

**STATEMENT OF
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**DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Miller, Ranking Member Michaud, Distinguished Members of the House Committee on Veterans' Affairs, thank you for this opportunity to appear before the Committee to discuss performance plans and awards. My testimony will review the policies and procedures that govern VA's senior executive performance management system.

Before I describe the technical aspects of performance plans and awards, I would like to express, on behalf of the VA workforce, our commitment to the Department's mission to serve Veterans. To accomplish this mission, we must recruit and retain the best talent, many of whom require special skills in health care, information technology, management and benefits delivery. In particular, VA requires talented senior executives to manage the complex set of facilities and programs that VA is responsible to administer. We are competing in tough labor markets for skilled personnel, both in the public and private sector. To remain competitive in recruiting and retaining the best personnel to serve our Veterans, we must rely on tools such as incentives and awards that recognize superior performance. We also recognize that we must hold our employees, and our leaders, accountable. Performance plans are the foundation of accountability not only for the senior executives but for the entire workforce. Senior leadership engagement in managing executive performance plans, including counseling and mid-year assessments, also serves as the model for the general schedule workforce.

There are two separate authorities available to VA to recruit and hire senior executives. Title 5 of the United States Code (U.S.C.) sets forth the Government wide regulations that are applicable to all Federal agencies. In addition, the Secretary of Veterans Affairs has separate hiring authority for health care and health care-related occupations under title 38, which applies to many senior executives serving in the Veterans Health Administration. Although VA utilizes two hiring authorities, VA uses uniform guidance and authority for evaluating and recognizing title 5 and title 38 Senior Executive performance. Thus, the VA uses a single senior executive performance management and appraisal system.

Public Law 108-136, passed by Congress and signed into law on November 24, 2003, established the performance-based pay system for members of the title 5 Senior Executive Service (SES) throughout the Federal Government. Agencies must demonstrate adherence to this law in the evaluation of senior executives and subsequent distribution of performance awards (5 U.S.C. 5307(d)) in order to receive biennial certification from the Office of Personnel Management (OPM). Agencies must also make meaningful distinctions based on performance for senior executive evaluations to receive certification. An OPM-certified agency may apply the maximum annual rate of pay as well as pay adjustments and cash awards as part of the executive's compensation. Presently, VA has an OPM-certified senior executive performance appraisal system. This certification allows VA to establish a higher level salary cap, which enhances our ability to recruit and retain the most qualified and high-performing senior executives. The statutory maximum executive pay for SES in an OPM-certified system is EX Level II (\$181,500), while the cap is at EX Level III (\$167,000) if an agency's performance system is not certified. Although the OPM certification applies only to the title 5 senior executives, it is this system that VA applies to all VA senior executives including title 38. However, title 38 physicians and dentists have additional statutory pay that allows salary to exceed the senior executive caps.

VA uses VA Form 3482, Senior Executive Performance Agreement, dated June 2012, to record critical elements of the performance plan and the rating assessment. We use five rating levels: Outstanding, Exceeds Fully Successful, Fully Successful, Minimally Satisfactory, and Unsatisfactory. Performance standards for these five ratings are included on the form. As required by OPM, performance requirements for each senior executive are assembled in the five Critical Element categories: Leading Change, Leading People, Business Acumen, Building Coalitions, and Results Driven. The particular discretionary weights to ratings applied to these Critical Elements in VA are: 20 percent, 20 percent, 10 percent, 10 percent, and 40 percent, respectively.

VA puts a higher value on "Results Driven" than other Critical Element categories. The requirements for each Critical Element are determined by organizational goals and strategies, and through discussion between the senior executive and his or her rating official. Additionally, there are Secretary-approved VA-wide foundational requirements in the five Critical Elements that all VA senior executives must strive to attain. This form also captures performance remarks from rating officials, narratives from the Performance Review Boards (PRB), and calculation of performance awards. More specific guidance on the process, the form, duties of the rating and reviewing officials, and the process used by the Performance Review Committees (PRC) and PRBs are contained in VA policy (Handbook/Directive 5027, Senior Executive Service, Part V).

VA's performance appraisal system is more rigorous and goes beyond the minimum standards set by OPM in 5 CFR for planning, monitoring, evaluating and rewarding executive performance. In 2011, VA added a reviewing official, which is not required, as part of the rating process for most senior executives. This reviewing official is responsible for summarizing accomplishments, commenting on values, highlighting any

areas of disagreement with the rating official, and providing a second, more senior review of accountability and accomplishment.

After completion of the performance plan by the rating/reviewing official at the end of the fiscal year, performance appraisals are then reviewed by PRCs that conduct an initial collective review of performance appraisals prior to the review by the PRB. The PRCs are discretionary and provide perspectives and assessments, which enable the PRB to more efficiently and effectively evaluate the contributions of each senior executive. Typically, the PRC and PRB conclude their deliberations in early December. The Secretary of VA, advised by the two rating panels, is the final authority on all executive ratings and ensures ratings appropriately reflect the executive's attainment of organizational goals and objectives. Once the rating is signed by the Secretary, there is no appeal allowed under 5 CFR section 430.308.

In 2014, VA added more rigor and discipline to this performance management and appraisal system by requiring and providing direction to the employee and the review panels on the direct linkage to VA's strategic goals and objectives and values. Also, critical to our ability to provide oversight and monitor the process, VA mandated electronic processing of all SES performance plans for fiscal year (FY) 2014. Automating the processing and management of our senior executive performance plans will increase our ability to ensure plans are timely, that mid-year reviews are accomplished, that rating and reviewing officials are designated properly, and that we have visibility on all goals and objectives throughout the rating year.

Our progress in making rating distinctions is evident in the chart below. VA has steadily made progress in evaluating and rating our senior executives using the five rating levels. The absence of ratings in the lowest two categories is not uncommon for most agencies and demonstrates that VA monitors and addresses performance on an ongoing basis. In all of Federal Government, there were only 12 senior executives rated Minimally Satisfactory and 3 rated Unsatisfactory in FY 2012.

Rating	FY 2010	FY 2011	FY 2012	FY 2013
Outstanding	35%	32%	25%	21%
Exceeds Fully Successful	38%	43%	48%	57%
Fully Successful	18%	19%	26%	19%
Minimally Satisfactory	0%	0%	0%	0%
Unsatisfactory	0%	0%	0%	0%

In addition to how VA's performance management system works, the Committee also asked how performance awards are administered. Guidance covering senior executive performance awards is set forth in 5 U.S.C. 5384, which states senior executive performance-based awards must be paid. There are specific parameters and restrictions in the law. These are the most significant:

- In accordance with 5 CFR 534.405(a)(1-2), the senior executive must have held a career appointment at the end of the performance appraisal period, or have previously held such an appointment and retained career rights.
- In accordance with 5 CFR 534.405(b)(1)(i), no more than 10 percent of aggregate salaries of all career senior executives can be utilized as the dollar amount for award pool; however, for FY 2013, this amount was capped by OPM at prior year's spending, and for FY 2011 and FY 2012, the caps provided by OPM were not to exceed 5 percent of aggregate salaries. A snapshot of senior executives' salaries is taken annually, as of September 30, to establish award pool funding using the statutory criteria or that provided by OPM.
- In accordance with 5 CFR 534.405(c), senior executive performance awards must be a minimum of 5 percent and no more than the maximum of 20 percent of the senior executive's salary.

Once final rating decisions have been made by the Secretary, modeling calculations are made to determine the fairest, most equitable, and transparent approach to recognize performance. There is no deliberate attempt to "spend every dollar," nor is there a "pre-determined" approach to assigning ratings or awards in VA. As mentioned previously, agencies must show distinctions in ratings, which means there must be a correlation between the rating and award amount. A lack of correlation creates the perception of unfairness and lack of transparency, and can place our OPM certification at risk. Therefore, until it is known how many ratings are at each performance level, there is no way of knowing how many awards, and in what amounts, can or should be paid.

At the end of the rating process, before final rating decisions are released, or performance awards are processed, name checks are requested to ensure no final ratings are released for any senior executive who is the subject of any administrative, Equal Employment Opportunity, or Office of Inspector General investigation, review or audit. While no presumptions are made regarding the outcomes of any such investigation, review, or audit, the rating decisions are not released and performance awards are not processed for senior executives subject to such activity.

Performance awards are part of SES employees' pay structure, and are awarded only after a rigorous and diligent review of executive achievements against both organization and Department performance goals. Performance awards are not bonuses; they are awards to promote excellence, and are given to the senior executives who perform the best. Performance awards, as outlined in the statute and CFR, are

designed to be part of their compensation – that is the premise of “pay for performance” law passed by Congress. Failure to recognize value and performance puts VA (and any organization) at risk of accelerating the retirement, resignation and transfer to other agencies or the private sector of some of the Department’s most experienced and effective senior managerial and professional talent.

Since FY 2010 our performance ratings demonstrate that VA is exercising due diligence in administering performance awards. VA spent less than the statutory agency aggregate limit on performance awards for career SES since 2008. See chart below:

SES Awards (Performance and Dollars Spent)

Fiscal Year	Total % Outstanding	Total Dollars Spent on Awards
2010	35%	\$4,735,725
2011	32%	\$3,683,204
2012	25%	\$3,391,410
2013	21%	\$2,707,597*

Note: FY 2013 totals as of June 13, 2014

The Committee also asked about the circumstances surrounding the initial processing and rescission of the performance award for the Medical Center Director at Phoenix VA Medical Center. During the course of the closeout activities, through a miscommunication/administrative error, a final rating and award was inadvertently released and processed for the Director, Phoenix VA Health Care System, though the individual’s name was listed as being under an ongoing investigation. Unfortunately, this was not the only error as another senior executive’s rating was also released and award processed while in a deferred status. The circumstances surrounding these errors were investigated, a report was rendered and actions were taken to modify the process and assess accountability to preclude future mistakes. On May 22, 2014, former Secretary Shinseki rescinded the ratings and awards.

VA continues to improve on performance management and evaluation of senior executives and is presently updating directives and handbooks to codify procedures from lessons learned last year.

In closing, I want to reiterate that VA must remain competitive to recruit and retain the best executives to serve our Veterans. Our ability to allocate performance awards to our highest performers is vital to hiring and retention. Equally vital is that VA must do better holding our executives and employees accountable for poor performance. VA recognizes that we face many challenges with performance management and we have much work to do in ensuring that our senior executives receive frequent and better training on the performance process and the guidelines for confronting poor performers. The key here is rigorous and precise implementation and management of all performance plans whether for senior executives or general schedule employees.

Performance plans are the foundation of accountability for poor and high performance and for individual professional development. Thank you for this opportunity to appear before you today. I look forward to answering your questions.