow from the difficulty in firing poorly performing managers. My best guess is that it is probably about 5 percent. But suppose it's far, far higher—higher, in fact than I believe anyone realistically supposes. Let's assume that the problem of firing poor performers is as high as 50 percent of the problem.

Can we fire our way to success in solving any of the VA's issues? And, even if we could, what should we do to solve the other 50 percent of the problem? The answer to this question requires working through a series of puzzles.

1. Inadequate resources. In part, the VA's problems flow in part from not enough resources, in both money and people. A July 23, 2015 report in *USAToday*, based on a Freedom of Information Act request, showed that the VA had 41,500 staff vacancies in June of this year, including 5,000 physicians, almost 12,000 nurses, and more than 1,200 psychologists. In some locations, one of five positions was

¹ U.S. Government Accountability Office, *High-Risk Series: An Update*, GAO 15-290 (February 2015), at <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.gao.gov%2Fassets%2F670%2F668415.pdf>

vacant.² The VA can't provide the care that veterans deserve if it doesn't have the resources to do so. Part of the answer requires providing the VA with more money, but many members of Congress are understandably reluctant to do so without assurance that the money will be spent well.

2. Critical management vacancies. In addition to problems in providing sufficient staffing for front-line care, the VA has been struggling to recruit managers. As Chairman Johnny Isakson pointed out in a July 23, 2015 letter to VA Secretary Robert McDonald, the department has a vacancy rate of 25 percent among its medical directors. Among the leaders of the department's Veterans Integrated Service Networks, which are responsible for coordinating the care for veterans, the vacancy rate is 43 percent.³

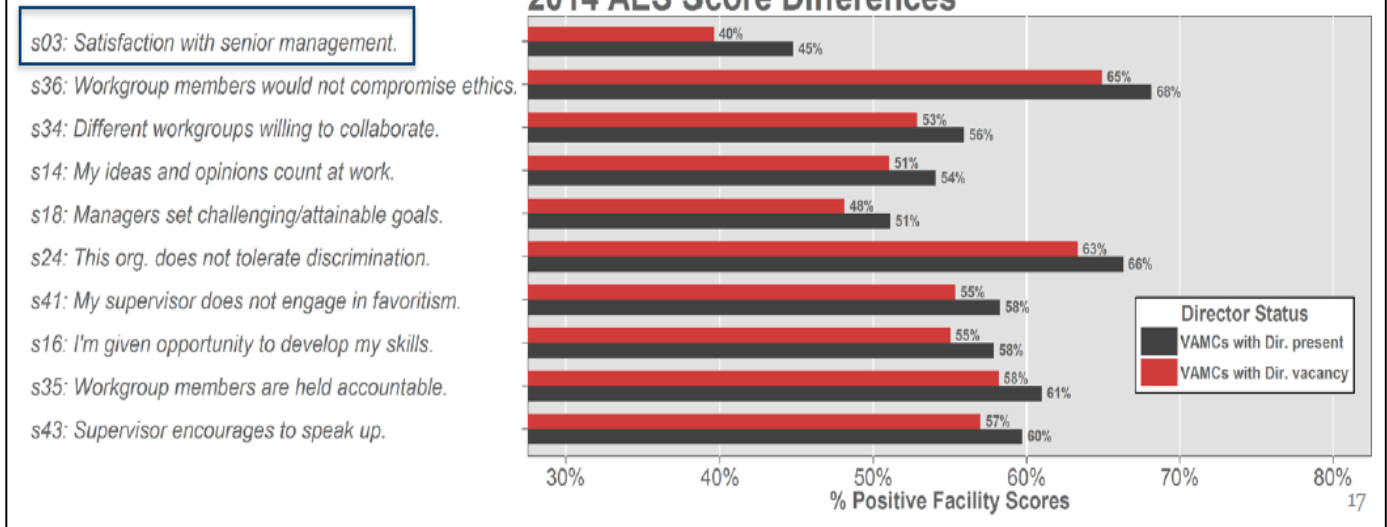
3. Vacancies hurt the department's performance. These vacancies have created severe problems for managing the turnaround that the VA needs. As the department's Undersecretary for Health, David Shulkin, has pointed out, "How can you possibly make the changes that we are doing unless you have the right leadership in place?"⁴ Moreover, vacancies badly hurt employee performance and morale. In the VA's All Employee Survey, facilities with a vacancy in the director position in FY2015 had lower scores across all survey questions.

² Meghan Hoyer and Gregg Zoroya, "VA has 41,500 unfilled medical jobs, forcing vets into costly private care," *USAToday* (July 23, 2015), at <http://www.usatoday.com/story/news/nation/2015/07/23/va-has-41500-unfilled-medical-jobs-forcing-vets-into-costly-private-care/30504525/>

³ Sen. Johnny Isakson to Secretary Robert McDonald (July 23, 2015), at <http://www.veterans.senate.gov/newsroom/majority-news/isakson-to-va-secretary-fill-vacant-va-leadership-positions-now>

⁴ Scott Maucione, "VA's top health official's five ways to transform access to health care," *FederalNewsRadio.com* (September 4, 2015), at

– Scores shown as “Percent Positive” or frequency of respondents selecting “agree/satisfied” or “strongly agree/very satisfied”



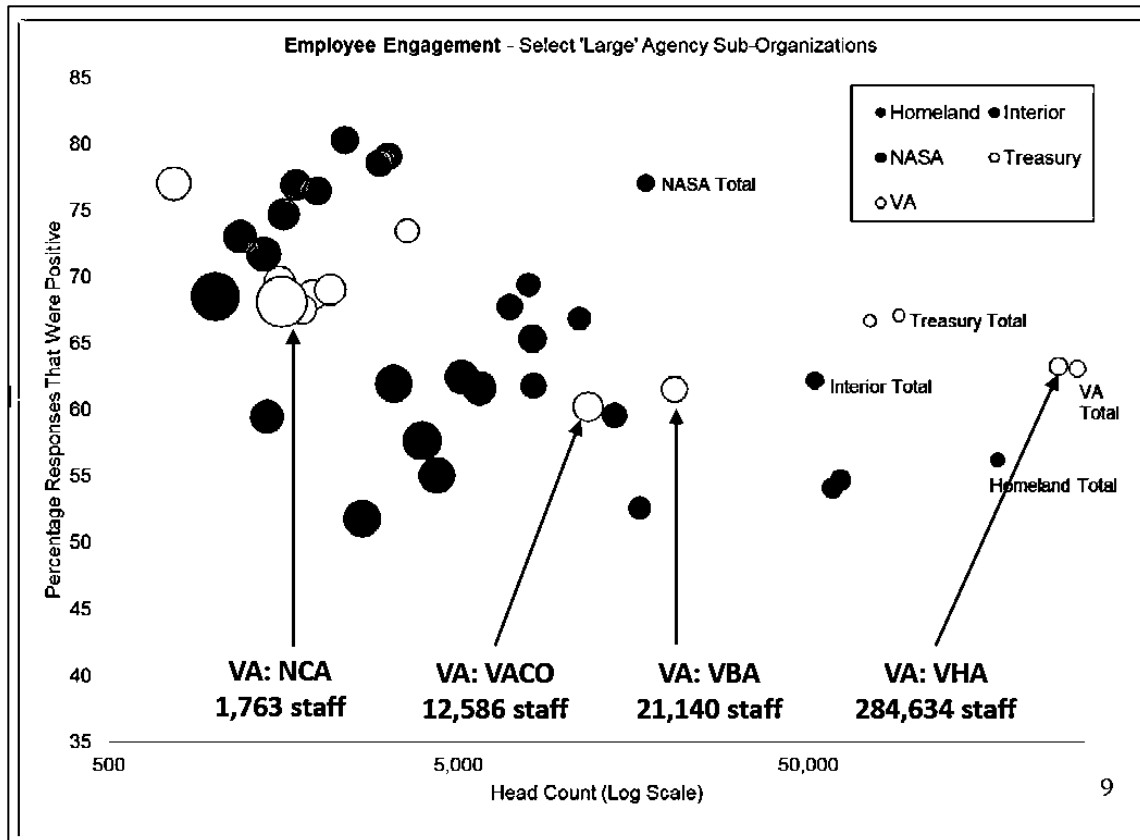
Source: Department of Veterans Affairs, 2014 All Employee Survey (AES).

This evidence makes clear that vacancies in key VA senior management positions hurt the department’s performance.

4. A focus on increasing the firing of senior managers increases the number of vacancies. Firm survey evidence is hard to come by, but the accumulated analysis of reporters for the media and anecdotal evidence from the field makes one thing clear: VA employees feel under assault, and that is vastly complicating the challenge of filling critical vacancies throughout the department. The Partnership for Public Service’s “best places to work in the federal government” shows that the VA is second-lowest in employee satisfaction and had the second biggest drop in satisfaction in 2104, in both cases after the Department of Homeland Security.⁵ It’s one of the most troubled departments in the federal government, and continued attacks on the department aren’t making it any better.

In fact, the Office of Personnel Management’s 2014 Federal Employee Values Survey shows that the VA is among the federal government’s most troubled departments. Its employee engagement score is low. The fact that it has so many employees only multiplies the problem.

⁵ Partnership for Public Service, “Best Places to Work Agency Rankings” (2015), at <http://bestplacestowork.org/BPTW/rankings/overall/large>

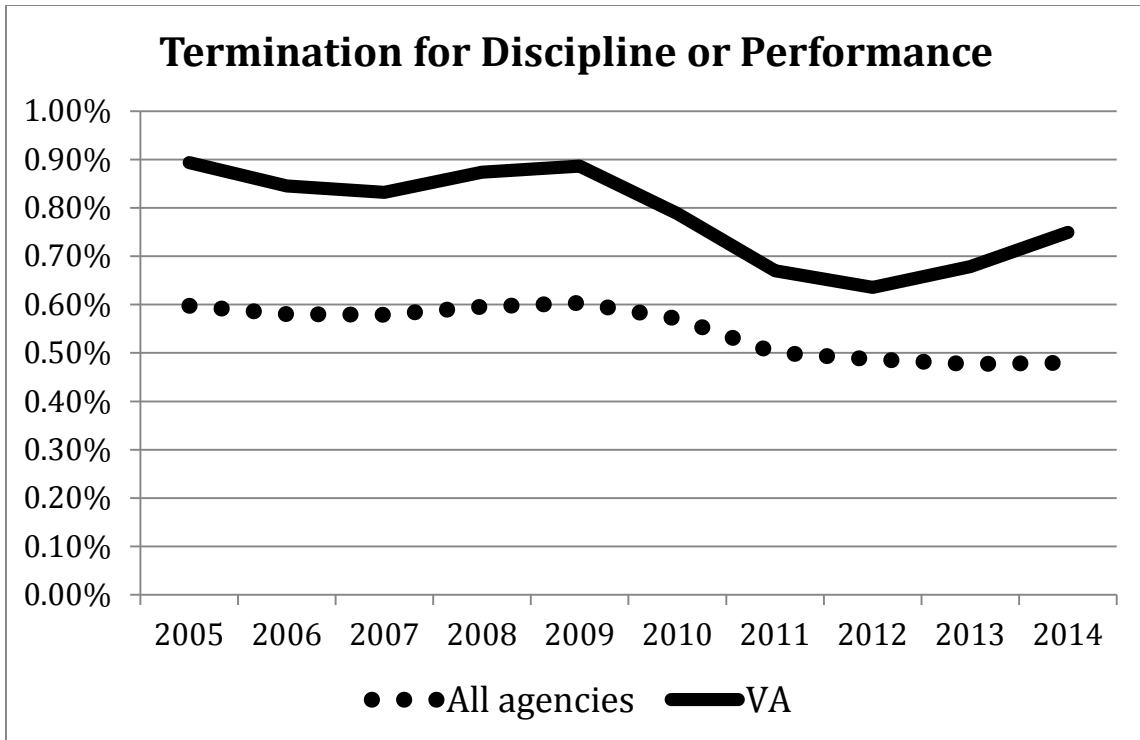


Source: Department of Veterans Affairs, based on 2013 Office of Personnel Management Federal Employees Viewpoint Survey.

Secretary McDonald has pointed out that the attacks on the department are making it harder to hire. He has said, “We can’t hire the people [we need] when members of Congress are going to somehow differentiate the VA versus other departments in government. That doesn’t cause people in government to want to work for the VA.”⁶

5. The rate at which the VA fires employees for cause is already above the federal average. The underlying assumption of many debates about the VA is that poor performers are allowed to continue in their positions. There is a question about whether we ought to adjust the balance of employee rights and managerial flexibility. But a careful look at the rate at which the VA terminates employees for disciplinary or performance reasons shows that it terminates employees at a rate more than one and a half times the federal government’s average.

⁶ Quil Lawrence, “Some Veterans Affairs Reforms Undermine Medical Recruitment Efforts,” *NPR.com* (August 31, 2015), at <http://www.npr.org/2015/08/31/436377436/some-veterans-affairs-reforms-undermine-medical-recruitment-efforts>



Source: Office of Personnel Management, FedScope.

The question is often raised—rightly—about whether government jobs in general enjoy more employment security than in the private sector. In July 2015, for example, the Bureau of Labor Statistics found that layoffs and discharges in the public sector occurred at a rate of 0.4 percent of the workforce, compared with 1.1 percent of the workforce in the private sector. However, the public and private comparisons include *both* termination for cause and layoffs for strategic and economics reasons; the BLS data do not separate them. The private sector has a higher rate of layoffs because the nature of its functions and business models are more variable.

It seems very likely, therefore, that public employees are terminated for cause at a lower rate than in the private sector, but the gap is smaller than is often believed. Moreover, since termination for disciplinary or performance reasons is higher in the VA than throughout the rest of government—0.75 percent of VA employees in 2014—it is likely that the gap between termination for cause in the VA compared with the private sector is not as large as usually assumed.

What does this mean? The VA is in trouble, but a singular focus on firing bad performers:

- Won't help the department hire the managers it needs.
- Will further damage the department's performance.
- Won't deal with most of the department's biggest problems, which lie beyond the performance of some poor department managers.

Steps to Real Reform

The firing process unquestionably needs to be improved. There's no place in the federal government for bad managers and bad management. But:

- We need to find the right balance between firing poor performers, and other disciplinary actions, on the one hand, and providing the protections that employees need to prevent political interference in their work, on the other. The nation's civil service original civil service act was the product of a partnership between a Democratic Senator, George Pendleton (Ohio), and a Republican President, Chester Arthur (New York). It's evolved since through bipartisan support of both parties.
- We need to find the right balance between these disciplinary actions and the fundamental talent management requirements of the nation's veterans care system.
- We need to find the right balance between these talent management needs and the mission of serving the nation's veterans.
- We can't expect to solve any of these problems by dealing with the VA in isolation, especially in changing the balance on any of these issues.

Legislative Recommendations for Improving Veterans Care

Let me explore the two principal pieces of legislation now before the Committee.

- *S. 290.* The "Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015," S. 290, would take steps to impose greater penalties on poor-performing employees, toughen the standards for employee performance ratings, mandate the reassignment of Senior Executive Service employees every five years, and restrict the Secretary's ability to place employees on administrative leave.

On a broad level, placing restrictions on employee benefits for those convicted of a felony makes sense. We need improvements in the employee rating system, although mandated distribution of ratings rarely works well. The SES originally anticipated that the federal government would create a corps of senior executives who would move among federal managerial assignments. However, mandating reassignment within the VA without fixing the SES's broader issues would surely not prove effective. Finally, no one wants employees to be placed on administrative

leave any longer than necessary, but due-process standards need to dictate the length of an administrative leave, not an arbitrary period.

More fundamentally, S. 290 does not deal with the fundamental issues facing the VA, and it would not get at the core problems that must be solved if we are to serve our veterans well.

- *S. 1856.* The “Department of Veterans Affairs Equitable Employee Accountability Act,” S. 1856, would significantly advance the nation’s efforts to strengthen health care for its veterans. In particular:
 - It provides the Secretary with greater power to suspend without pay and remove an employee found to behave in ways that do not serve the needs of veterans. More managerial flexibility is clearly a good step.
 - It establishes reasonable procedures to ensure that employees suspected of posing such a threat are provided with due process, in the best bipartisan traditions of the nation’s civil service policies.
 - It clearly holds the department’s top officials accountable for the department’s management. In particular, it focuses on the importance of recruiting employees, motivating them, training them for their roles, and holding them accountable. The VA is a people-based business. Better people policies are essential to better performance. Key managers need to be subject to an annual performance plan that provides a game plan for effective management.
 - It focuses the performance plan for managers squarely on the department’s human capital needs. It cannot fulfill its mission without planning for the people it needs, recruiting them, training them, retaining them, and developing them for future leadership advances. Every great private company follows these steps. The nation owes its veterans nothing less.
 - It requires managers to make an affirmative decision to keep employees at the end of the probationary period. Too often, it’s been easy for low-performing employees to slip through to permanent status. A government position ought to be earned through demonstrated successful performance. It is the responsibility of the manager to review each employee during the probationary period to ensure that the employee’s work rises to that level—and to conduct regular reviews and to provide career help afterwards to ensure that the employee’s contributions continue to advance.
 - It puts training at the center of the VA’s career development work. The most essential component is helping employees learn how best to motivate,

manage, and lead. We are now not only trying to solve the serious problems that plague the department today. We are also building the foundation on which its future service to veterans depends. The only effective way to avoid future crises is to build—now—for the capacity the department will need tomorrow.

- It provides a separate promotional track for technical experts outside of the management track. As the nation’s largest health care system, the VA will need.
- It engages the department directly with the GAO. That is a valuable step in improving the department’s performance.

Oversight Recommendations for Improving Veterans Care

In addition, the committee could significantly improve its oversight of the department’s care for veterans through its oversight functions. A regular, sustained strategy for reviewing the following issues would prove especially effective, through the Committee’s hearings and through the staff’s field investigations:

- ***Removal and due process.*** Reviewing the balance between efforts to identify, suspend, and remove employees who have shown themselves unworthy of the public trust, on the one hand; and the due-process protections afforded them under the law and Constitution, on the other. In the United States, there’s always been a balance between sanctions and due process. The VA is at the frontier of an important effort to re-set this balance. That is an important effort, and the committee could support that effort through its oversight.
- ***Accountability.*** Solving the department’s problems will require developing a performance plan for the department and ensuring that its managers understand their own contributions to the department’s performance. The committee could advance this effort through regular oversight of the department’s overall performance plan, as well as its efforts to bring managers’ work into alignment with this plan.
- ***Human capital.*** The VA’s success will ultimately depend on planning for the employees it needs, recruiting them, hiring them, training them, retaining them, and developing them. The committee could advance this effort through oversight of the department’s strategic human capital management.
- ***High-risk progress.*** In 2015, GAO placed the VA’s health care programs on its high-risk list of programs most prone to fraud, waste, abuse, and

mismanagement. GAO has identified core problems in the department's management; improving care for veterans will require solving these problems. The committee could advance the department's performance through regular oversight of the department's plan for getting off the high-risk list and of the progress it can demonstrate in doing so. In particular, it would be useful to ask the department's senior managers to testify, on a regular basis, about the steps they are taking to develop a plan for improving the department's performance and how they will close the gap with the best-performing departments and agencies in the federal government.

Our nation's veterans have given so much to the country. The country has made promises to them, and it is a sacred obligation to make good on those promises. Nothing could be a more fundamental measure of the greatness of our nation. The VA's problems now are significant, but they are eminently solvable. Through its work, this committee has the potential to help the department make the big steps that are needed.