

**PART XI. PROHIBITED PERSONNEL PRACTICES FOR SCHEDULE
POLICY/CAREER EMPLOYEES**

Transmittal

1. Reason for Issue

This policy establishes the Department of Veterans Affairs (VA) standards and expectations regarding prohibited personnel practices (PPPs), as identified in 5 U.S.C. § 2302(b), for all employees and supervisors who have been appointed or moved to a Schedule Policy/Career position.

2. Issuance Information

- **Effective Date:** April 08, 2026
- **Recertification Date:** April 08, 2031
- **Responsible Office:** Office of Human Resources and Administration (HRA) (006), Office of the Chief Human Capital Officer (OCHCO) (05).
- **Responsible Office Email:** Not applicable.

3. Related Issuances

- Not applicable.

4. Rescission(s)

- Not applicable.

BY DIRECTION OF THE SECRETARY OF VETERANS AFFAIRS:

/s/

Mark R. Engelbaum
Assistant Secretary for
Human Resources and Administration

DISTRIBUTION: Electronic Only

PART XI. PROHIBITED PERSONNEL PRACTICES FOR SCHEDULE POLICY/CAREER EMPLOYEES

a. Purpose

This policy establishes the Department of Veterans Affairs (VA) standards and expectations regarding prohibited personnel practices (PPPs), as identified in 5 U.S.C. § 2302(b), for all employees and supervisors who have been appointed or moved to a Schedule Policy/Career position. Schedule Policy/Career employees may not seek corrective action before the Office of Special Counsel (OSC) based on allegations of PPPs established under 5 U.S.C. § 2302(b). Instead, such employees will follow the procedures established under this policy when seeking corrective action. This policy outlines the responsibilities of all VA employees and supervisors in preventing PPPs. Compliance with this policy is mandatory for all applicable personnel.

Because Schedule Policy/Career employees are excluded from the statutory remedial framework under 5 U.S.C. § 2302(b), including review by OSC and the Merit Systems Protection Board (MSPB), this policy establishes an internal agency process to receive, investigate, and adjudicate allegations of PPPs. This internal process is intended to provide a fair, impartial, and timely mechanism for review of alleged violations of PPPs.

b. Policy Statement

It is the policy of the VA to ensure that all personnel actions are carried out fairly, transparently, and in strict adherence to applicable laws. VA employees, supervisors, and managers shall not engage in any prohibited personnel practice. Violations undermine the integrity of the federal civil service and may result in disciplinary action, including removal, as well as appropriate corrective action.

c. Scope

This policy applies to: All VA employees who have been appointed or moved to a Schedule Policy/Career position; all applicants for a Schedule Policy/Career position with the VA; and all supervisors, managers, executives, and VA officials with authority to take, direct, recommend, or approve personnel actions against applicants for or employees holding Schedule Policy/Career positions.

d. Authority

Pursuant to Executive Order (E.O.) 14171, all Schedule Policy/Career employees – appointed or moved to such positions – are excepted from chapter 43 and 75 procedures for performance-based and adverse actions and exempt from coverage

under 5 U.S.C. 2302(b) because Schedule Policy/Career positions are excluded from 5 U.S.C. 2302(a)(2)(B)(i)-(ii). This means that Schedule Policy/Career employees are not covered by the statutory enforcement and remedial mechanisms applicable to PPPs, including review and investigation by OSC or appeal rights to the MSPB.

Further, E.O. 14171 reinstated and amended E.O. 13957, thereby requiring agencies to “establish rules to prohibit the same personnel practices prohibited by section 2302(b) of title 5, United States Code, with respect to any employee or applicant for employment in Schedule Policy/Career of the excepted service.” In compliance with these orders, this policy establishes rules that prohibit the same prohibited personnel practices described by section 2302(b).

This policy governs internal agency review of alleged PPPs affecting Schedule Policy/Career employees. It does not expand or modify the statutory jurisdiction of the Office of Accountability and Whistleblower Protection (OAWP), the Office of Inspector General (OIG), or OSC.

e. Prohibited Personnel Practices

For purposes of this policy, “personnel action” shall be interpreted consistent with 5 U.S.C. § 2302(a)(2)(A), and includes, but is not limited to, appointments, promotions, disciplinary actions, reassignments, performance evaluations, decisions concerning pay or benefits, and any significant change in duties, responsibilities or working conditions.

For purposes of this policy, the VA applies the following PPPs, which mirror those set forth in 5 U.S.C. § 2302(b), as enforceable internal agency standards.

Pursuant to 5 U.S.C. § 2302(b), as applied by VA, no VA employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall, with respect to such authority, engage in any of the following actions:

1. Discriminate for or against any employee or applicant based
 - a. on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);
 - b. on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
 - c. on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
 - d. on the basis of a handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

- e. on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation
2. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
 - a. An evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
 - b. An evaluation of the character, loyalty, or suitability of such individual
3. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity
4. Deceive or willfully obstruct any person with respect to such person's right to compete for employment
5. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment
6. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment
7. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of title 5) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of title 5) or over which such employee exercises jurisdiction or control as such an official
8. Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—
 - a. Any disclosure of information by an employee or applicant, regardless of whether the disclosure is made within or outside the VA and regardless of whether the disclosure is made as part of the complaint process established under this policy, which the employee or applicant reasonably believes evidences—

- i. Any violation of any law, rule, or regulation, or
 - ii. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs
 - b. Any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures (including employees of OAWP), of information which the employee or applicant reasonably believes evidences—
 - i. Any violation (other than a violation of this section) of any law, rule, or regulation, or
 - ii. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or
 - c. Any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (b) that is—
 - i. not classified; or
 - ii. if classified—
 - 1. has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and
 - 2. does not reveal intelligence sources and methods.
- 9. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—
 - a. The exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—
 - i. with regard to remedying a violation of paragraph (8); or
 - ii. other than with regard to remedying a violation of paragraph (8);
 - b. Testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (a)(i) or (ii);

- c. Cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review, including but not limited to OAWP) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
 - d. Refusing to obey an order that would require the individual to violate a law, rule, or regulation
- 10. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States
- 11. Knowingly take, recommend, or approve any personnel action if the taking of such action would violate a Veterans' preference requirement; or knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a Veterans' preference requirement
- 12. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of title 5
- 13. Implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement—
 - a. Does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or
 - b. Prohibits or restricts an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review (including but not limited to OAWP) any information that relates to any

violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection; or

14. Access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This policy shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

For purposes of paragraph 8(i), any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under 5 U.S.C. 2302(a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

f. Complaint Procedures

1. As determined by VA, employees operating under Schedule Policy/Career may file a complaint of an alleged PPP with OAWP. Complaints alleging a PPP committed by a senior leader, as defined by VA Directive 0500, and complaints alleging a violation of Paragraph e.8. of this Policy (relating to retaliation for making a protected disclosure), must be submitted to OAWP.
2. Any complaint must be filed within 15 business days following the date of the act or event that the employee believes created the problem, or within 15 business days following the date the employee became aware of (or reasonably should have become aware of) the act or event.
3. An employee's complaint must contain a clear and specific statement of the facts and alleged PPPs (although identification of a specific sub-paragraph of this Policy is not required), the remedy sought, and any documentation in the employee's possession supporting the complaint. If the complaint includes matters within the jurisdiction of another administrative body, the employee must

clearly distinguish the PPP allegations so that other claims may be processed through the appropriate statutory procedures.

4. For allegations investigated by OAWP, OAWP will issue a written report of investigation, including if appropriate any proposed disciplinary or non-disciplinary recommendation, and any necessary corrective action for the employee/applicant, within 90 calendar days from the date of the employee's/applicant's complaint; however, failure to meet the 90-day deadline does not negate the validity of the decision once it is ultimately issued. OAWP's decision becomes the final decision after 15 calendar days and is not subject to further review; except that they may reopen any decision and reconsider such decision de novo upon their own initiative within 15 calendar days of issuance. The reconsidered decision becomes the final agency factual decision and is not subject to further review.
5. Complaints filed with OAWP, involving alleged PPPs against a senior leader (as defined in Directive 0500) or retaliation by any supervisor for making a whistleblower disclosure (as defined by 38 U.S.C. § 323(g)(3)), will be reviewed and processed according to Directive 0500 and OAWP's internal standard operating procedures. If OAWP substantiates an allegation that a PPP was committed, it will make a disciplinary recommendation, if appropriate, and may make a recommendation for corrective action for the Schedule Policy/Career and/or other employee(s) impacted by the PPP. Any discipline initiated by VA in response to OAWP's decision and recommendation will follow standard procedures set forth in 5 U.S.C. Chapter 75, 38 U.S.C. § 713, 38 U.S.C. § 714, and/or other applicable laws and VA policy, including but not limited to VA Handbook 5021.
6. Investigation of complaints filed with OAWP and then referred to another VA entity for investigation under 38 U.S.C. § 323(c)(1)(D) will be investigated pursuant to VA Handbook 0700. The investigative entity will issue a report with its findings of fact and conclusions within 90 calendar days of receiving the referral from OAWP; however, failure to meet the 90-day deadline does not negate the validity of the findings of fact or conclusions once the report is ultimately issued. The investigative entity's findings of fact and conclusions become the final decision after 15 calendar days and is not subject to further review; except that they may reopen any decision and reconsider such decision de novo upon their own initiative within 15 calendar days of issuance. The reconsidered decision becomes the final agency factual decision and is not subject to further review. Any discipline initiated by VA in response to the investigative entity's decision (findings of fact and conclusions) will follow standard procedures set forth in 5

U.S.C. Chapter 75, 38 U.S.C. § 713, 38 U.S.C. § 714, and/or other applicable laws and VA policy, including but not limited to VA Handbook 5021.

7. In evaluating allegations of PPPs under Paragraph e.8. and e.9. of this Policy, the VA will apply a burden-shifting framework consistent with principles underlying 5 U.S.C. § 1221(e) and the existing case law surrounding 5 U.S.C. §§ 2302(b)(8) and (b)(9): (a) the employee must demonstrate by a preponderance of the evidence that a PPP was a contributing factor in the personnel action; and (b) the VA may avoid taking corrective action if it demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of the protected disclosure or protected activity.

g. Nondisclosure and Whistleblower Protection

1. No VA policy, nondisclosure agreement, or directive may limit an employee's right to: report PPPs to Inspector Generals, Congress, or any other authorities permitted by law, rule, regulation, or policy.
2. No VA employee may retaliate against an individual for filing a complaint or participating in the complaint resolution process under this Policy. Prohibited retaliation includes, but is not limited to, harassment; taking, threatening, or recommending an unfavorable personnel action; withholding or threatening to withhold a favorable personnel action; or any other conduct intended to punish or deter protected activity under this policy.

Any employee, supervisor, or other official found to have engaged in retaliation under this Policy is subject to disciplinary action, up to and including removal.

h. Training and Awareness

VA shall provide training on the above PPPs and this Policy to Schedule Policy/Career employees and will incorporate this Policy into existing supervisor training.