

IMPLEMENTATION OF EXECUTIVE ORDER (EO) 14171, SECTION 6 RELATED TO DISCIPLINE AND PERFORMANCE

1. **PURPOSE:** This Notice amends provisions outlined in Department of Veterans Affairs (VA) Handbook 5013, Performance Management Systems, and VA Handbook 5021, Employee-Management Relations, in accordance with [Executive Order \(EO\) 14171, Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce](#), dated January 20, 2025, and [38 U.S.C. § 7414\(e\), Prohibition on Certain Settlement Agreement Terms](#), dated December 29, 2022. Provisions of EO 14171 that are already incorporated in VA Handbook 5013 are also included below.
2. **POLICY:**
 - a. **Background.** Section 6 of [EO 14171](#) and Office of Personnel Management (OPM) guidance titled “[Guidance on Revocation of Executive Order 14003](#)” require VA to implement the policies related to discipline and unacceptable performance as prescribed in [EO 13839, Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles](#), dated May 25, 2018. Subsequently, on June 17, 2025, OPM provided additional guidance titled “[Performance Management for Federal Employees](#)” (later amended) regarding revisions to agency policies consistent with [EO 14171](#).
 - b. **VA Handbook 5013.** VA Handbook 5013 is revised as follows:
 - (1) **Mandatory Supervisory Critical Element.** All supervisory performance plans must include a critical element titled “Holding Employees Accountable” and another critical element titled “Whistleblower Protection.”
 - (2) **Exclusion of Schedule Policy/Career Employees.** Employees appointed under Schedule Policy/Career are excluded from the provisions of VA Handbook 5013, Part I, paragraph 8, and Appendices C and D.
 - (3) **Elimination of Grievances Related to the Assignment of Ratings of Record.** Employees may not file a grievance under the provisions of VA Handbook 5013 regarding dissatisfaction with a rating of record. The provisions of VA Handbook 5013, Part I, paragraph 11 and Appendix A, paragraph 13 are rescinded and no longer in effect.
 - (4) **Opportunity to Demonstrate Acceptable Performance.**
 - (a) Employees covered by the provisions of 38 U.S.C. § 714 are not afforded an opportunity to improve period/performance improvement plan (PIP) as outlined in [VA Notice 26-05, Taking Actions under 38 U.S.C. § 714](#).
 - (b) Employees not covered by the provision of 38 U.S.C. § 714 whose performance has been determined to be Unacceptable in one or

more critical elements will be given an opportunity to demonstrate acceptable performance in the critical element(s) at issue prior to an action being proposed under the provisions of 5 U.S.C. Chapter 43. This is accomplished by developing a written PIP that generally lasts no longer than 30 calendar days unless a longer period is necessary to provide sufficient time to evaluate an employee's performance. (See VA Handbook 5013, Part I, Appendix C., paragraph 7.d.)

- (5) **Using 5 U.S.C. Chapter 75 to Take Performance-Based Actions.** The removal procedures set forth in [5 U.S.C. Chapter 75](#) should be used when appropriate to address instances of unacceptable performance. (See VA Handbook 5013, Part I, Appendix D.)

c. **VA Handbook 5021.** VA Handbook 5021 is revised as follows:

- (1) **Progressive discipline.** Progressive discipline is not required; the penalty for each instance of misconduct should be tailored to the facts and circumstances. Conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time — particularly where the employees are in different work units or chains of supervision. Supervisors are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct. Nonetheless, employees should be treated equitably, so supervisors should consider appropriate comparators as they evaluate potential disciplinary actions. Additionally, suspensions should not be used as a substitute for a removal in circumstances in which a removal is appropriate. (Revises VA Handbook 5021, Part I, Chapter 1, paragraph 8g; VA Handbook 5021, Part 1, Chapter 1, Appendix A; VA Handbook 5021, Part II, Chapter 1, paragraph 7b, and VA Handbook 5021, Part II, Appendix A.)
- (2) **Timeliness of Adverse Actions.** To the extent practicable, the decision letter should be issued and effected 30 calendar days after issuance of the proposed adverse action. Additionally, to the extent possible, when issuing a removal decision, it will be issued within 15 business days after the expiration of the employee's reply period following the notice of proposed removal. However, the removal will not be effected in less than 30 calendar days from the date of issuance of the proposal. (See VA Handbook 5021, Part I, Chapter 3, paragraph 13.)

NOTE: Business day(s) are defined as weekdays, which are Monday through Friday, except when such a day is designated as a Federal holiday by the OPM, or the employee's assigned facility is closed for regular administrative business, e.g., inclement weather even if it causes ad hoc/unscheduled telework. For calculation purposes, the period of 15 business days for a decision to be issued when taking an action begins on the first business day after the proposal is issued to the employee, i.e.,

hand-delivered to the employee or, if mailed, the date received or 5 calendar days after mailed.

- (3) **Elimination of grievances related to the assignment of ratings of record.** Employees may not file a grievance regarding dissatisfaction with a rating of record as stated under the provisions of VA Handbook 5021, Part IV, Chapter 2, paragraph 6.z. The reference in paragraph 6.z. to filing a grievance under the provisions of VA Handbook 5013 is removed.
- d. **Settlement Agreements.** Settlement agreements involving all VA employees must comply with the following:
- (1) The agency shall not agree to erase, remove, alter, or withhold from another agency any information about an employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.
 - (2) In accordance with [38 U.S.C. § 7414\(e\)](#), the agency shall not enter into a settlement agreement relating to an adverse action against a health care professional of the Department if such agreement includes terms that require the Secretary to conceal from the personnel file of the employee a serious medical error or lapse in clinical practice that constitutes a substantial failure to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients.
 - (3) **Corrective action based on discovery of agency error.** The requirements described in paragraph 2.d.(1) of this Notice do not prevent management from taking corrective action, should it come to light, including during or after the issuance of a disciplinary or adverse action that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, management would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. The agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. Documents subject to withdrawal or modification could include, for example, an SF-50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action or an employee performance appraisal.

- (4) **Corrective action based on discovery of material information prior to final agency action.** When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, the agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to a final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, the agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph 2.d.(1) of this Notice would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.
- (5) OGC should be consulted for questions regarding compliance with these provisions.

- 3. RESPONSIBLE OFFICE:** Office of Human Resources and Administration (006), Office of the Chief Human Capital Officer (05), Employee Relations & Performance Management Service (051).
- 4. RELATED HANDBOOKS:** VA Handbook 5021, Employee/Management Relations, and VA Handbook 5013, Performance Management Systems.
- 5. RESCISSION:** This Notice will be rescinded within one year or when incorporated into VA Handbook 5021, Employee/Management Relations, and VA Handbook 5013, Performance Management Systems.

BY DIRECTION OF THE SECRETARY OF VETERANS AFFAIRS:

/s/
Mark R. Engelbaum
Assistant Secretary for
Human Resources and Administration