



**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, and Members of the Committee, thank you for the opportunity to provide a statement for the record on important legislation pending before this Committee. I am Max Stier, President and CEO of the Partnership for Public Service, a nonpartisan, nonprofit organization dedicated to revitalizing the federal civil service and transforming the way government works. I appreciate the chance to share the Partnership's views on the *Department of Veterans Affairs Equitable Employee Accountability Act of 2015* (S. 1856) and the *Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015* (S. 290).

This Committee is right to be concerned about accountability at the Department of Veterans Affairs (VA), given recent management failures. The Partnership shares your concern and is one of the most vocal and passionate proponents of reforming our civil service system and ensuring that our federal government operates effectively and efficiently to provide the results the American public expects and deserves. We issued a report<sup>1</sup> last year outlining a framework to improve the management and performance of the federal workforce across government. I shared many of these recommendations when I testified before you on June 24, 2015.

As you consider legislation pending before this Committee, we urge you to consider whether the changes you are pursuing will achieve your desired end goal – improved services for our nation's veterans. For some of the changes being proposed, we believe the answer is no. The reforms being promoted in the *Department of Veterans Affairs Accountability Act of 2015* (S. 1082), for example, may have unintended consequences including diminished protection for whistleblowers and diminished incentive for talented and experienced people to seek employment in the Department.

Rather than simply finding ways to fire federal employees faster, the focus of legislative reform must be on how we can serve our veterans better. There are a number of ways to reform our system and improve service to the veteran community, but moving to an “at-will” employment system for the Department is not one of them. VA must ensure it hires high-quality talent at all levels, provides developmental opportunities to position employees for success and holds career and political leaders accountable for their performance. With this in mind I offer my feedback on S. 1856 and S. 290.

### **S. 1856**

We are very pleased that Ranking Member Blumenthal has championed the *Department of Veterans Affairs Equitable Employee Accountability Act of 2015* (S. 1856), legislation that would address accountability as well as critical management challenges at VA. The Partnership strongly supports this bill and encourages Congress to act quickly and pass it.

As introduced, the bill provides the Secretary with an additional authority to remove employees for performance or misconduct that is a threat to public safety or health, while providing for due process to ensure the law is constitutional and enforceable. We understand there is some concern that this language may not apply to individuals responsible for recent mismanagement at VA. This concern can be addressed by revising the standard. For example, the bill could provide for removal for performance or misconduct that “adversely impacts the healthcare, services, or benefits provided to veterans and their families” rather than if the employee's performance or misconduct is a “threat to public health or safety.” We also recommend clarifying that VA employees under this section are entitled to appeal a decision to the Merit Systems Protection Board (MSPB).

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<sup>1</sup> Partnership for Public Service and Booz Allen Hamilton, *Building the Enterprise: A New Civil Service Framework*, April 2014, <http://ourpublicservice.org/publications/viewcontentdetails.php?id=18>.

In addition to providing this added removal authority, the bill takes a number of steps to address management challenges at VA and, hopefully, prevent substandard performance that has undermined confidence in the Department from happening in the future.

First, the bill creates a separate promotion track for technical experts so they can advance in their careers without having to go into management positions for which they are ill-suited. Too often we hear that supervisors promote their employees into management positions as the only way to advance them, even when the employees are technical experts who may be uninterested or unskilled in managing people.

Second, the bill ensures managers are fully using the probationary period to develop high-potential employees and to evaluate and remove someone if they are not the right fit for the position. The probationary period is a continuation of the assessment process and gives managers the chance to determine an individual's fitness for the position. Individuals who have not demonstrated the competencies needed to perform well can be removed more easily during this period. Too often, however, employees pass their probationary period due to inaction of managers.

S. 1856 would require managers to make an affirmative decision as to whether an individual who serves in a probationary period has demonstrated successful performance and should continue past the probationary period. It also requires new supervisors to demonstrate management competencies, in addition to technical skills, in order to remain in a management position. We encourage Sen. Blumenthal to tweak the language to make it clear that a manager must make a decision whether to pass an employee through the probationary period "within" rather than "no later than" the 30 days prior to the end of the probationary period. We also recommend clarifying what happens if no action is taken by the time the probationary period ends and suggest the employee is either removed or falls back to a nonsupervisory role.

Third, S. 1856 requires periodic training for managers on the rights of whistleblowers and how to address an employee allegation of a hostile work environment, reprisal or harassment; how to motivate, manage and reward employees effectively; and how to manage employees who are performing at an unacceptable level. In addition, VA managers are held accountable in performance plans for taking action to address poor performance and misconduct and for taking steps to improve or sustain high levels of employee engagement. We regularly hear from agencies that many of the performance-related issues could be addressed if there was better training for managers, if they were held accountable for dealing with poor performers and if they had support from leadership.

Sen. Blumenthal's bill would hold senior political leaders accountable in performance plans for recruiting and selecting the right people for employment at the agency, engaging and motivating employees, training and developing employees and holding managers accountable for making difficult performance decisions. Accountability for management in government starts at the very top and this provision will ensure all leaders, career and political, are held accountable.

Finally, the legislation requires GAO to study the implementation of Section 707 of the *Veterans Access, Choice, and Accountability Act of 2014*, which was enacted last year, to understand its impact on performance, accountability, recruitment and retention at VA, particularly at the executive level. The provision would also require GAO to review VA's internal policies for dealing with performance issues and make recommendations for how the Department could expedite the process for addressing performance and misconduct administratively. This report will give members of the Committee and Congress valuable information that can inform future policy decisions at VA and across government.

## **S. 290**

The *Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015* would make a number of changes to the Senior Executive Service (SES) at VA, some of which we believe are primarily punitive in nature. Instead of focusing on reducing annuities for a handful of current or former federal employees convicted of certain crimes, the Partnership believes it is more advantageous to focus on ensuring agencies are selecting and developing the very best executive talent.

For example, we are pleased to see the provision that would expand mobility at the Department. The Partnership has long supported greater mobility in the federal government, particularly at the executive level, as we believe diversity of experience strengthens leadership. The SES was designed to be a mobile corps, yet more than 50 percent of senior executives at VA have never changed positions since joining the SES.<sup>2</sup> Sen. Moran's bill would require the Secretary to "reassign each individual employed in a senior executive position to a position at a different location that does not include the supervision of the same personnel or programs." To alleviate any concerns about forcing executives to uproot their families and move to a new location, we suggest striking "at a different location." In addition, it is important that reassignments be made strategically and in a way that will help VA achieve its mission.

We support the ability of the Secretary to waive the mobility requirement but do not believe the Secretary should be required to go to Congress before issuing a waiver. We recommend giving the Secretary the discretion, as part of broader workforce management, to issue a waiver as long as he or she submits an annual summary report to Congress with the number of executives who have remained in their position for more than five years and a brief explanation as to why the waiver was granted. The Secretary might also do a review at that point to determine whether those positions should be designated as Senior Level (SL) or Senior Technical (ST) positions.

We do have concerns, however, about the provision that would reform the performance appraisal system and create a forced distribution for executives at VA. Under this legislation, no more than 10 percent of executives could receive an "outstanding" rating and no more than 20 percent could receive a rating that "exceeds fully successful." Such a provision seems arbitrary. Further, there is no compelling research that demonstrates that a multi-level, forced distribution performance appraisal system results in improved employee performance. In fact, it could do the opposite, and a number of successful private sector companies are moving away from such systems. A better alternative might be a requirement for a review of the Department's performance management system with an objective of ensuring that it encourages ongoing feedback, includes clear performance measures that are aligned with organizational outcomes, and identifies opportunities for employee development. The Department's performance management system must also identify the small percentage of employees who will not or cannot perform successfully and take action to separate them.

S. 290 also requires the Secretary to submit to the House and Senate Veterans Affairs Committees a report on the performance appraisal system, and the report is to include detailed information about every executive's performance appraisal. Any report on the outcomes of the performance appraisal system should maintain the privacy of the individual executive absent any compelling need to provide that information.

Finally, S. 290 also includes a provision setting limits on the length of paid administrative leave available to employees. The provision is similar to language in S. 1856. The Partnership believes all agencies

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<sup>2</sup> Office of Personnel Management analysis of the Central Personnel Data File (now called EHRI-SDM) for career senior executives employed at VA on March 31, 2011.

should be entitled to use administrative leave in certain instances (e.g., a doctor's appointment, voting, weather emergency, etc.) but we are generally supportive of placing some limits on the length of time someone can remain on administrative leave, particularly when they are on leave pending possible removal or discipline based on their performance or conduct. In addition, we understand the desire for greater transparency but are concerned about the administrative burden on VA if the agency is required to submit a quarterly report to Congress with the names of every individual who has been on administrative leave for longer than seven days during the quarter. Instead, we suggest requiring an annual summary report, which should be sufficient.

In addition to pursuing statutory changes, we hope you will continue to work with leaders at the Department and encourage them to take action administratively to address performance and accountability. It is our belief that VA has the ability to address many of these issues on its own. For example, VA could provide better information to managers on how to take a performance-based action and how to fully utilize the probationary period. In addition, they could improve internal communication between senior leaders and the Office of Inspector General about performance based actions to provide greater transparency and to try and resolve issues more quickly.

## **Conclusion**

Thank you for the opportunity to share my views on pending legislation. As legislation moves through the Committee and to the floor we hope you will stay focused on the outcome you hope to achieve – better care for our nation's veterans. To bring about real reform at VA, it is not enough to get rid of a few bad apples; the Department must fundamentally change the way it manages its talent.