



**PARTNERSHIP FOR PUBLIC SERVICE**

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Prepared for

**The Senate Committee on Veterans Affairs**

**Hearing on Pending Legislation**

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Chairman Isakson, Ranking Member Blumenthal, members of the Senate Committee on Veterans' Affairs, thank you for the opportunity to share the Partnership for Public Service's views on the proposal of the Secretary of Veterans Affairs to establish a comprehensive employment system under Title 38 for VA's Senior Executive level leadership positions. The Partnership is a nonpartisan, nonprofit organization that works to revitalize our federal government by helping it attract mission-critical talent, engage employees, modernize its management systems, build coalitions of support for a high-performing and accountable government, and develop effective leaders.

### **Partnership's Commitment to Effective Leadership**

The Partnership places special emphasis on developing strong leaders who are prepared to deliver results by building effective teams, driving innovation and working across boundaries. Leadership is the most important factor influencing federal employee satisfaction, commitment, and, ultimately, government performance. This is borne out by the *Best Places to Work in the Federal Government Rankings*, published by the Partnership for Public Service and Deloitte, which year after year find that effective leadership is the single biggest driver of employee satisfaction with, and commitment to, their organizations. It is as simple as this: agencies with good leaders perform better than agencies that struggle with leadership.

Through our leadership development programs, executive onboarding, coaching, thought leadership and advocacy, the Partnership works to ensure our government has a strong executive corps that is prepared to lead. The Partnership is currently engaged in a new research effort with McKinsey and Company to identify agency best practices with respect to attracting, developing and retaining high-performing senior executives. The report, to be released later this spring, will also determine how agencies are measuring the success of those activities. We hope this work will inform and support government-wide efforts to strengthen senior leadership, including the implementation of the President's Executive Order on Strengthening the Senior Executive Service issued last December.

### **VA Senior Executive Corps Faces Major Challenges**

The Partnership is committed to an efficient, effective, engaged and accountable senior executive corps, government-wide and at the VA. But the Department's senior executives face major headwinds. The 2015 *Best Places to Work in the Federal Government Rankings*, based on data from the Office of Personnel Management's *Federal Employee Viewpoint Survey (FEVS)*, finds that VA's executives rank last among large agencies in overall satisfaction (18 out of 18), and their satisfaction score dropped 7.6 points from 2014.<sup>1</sup> An analysis of the FEVS finds that, while nearly 95% of VA senior executives believe the work they do is important, and two-thirds would recommend their agency as a good place to work, barely a third believe they have sufficient resources to do their job (34.6%) and fewer than half believe they have a reasonable workload (42.7%). Perhaps most troubling is the fact that just 42.5% of VA executives believe that the results of the FEVS will be used to make the agency a better place to work – a worrying result that suggests a possible lack of confidence in leaders' responsiveness to employee concerns. The Department ranks second-to-last in the workplace category of Effective Leadership, which measures the extent to which employees believe leadership at all levels of the organization generates motivation and

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<sup>1</sup> "Department of Veterans Affairs." *Best Places to Work in the Federal Government*. Partnership for Public Service, 15 Dec. 2015. Web. 10 Mar. 2016.

commitment, encourages integrity and manages people fairly, while also promoting the professional development, creativity and empowerment of employees.

Data released by VA and others, as well as anecdotal evidence, seem to indicate that low and declining satisfaction among the Department's senior executives is having a real and measurable impact on the ability of the Department to bring in the executive-level talent that it needs to achieve its mission. The Secretary's proposal cites figures showing that nearly 30% of VA's SES allocations are unfilled, while almost 70% of VA's current executives are currently or within one year of being retirement eligible.<sup>2</sup> The Department has also seen a drastic decline in applications for executive management positions over the last year, and has had to repost several SES positions multiple times due to lack of quality candidates. Exacerbating this problem is the significant pay gap between senior executives in some of VA's most important and high-profile positions, such as hospital administration, and their private sector counterparts.

### **VA's Proposal to Establish a Comprehensive Employment System Under Title 38 for Senior Executive positions: Partnership View**

The Secretary has offered a comprehensive and transformative set of ideas for reforming VA's leadership, including a proposal to establish a new personnel system for senior executives under Title 38. We commend the Committee for making a serious effort to critically examine the proposals offered by the Department, and we offer the Partnership's perspectives below.

#### **Market-Sensitive Compensation is a Good Step Forward**

We agree with the Secretary's assessment that federal sector pay is "dramatically below what the private sector offers for comparable positions."<sup>3</sup> The Partnership's 2014 report with Booz Allen Hamilton, *Building the Enterprise: A New Civil Service Framework*, noted that federal pay "undermines the ability of the government to attract and retain high-quality, white-collar talent because it treats the workforce as a unified mass, and it bears little relationship to the compensation rates paid for similar work in the broader labor market."<sup>4</sup> Data from the Partnership's analysis of the OPM *Federal Employee Viewpoint Survey* reinforce this idea: just 43.3% of Veterans Health Administration senior executives report that they are satisfied with their pay. Across the Department, a small majority (54.2%) are satisfied, though the number climbs significantly at the Veterans Benefits Administration (81%). Understanding how the labor market values jobs, internally within an organization and across the market, is an accepted best practice and the way in which virtually every private sector entity sets compensation. The federal government's decades-old General Schedule system reflects a time when federal employees did not perform the complex and highly specialized range of jobs that they do today.

In our view, the proposal's expansion of market pay to skilled and highly sought-after executives, particularly those in the Veterans Health Administration, who serve in the majority of VA's executive positions, is necessary to attract and retain the talent needed to make VA's transformation successful. Yet many senior executives also serve in critical mission support

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<sup>2</sup> United States of America. Department of Veterans Affairs. *Title 38 Appointment, Compensation, Performance Management, and Accountability System for Senior Executive Leaders in the Department of Veterans Affairs (VA)*. Washington, D.C., 2016. Page 2

<sup>3</sup> *Ibid.* 3.

<sup>4</sup> *Building the Enterprise: A New Civil Service Framework*. Rep. Washington, D.C.: Partnership for Public Service and Booz Allen Hamilton, 2014. Print.

functions like human resources, information technology, and financial management. Thus, it is important that any compensation proposal account for the impact it will have on all executives of the Department.

The new compensation system as currently proposed will add an additional pay band, classified as “1A”, with higher compensation than in the current system. This bears a resemblance to the four-tier SES proposed in *Building the Enterprise*, in which executives at the top of the band are expected to perform as government’s most expert problem-solvers who deploy as needed to address difficult challenges across government. We appreciate VA’s recognition of the need to more generously compensate those executives engaged in what the Secretary’s proposal describes as “the most complex executive leadership roles.”<sup>5</sup> We believe that this aspect of the proposal will serve the Department’s executive recruitment and retention efforts well and, if implemented properly, could serve as a model for the rest of government.

It will be important, however, to thoughtfully consider how market-based compensation will be implemented. A thorough market examination may find that some employees are paid above-market. In our *Building the Enterprise* report, we recommended that when introducing market-based compensation, those individuals who are paid at above-market rates should not lose pay, but should have their pay frozen until it reaches the market level. Another option for the Committee to consider would be phasing in the proposal in such a way as to grandfather in current employees and applying market compensation to future hires.

#### **VA Should Be Able To Determine Executive Qualifications with Proper Oversight**

Under Secretary McDonald’s proposal, the VA Secretary would have much greater flexibility to determine the qualifications required for an executive leadership position and would be able to appoint senior executives without needing Office of Personnel Management (OPM) certification. The Partnership’s *Building the Enterprise* report recommended that OPM delegate to agencies the authority to certify their own executives, rather than going through the Qualifications Review Board (QRB) process. While the QRB can add value by ensuring that new executives are evaluated as government-wide assets and that there is a meaningful check on agencies, it can also increase the time to hire. Ultimately, we believe that agencies like VA know the talent and specialized skills they need (e.g., hospital administration) and are best positioned to make a hiring decision. The Partnership believes that this authority, combined with a periodic OPM audit and oversight, can offer the VA a way to bring in executive talent more quickly.

One aspect of this proposal which will require significant attention from both the Department and the Committee is the authority to transfer executives to other agencies. VA will set its own qualification standards, and department executives will be operating under a different system than their peers across government. This could make it more difficult for executives to move in and out of VA which is counter to the original vision of the SES as a mobile corps of leaders. While the Secretary’s proposal notes that the Department would enter into an interchange agreement with OPM “to allow certified permanent career VA senior executives to transfer to career SES appointments in other Federal agencies on the same basis as permanent career Senior Executives

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<sup>5</sup> United States of America. Department of Veterans Affairs. *Title 38 Appointment, Compensation, Performance Management, and Accountability System for Senior Executive Leaders in the Department of Veterans Affairs (VA)*. Washington, D.C., 2016. Page 6.

appointed under Title 5 authorities,”<sup>6</sup> we urge the Committee to give its sustained attention to the negotiation and execution of any such agreement, should the proposal move forward.

### **Committee Should Consider Alternate Approaches to Increasing Accountability**

Accountability is not just the structure of the discipline and appeals process; effective performance management and strong, empowered leaders are both critical. As I noted in my statement before this Committee last September, “[r]ather than simply finding ways to fire federal employees faster, the focus of legislative reform must be on how we can serve our veterans better.”<sup>7</sup>

The Partnership has been pleased to work with this Committee, as well as your counterparts in the House, to develop ideas to improve the quality of performance management and leadership at VA. For example, this Committee has already acted in a bipartisan manner in reporting S.290, the *Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015*, which, among other provisions, would hold VA senior leaders accountable for engaging and motivating employees, and would hold managers accountable for dealing with poor performers. This legislation also strengthens the probationary period to ensure that it is being used as a continuation of the hiring and assessment process; by requiring managers to make an affirmative decision to keep an individual on the job past the conclusion of their probationary period, the legislation helps ensure that poor performers will not be converted to permanent employment. These changes would not only lead to a more accountable Department, but would actually serve veterans better by removing poor performers before they have a chance to do harm.

With respect to the disciplinary process, Secretary McDonald’s proposal indicates a belief that current authorities relating to senior executive accountability under Title 5 are not consistent with the Department’s ability to achieve its mission. To quote the Secretary, “True accountability is challenged when the available authorities require unduly lengthy pre- or post-decisional procedures, or when third party appellate processes rely too heavily on unsuitable precedent... extending the Title 38 disciplinary and appellate procedures to VA’s career executives would strike a better balance between executives’ due process rights and the Secretary’s need to effectively manage his executive workforce.”<sup>8</sup>

The Partnership does not agree that the current Merit Systems Protection Board (MSPB) appellate process is inconsistent with the Department’s ability to hold executives accountable. The MSPB, which adjudicates appeals for federal employees under Title 5, actually upholds agency decisions more often than not. Seventy-eight percent of appeals from across government made to MSPB in 2014 upheld the agency’s original decision or action.<sup>9</sup> In 2015, the corresponding percentage was 80%.<sup>10</sup>

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<sup>6</sup> *Ibid.* 1.

<sup>7</sup> Written Statement of Max Stier, President and CEO, Partnership for Public Service: Hearing on Pending Legislation, 114th Cong., 5 (2015) (testimony of Max Stier). Print.

<sup>8</sup> *Ibid.* 4.

<sup>9</sup> Yoder, Eric. "Agencies Strike Out Too Much on Employee Appeals? Any Ballplayer Would Love Management’s Batting Average." *Washington Post*. 18 Feb. 2016. Web. 10 Mar. 2016.

<sup>10</sup> United States of America. Merit Systems Protection Board. *Annual Report for FY 2015*. Washington, D.C.: Merit Systems Protection Board, 2016. Print. Page. 20.

There are good reasons why recent decisions issued by the Merit Systems Protection Board have not gone the Department's way. As the Board itself has noted, the Veterans Access, Choice, and Accountability Act of 2014, which created the expedited appeals process for senior executives at the Department of Veterans Affairs, did not change the standard of proof or evidentiary requirements for an administrative judge to make a decision. The authority created by the Act also does not allow the judge reviewing the case to mitigate penalties. In the case of Linda Weiss, who the VA fired due to what it considered to be a failure to perform the duties of her position in dealing with a problem employee, Administrative Judge Arthur Joseph upheld the bulk of the Department's charges but found that the penalty was "unreasonable under the circumstances" and that "the newly enacted legislation [the Choice Act] under which the Board exercises jurisdiction over this appeal narrowly circumscribes the Board's authority regarding review of the agency's penalty." Judge Arthur continues, saying that "mitigation of the penalty by the administrative judge is not authorized."<sup>11</sup>

Before considering such a significant change to the Department's workforce, we encourage the Committee to work with your Senate colleagues to pass the thoughtful and comprehensive legislation reported in December, and provide the oversight necessary to ensure that the Department is using its existing performance management tools effectively. We further encourage the Committee to look at ways to refine the Choice Act to give greater flexibility to Administrative Judges in administering adverse actions, for example by authorizing judges to mitigate penalties, or by allowing appeals to be brought before the full Merit Systems Protection Board for adjudication. This second refinement of the Choice Act would provide an additional layer of oversight for executives and could be established with a set amount of time available for review to ensure an efficient process. These reforms would actually enhance accountability at the Department by upholding disciplinary actions against an employee even in cases where the agency may have acted too harshly, or not harshly enough, and by ensuring that VA managers and supervisors are trained and empowered to take action against poorly performing employees.

### **Rigorous Evaluation Processes are Critical**

The scandal that erupted within the Phoenix VA Health Care System in April 2014 brought to light serious wrongdoing and troubling practices within certain Veterans Health Administration facilities, and demanded a response from Congress. That response, the Veterans Access, Choice, and Accountability Act of 2014, made significant reforms to how VHA staffs and provides care at its hundreds of facilities. It also made major changes in the authorities of VA to discipline its executives.

It is critically important that in considering further changes to the disciplinary process, the Committee takes care that reforms are made with serious deliberation and recognition of their potential impact. As I have noted above, the authorities provided by the Choice Act, meant to improve the Department's ability to hold its executives accountable for wrongdoing, has not been able to deliver the results originally hoped, namely a better-managed and more engaged VA, and match Congress' intent.

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<sup>11</sup> Linda Weiss v. Department of Veterans Affairs. 29. Merit Systems Protection Board New York Field Office. 16 Feb. 2016. Print. Page 21.

Should the Committee and VA decide to move forward with legislation implementing the Secretary's proposal being discussed today, I strongly urge the addition of a rigorous and comprehensive evaluation component. Congress, the department, our veterans and the public need the means to assess whether the personnel system designed by VA is leading to meaningful transformation and the talented, professional and engaged workforce necessary to serve our veterans at the highest level of quality and service. While there are dozens of critical questions that the Committee should be asking before, during and after implementation of this proposal, the three stated below will be most critical to evaluating its effectiveness:

- Is VA successful in recruiting, hiring and retaining top quality senior executives with the unique skills necessary to accomplish its mission?
- Are VA executives satisfied with and engaged in their work?
- Are VA executives successful in meeting the agencies objectives, and is the Department successful in achieving its mission?

If requested, we would be pleased to share with this Committee suggested legislative language for an evaluation component.

### **Conclusion**

Effective leadership is at the core of the Partnership's mission, and we welcome the dialogue on how best to position VA's executives to meet their complex and critically important mission. The Secretary's proposal to move the Department's executives to a personnel system under Title 38 offers what we believe are meaningful benefits, notably more market-sensitive pay and greater flexibility in hiring and certifying executives. However, we are troubled by the proposed change to take the Department's executives out of the jurisdiction of the Title 5 disciplinary system, which includes review of appeals by the independent Merit Systems Protection Board. We believe there are intermediate steps, from reforming the Veterans Access, Choice, and Accountability Act authorities to legislative proposals already in motion to strengthen performance management tools, which can address the challenges cited by the Secretary in completing the Department's transformation. We urge the Committee to examine this proposal with the utmost care, and act with caution when considering major changes to the structure of the Department's workforce. Building a Department of Veterans Affairs that serves veterans with the care and respect they have earned will require engaged, accountable and high-performing executives who are fully invested in the Department's transformation. The Committee should proceed with this as its foremost goal.

Thank you for the opportunity to submit this statement for the record. I look forward to continuing to work with the Committee on this and other matters impacting the workforce of the Department.