

BEYOND THE BATTLEFIELD: STRENGTHENING VETERAN-CENTERED WORKFORCE STABILITY IN A POST PACT- ACT VA

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INTRODUCTION

The support, care, and honor for persons that have served in the United States Armed Forces is deeply interwoven in the nation's history and

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development.¹ The U.S. Department of Veterans Affairs (“the Department” or “the VA”) dates back to the thirteen colonies, with each of its preceding organizations created to address the needs of specific wars.² Eventual U.S. involvement in both World War I and World War II led Congress to expand veterans’ benefits to encompass “disability compensation, insurance, and vocational rehabilitation.”³ Congress folded these benefit programs, then managed by multiple offices, into the Veterans’ Bureau in 1921, with renewed focus on medical access for World War I veterans.⁴ In an effort to promote efficiency, another round of consolidation took place in 1930, consolidating the Veterans’ Bureau and two other component agencies into the Veterans Administration.⁵ In 1987, after several attempts over the years to raise the Veterans Administration to cabinet-level status failed due to fear of expanding the federal bureaucracy, President Ronald Reagan shifted the narrative, showing support for the legislation and giving those “who have defended the borders of freedom . . . what they have deserved for so long: a seat at the table in our national affairs.”⁶ By 1988, the U.S. Department of Veterans Affairs was born, reaffirming the nation’s reverence for those who have “borne America’s battles.”⁷

Today, the VA is the second-largest federal agency and functions as the federal government’s principal agency for honoring and supporting U.S. veterans, active servicemembers, and their families.⁸ To better manage its

1. *VA History Summary*, U.S. DEP’T OF VETERANS AFFS., <https://department.va.gov/history/history-overview> [<https://perma.cc/3XD8-HG9N>] (last updated Jan. 12, 2025) (“[S]ervices provided to Veterans affected American society and culture as much as the service rendered by Veterans.”).

2. *History of VA and Its Administrations*, U.S. DEP’T OF VETERANS AFFS., <https://department.va.gov/history> [<https://perma.cc/YC3P-8DRX>] (last updated Dec. 2, 2025).

3. *VA History Summary*, *supra* note 1.

4. *Id.*

5. *Id.*

6. Barbara Matos & Jeffrey Seiken, *Object 41: Creating the Department of Veterans Affairs*, U.S. DEP’T OF VETERANS AFFS., <https://department.va.gov/history/100-objects/object-41-creating-the-department-of-veterans-affairs> [<https://perma.cc/G3GF-AGMB>] (last updated Mar. 20, 2025); Ronald Reagan, President of the U.S., Remarks at the National Defense University on Signing the Department of Veterans Affairs Act (Oct. 25, 1988), in RONALD REAGAN PRESIDENTIAL LIBR. & MUSEUM [hereinafter *Remarks at the National Defense University*], <https://www.reaganlibrary.gov/archives/speech/remarks-national-defense-university-signing-department-veterans-affairs-act> [<https://perma.cc/6EDM-9VHK>].

7. *Remarks at the National Defense University*, *supra* note 6.

8. See *About the Department*, U.S. DEP’T OF VETERANS AFFS., <https://department.va.gov/about> [<https://perma.cc/9JXN-QE3Z>] (last updated Apr. 9, 2025); *How Many People Work for the Federal Government?*, USAFACTS, <https://usafacts.org/articles/how-many-people-work-for->

extensive scope, the VA is comprised of three component agencies—the Veterans’ Health Administration (VHA), Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA).⁹ The VHA is the largest integrated healthcare system in the United States and provides comprehensive healthcare services to more than eight million eligible military veterans and their family members nationwide.¹⁰ As an integrated healthcare system, the VHA operates across eighteen Veterans Integrated Service Networks (VISNs) to provide veterans with every stage of care through its broad medical facility network of “hospitals, health-care centers, outpatient clinics, and dialysis centers” across the nation.¹¹ The VBA is responsible for administering programs that provide nonmedical benefits to servicemembers, veterans, their dependents, and survivors ensuring lifelong engagement with the VA.¹² With over six million recipients across fifty-six regional offices, the VBA controls the lifespan of benefit claims, ranging from veteran registration and eligibility determinations, to the distribution of key benefits such as insurance, education, compensation and pension, vocational rehabilitation and employment, and the home loan guarantee.¹³ The NCA provides burial spaces, delivers dignified burial services, and maintains gravesites to honor deceased veterans and their families with final resting

the-federal-government [<https://perma.cc/FJ5L-DN7J>] (last updated Nov. 12, 2025) (reporting 2.9 million full-time federal government employees as of August 2025, including over 482,000 employees at the Department of Veterans Affairs (VA) and over 772,000 at the Department of Defense).

9. *About the Department*, *supra* note 8.

10. OFF. OF RURAL HEALTH, *VA’s Administrations*, U.S. DEP’T OF VETERANS AFFS., <https://www.ruralhealth.va.gov/aboutus/structure.asp> [<https://perma.cc/WA2T-Z8P3>] (last updated Dec. 4, 2024) (providing that the Veteran Health Administration’s (VHA’s) comprehensive offerings range from traditional hospital-based services to surgical specialties and biomedical research); *see also infra* text accompanying note 93 (describing those veterans ineligible for benefits).

11. Tyler Biscontin, *Veterans Health Administration*, EBSCO (2025), <https://www.ebsco.com/research-starters/politics-and-government/veterans-health-administration-vha#full-article> [<https://perma.cc/T2UN-ZS7M>]; *see, e.g., Veterans Integrated Services Network*, U.S. DEP’T OF VETERANS AFFS., <https://department.va.gov/integrated-service-networks/> [<https://perma.cc/THD3-HQZA>] (last updated July 28, 2025) (defining Veterans Integrated Services Networks as “regional care systems working together to better meet local healthcare needs and provide greater access to care”).

12. *See* OFF. OF RURAL HEALTH, *supra* note 10 (describing Veterans Benefit Administration (VBA) responsibilities).

13. *See id.* (listing the “VA’s five key lines of non-medical benefits”); U.S. DEP’T OF VETERANS AFFS., VETERANS BENEFITS ADMIN.: ANNUAL BENEFITS REPORT FISCAL YEAR 2024 at 7, 9, 69 (2024).

places across 155 national cemeteries.¹⁴ Together, these component agencies carry out the VA's four imperative missions: provide healthcare, disburse benefits, memorialize veterans, and "improve the Nation's preparedness for response to war, terrorism, national emergencies, and natural disasters."¹⁵

While the VA's mission is clear, its execution is more complex—particularly in times of shifting politics.¹⁶ As a cabinet-level agency led by a politically appointed Secretary, the VA is not immune to partisan agendas, shifting political priorities, and budget realignment.¹⁷ This Comment details the importance of strengthening the VA's ability to protect itself in the face of changing political administration and suggests the use of notice-and-comment rulemaking and revitalized guidance documents to legitimize the process of identifying and insulating mission critical occupations.

Part I discusses complications arising from the series of executive orders issued during the first month of President Donald J. Trump's second term, which reignited the VA's staffing issues amidst an influx of claims under the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act).¹⁸ Part II analyzes the VA's current rulemaking processes and procedures and its exceptions in compliance with the Administrative Procedure Act (APA).¹⁹ Part III calls upon the Department of Veterans Affairs to strengthen its capacity for self-protection to ensure the stable and efficient continuation of essential services during administrative turnover, budgetary realignments, and government shutdowns, by pursuing regulatory safeguards through notice-and-comment rulemaking and refining guidance documents.²⁰

14. OFF. OF RURAL HEALTH, *supra* note 10 ("Nearly 5.3 million people—including 4 million Veterans from the Revolutionary War to the war in Iraq and Afghanistan—are honored with a burial in a VA national cemetery.").

15. *About the Department*, *supra* note 8. Benefits include but are not limited to the GI Bill, the VA home loan, disability compensation, and veterans pension programs. See *VA Benefits for Service Members*, U.S. DEPT OF VETERANS AFFS., <https://www.va.gov/service-member-benefits/> [<https://perma.cc/9E8C-5QTQ>] (last updated June 23, 2025).

16. See Eric Katz, *VA Plans to Lay Off as Many as 83,000 Employees This Year*, GOV'T EXEC. (Mar. 4, 2025), <https://www.govexec.com/workforce/2025/03/va-plans-lay-many-83000-employees-year/403477/> [<https://perma.cc/9ELD-XLAY>].

17. See *id.*

18. See *infra* Part I.

19. See *infra* Part II.

20. See *infra* Part III.

I. BACKGROUND

In 2022, Congress passed the PACT Act.²¹ The PACT Act established “substantial legislative changes for how the [VA] processes claims for toxic exposed [v]eterans and their survivors.”²² Congress determined that its passage was essential to expand healthcare and prospective benefits for the nearly 3.5 million U.S. servicemembers and “[v]eterans exposed to burn pits, Agent Orange, and other toxic substances” during conflicts in the Persian Gulf, Vietnam, Kosovo, Afghanistan, and Iraq.²³ Heralded as one of the “largest health care and benefit expansion[s] in VA history,” the PACT Act expanded both presumptive conditions for toxic exposure and presumptive-exposure locations.²⁴ In the first year after its passage the VA received over 800,000 PACT Act related claims,²⁵ and in response, the VA increased its hiring efforts to stay ahead of demand.²⁶ But, on January 20, 2025, as one of President Trump’s first actions of his second term, he instituted a federal hiring freeze by executive order.²⁷ Aiming to rehabilitate the federal hiring process from its “broken, insular, and outdated” practices and commence a “critical transformation of the Federal bureaucracy,” President Trump froze the hiring of federal civilian employees in “all executive departments and

21. Promise to Address Comprehensive Toxics (PACT) Act, Pub. L. No. 117-168, 136 Stat. 1759 (2022).

22. U.S. DEP’T OF VETERANS AFFS., VETERANS BENEFITS ADMINISTRATION POLICY LETTER 20-22-10 (Dec. 22, 2022).

23. See *The PACT Act and Your VA Benefits*, U.S. DEP’T OF VETERANS AFFS., <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/#whats-the-pact-act-and-how-wil> [<https://perma.cc/LE33-H9U8>] (last updated Apr. 21, 2025); *Exposure to Hazardous Chemicals and Materials*, U.S. DEPT OF VETERANS AFFS., <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/> [<https://perma.cc/LP9S-G8WQ>] (last updated Aug. 8, 2025); see Tim Bullman & Aaron Schneiderman, *Mortality Experience of US Veterans Following Service as International Peacekeepers in Bosnia/Kosovo Theater, 1996-2002*, 62 *Cancer Epidemiology* 101563 (2019); Press Release, Nat’l Nurses United, Nurses Urge Immediate Senate Passage of Honoring Our PACT Act (June 2, 2022), <https://www.nationalnursesunited.org/press/nurses-urge-immediate-senate-passage-of-honoring-our-pact-act> [<https://perma.cc/2BB4-NZXW>].

24. *The PACT Act and Your VA Benefits*, *supra* note 23.

25. U.S. DEP’T OF VETERANS AFFS., VA PACT ACT PERFORMANCE DASHBOARD: VA PACT ACT FIRST YEAR IN REVIEW (2023), https://department.va.gov/pactdata/wp-content/uploads/sites/18/2023/12/VA_PACTActDashboard_Issue13_081023_508.pdf [<https://perma.cc/32CB-B96V>].

26. Jory Heckman, *VA’s Historic Hiring Surge Leads to All-Time Record for Veteran Care and Benefits*, FED. NEWS NETWORK (Nov. 6, 2023, 10:00 AM), <https://federalnewsnetwork.com/hiring-retention/2023/11/vas-historic-hiring-surge-leads-to-all-time-record-for-veteran-care-and-benefits/> [<https://perma.cc/B8UU-JB9W>].

27. Presidential Memorandum on Hiring Freeze, 90 Fed. Reg. 8,247 (Jan. 20, 2025).

agencies regardless of their sources of operational and programmatic funding.”²⁸

In an effort to reform the federal workforce “to maximize governmental efficiency and productivity,” President Trump issued a series of executive orders introducing a hiring plan in which agency heads were to work in conjunction with Department of Government Efficiency (DOGE) Team Leads to “reduce the size of the [f]ederal [g]overnment’s workforce,” and further prompted agency heads to “undertake preparations to initiate large-scale reductions in force.”²⁹ In doing so, many federal agencies, along with numerous prospective employees—graduating students and members of the civilian workforce seeking federal employment—have been hit with significant adverse effects in staffing and operation.³⁰

The VA was not left unscathed. In March 2025, VA Chief of Staff Christopher Syrek warned of a “sweeping” reduction in force (RIF) that would “spare no part of the department,” setting an initial target of VA staffing levels in fiscal year 2019.³¹ Many Democratic lawmakers pushed back on these reduction efforts, noting that this rate of firing could hollow out the VA and risk “rolling back the progress made under the PACT Act.”³² The VA has received nearly 3 million PACT Act-related claims and approved close to 2 million such claims since its passage in 2022.³³ In response to the

28. *Id.*; Exec. Order No. 14,210, 90 Fed. Reg. 9,669–70 (Feb. 11, 2025); Exec. Order No. 14,170, 90 Fed. Reg. 8,621 (Jan. 30, 2025).

29. *See* Exec. Order No. 14,158, 90 Fed. Reg. 8,441 (Jan. 29, 2025); Exec. Order No. 14,210, 90 Fed. Reg. 9,669–70 (Feb. 11, 2025); Exec. Order No. 14,170, 90 Fed. Reg. 8,621 (Jan. 30, 2025).

30. *See* Mark McGraw, *Feeling the Impact of the Federal Hiring Freeze*, PUB. SECTOR HR ASS’N (Jan. 28, 2025), <https://pshra.org/feeling-the-impact-of-the-federal-hiring-freeze/> [<https://perma.cc/LPK4-YJ3F>] (“For example, the National Park Service has put hiring for more than 1,000 seasonal positions on hold since the freeze took effect . . .”); Bennett Nesley, *Understanding the Federal Hiring Freeze and Its Impact on Your Job and Internship Search*, VILLANOVA UNIV. CAREER CONNECTIONS, <https://connections.villanova.edu/blog/2025/02/06/understanding-the-federal-hiring-freeze-and-its-impact-on-your-job-and-internship-search/> [<https://perma.cc/4QZL-BPJP>] (last visited Apr. 15, 2026) (advising students on how to search for jobs amid the hiring freeze).

31. *See* Katz, *supra* note 16 (detailing VA Chief of Staff Christopher Syrek’s intention to slash the VA workforce by upwards of 83,000 jobs, down to 399,000 from the current employment of approximately 482,000 staff and 459,000 full-time workers).

32. *See id.* (noting that both the Veterans Health Administration (VHA) and Veterans Benefit Administration (VBA) surged hiring efforts to “accommodate the flood of veterans newly eligible for care and benefits under the PACT Act” resulting in a record-setting fiscal year in 2023).

33. U.S. DEP’T OF VETERANS AFFS., VA PACT ACT PERFORMANCE DASHBOARD: VA PACT ACT THIRD YEAR IN REVIEW (2025), https://department.va.gov/pactdata/wp-content/uploads/sites/18/2025/08/VA_PACT-Act-Dashboard_Anniversary-Issue_081525_Final-508-v7.pdf [<https://perma.cc/SBV4-EG8H>].

resounding pushback, the VA indicated that its workforce would instead shed up to 30,000 employees by the end of fiscal year 2025 “through the federal hiring freeze, deferred resignations, retirements and normal attrition” rather than a large-scale RIF.³⁴

Many lawmakers, veterans, and veterans advocates remain skeptical of the claimed “normal” workforce reductions facing the VA.³⁵ According to the VA’s Workforce Dashboard, which shares key hiring and retention metrics, the VA’s cumulative workforce has declined by a minimum of 13,000 employees since January 2025, several thousands of which from the VHA alone.³⁶ In the voluntary exit survey, many departing VA employees listed “job stress/pressure” and “lack of trust/confidence in senior leaders” as their reasons for leaving with some even listing “unethical behavior on the part of leadership or the organization.”³⁷ In August, the VA Office of Inspector General (OIG) released its Determination of Veterans Health Administration’s Severe Occupational Staffing Shortages Fiscal Year 2025 report.³⁸ The OIG’s annual report found that “[94%] of facilities reported severe occupational staffing shortages for Medical Officer occupations, and [79%] of facilities reported severe shortages for nurse occupations.”³⁹ Additionally, “VHA facilities reported a total of 4,434 severe occupational staffing

34. *VA to Reduce Staff by Nearly 30K by End of FY2025*, U.S. DEP’T OF VETERANS AFFS. (July 7, 2025), <https://news.va.gov/press-room/va-to-reduce-staff-by-nearly-30k-by-end-of-fy2025/> [<https://perma.cc/6T63-8BRQ>].

35. See Katz, *supra* note 16 (“Gutting VA’s staffing to pre-PACT Act levels will cripple the very system that millions of veterans rely on, denying them access to lifesaving health care, claims processing, and education benefits they’ve earned.”); Aaron Glantz, *U.S. Veterans Agency Lost Thousands of ‘Core’ Medical Staff Under Trump, Records Show*, GUARDIAN (Aug. 11, 2025, 6:00 AM), <https://www.theguardian.com/us-news/2025/aug/11/us-veterans-affairs-agency-medical-staff-departures> [<https://perma.cc/4NK8-59DX>] (photographing the “Unite for Veterans, Unite for America” rally at the National Mall).

36. See 23 U.S. DEP’T OF VETERANS AFFS. WORKFORCE DASHBOARD 1 (2025), <https://department.va.gov/employees/wp-content/uploads/sites/63/2025/07/VA-Workforce-Dashboard-Issue-23.pdf> [<https://perma.cc/8NR5-XJE9>] (listing the total VA onboard at 466,829 employees); 29 U.S. DEP’T OF VETERANS AFFS. WORKFORCE DASHBOARD 1 (2025), <https://department.va.gov/employees/wp-content/uploads/sites/63/2025/09/VA-Workforce-Dashboard-Issue-29.pdf> [<https://perma.cc/36QK-T4JR>] (listing the total VA onboard at 453,708 employees).

37. 29 U.S. DEP’T OF VETERANS AFFS. WORKFORCE DASHBOARD, *supra* note 36, at 4.

38. U.S. DEP’T OF VETERANS AFFS. OFF. OF INSPECTOR GEN., VA-OIG-25-01135-196, DETERMINATION OF VETERANS HEALTH ADMINISTRATION’S SEVERE OCCUPATIONAL STAFFING SHORTAGES 6 (2025).

39. *Id.* at i, n.3 (explaining that severe shortages refer to hard to fill occupations, not necessarily an indication of vacancies).

shortages, a [50%] increase from FY 2024.”⁴⁰ In response to OIG’s report, the ranking member of the Senate Committee on Veterans’ Affairs claimed reduction efforts were “driving dedicated VA employees to the private sector at untenable rates” as “[s]taffing shortages . . . are getting significantly worse, including critical veterans’ health care positions and essential jobs that keep VA facilities running,”⁴¹ confirming their fears that “critical staffing shortages across the country [will lead] to decreased access and choice for veterans.”⁴²

Staffing shortages only exacerbate the issues surrounding veterans’ access to health care. Jenn Kerfoot, a U.S. Navy veteran who deployed to Afghanistan in support of Operation Enduring Freedom, lambasted the “unseen battles” that newly removed veterans experience in their attempt to access health care, calling the process “a labyrinth of health care bureaucracy [seemingly] designed to confound and discourage.”⁴³ Kerfoot recounted her feelings of disillusionment during her return to civilian life after her first visit to a VA hospital in 2015 resulted in a three-week wait for mental health care.⁴⁴ Further lamenting the “daunting” multifaceted healthcare enrollment process, Kerfoot stated: “It shouldn’t be easier to enlist in the military than it is to get good health care. And it shouldn’t be easier to go to war than to come home from it.”⁴⁵

Now, veterans applying for health care benefits and services face elongated wait times varying from days to months.⁴⁶ In an interview with *The Guardian* in August 2025, Manuel Santamaria, a disabled veteran who served as an army medic and paratrooper during conflicts in Iraq and Afghanistan, described difficulties scheduling appointments since the current Administration’s reduction

40. See *id.* at 6.

41. See Press Release, Blumenthal Statement on VA Watchdog Report Revealing Urgent Staffing Shortages, U.S. Senate Comm. on Veterans’ Affs. (Aug. 12, 2025), <https://www.veterans.senate.gov/2025/8/blumenthal-statement-on-va-watchdog-report-revealing-urgent-staffing-shortages> [<https://perma.cc/UU8T-SF28>].

42. See Press Release, Ranking Member Takano Statement on Severe VA Staffing Shortages, U.S. House Comm. on Veterans’ Affs. (Aug. 12, 2025), <https://democrats-veterans.house.gov/news/press-releases/ranking-member-takano-statement-on-severe-va-staffing-shortages> [<https://perma.cc/74D6-ASEV>].

43. Jenn Kerfoot, *Unseen Battles: The Harsh Realities of Veterans’ Access to Health Care*, STAT NEWS (Apr. 29, 2024), <https://www.statnews.com/2024/04/29/veterans-difficulties-accessing-health-care> [<https://perma.cc/S4GW-8JJE>].

44. See *id.* (revealing that unless she was on the verge of physically harming herself, a three-week wait time was the VA hospital’s best offer).

45. *Id.*

46. Jamie Rowen, *5 Reasons Veterans Are Especially Hard-Hit by Federal Cuts*, CONVERSATION (Mar. 9, 2025, 11:57 AM), <https://theconversation.com/5-reasons-veterans-are-especially-hard-hit-by-federal-cuts-251188> [<https://perma.cc/64DV-X9Z7>].

efforts, oftentimes being placed on hold for upwards of two hours.⁴⁷ Santamaria suffers from post-traumatic stress disorder and psoriasis, an autoimmune condition that causes skin inflammation presenting as a rash of discolored, itchy, and scaly patches of skin.⁴⁸ In February, when Santamaria sought to switch medications after running out of his original psoriasis prescription, the VA did not have any availability to see him until May.⁴⁹ By the date of his appointment, Santamaria's "entire body was covered by cracked, bleeding welts."⁵⁰

Most damaging, the VA has lost thousands of mission critical occupations (MCOs) across their component agencies.⁵¹ As defined by the U.S. Office of Personnel Management (OPM) and adopted by the VA, MCOs are occupations essential to accomplishing an agency's mission "without which mission-critical work cannot be completed."⁵² VA MCOs are agency personnel determined by VA administration and staff offices as essential to performing the VA's mission. These positions are added, confirmed, or removed through VA MCO Determination and Validation process biannually.⁵³ OPM, the executive agency managing the federal civil service, requires federal agencies to conduct annual workforce and succession planning to identify high-risk MCOs in an effort to close existing skills gaps.⁵⁴ The VA's strategic workforce and succession planning procedures are housed in its personnel handbooks.⁵⁵ The VHA, in one of its annual Mission Critical Occupations Report, created a top ten list of the highest ranking "hard-to-fill" MCOs.⁵⁶ Year-to-year, the highest ranking hard-to-fill occupations within

47. Glantz, *supra* note 35.

48. *Id.*

49. *Id.*

50. *See id.* (providing a picture, courtesy of Manuel Santamaria, of the effects of psoriasis on his hands).

51. 29 U.S. DEP'T OF VETERANS AFFS. WORKFORCE DASHBOARD, *supra* note 36, at 3; 23 U.S. DEP'T OF VETERANS AFFS. WORKFORCE DASHBOARD, *supra* note 36, at 1; *see also* Glantz, *supra* note 35 ("The VA has experienced a net loss of 2,000 registered nurses since the start of this fiscal year, the data shows, along with approximately 1,300 medical assistants, 1,100 nursing assistants and licensed practical nurses, 800 doctors, 500 social workers and 150 psychologists.").

52. *Reference Materials Glossary*, U.S. OFF. OF PERS. MGMT., <https://www.opm.gov/policy-data-oversight/human-capital-framework/reference-materials> [<https://perma.cc/ZN8A-26VR>] (last visited Nov. 9, 2025); *see* U.S. DEP'T OF VETERANS AFFS., VA HANDBOOK 5002: STRATEGIC WORKFORCE AND SUCCESSION PLANNING 8 (2024) [hereinafter VA HANDBOOK 5002] (revising the VA's policy for workforce and succession planning).

53. *See* VA HANDBOOK 5002, *supra* note 52, at 13.

54. 5 C.F.R. § 250.204 (2025).

55. *See, e.g.*, VA HANDBOOK 5002, *supra* note 52.

56. U.S. DEPARTMENT OF VETERANS AFFAIRS, VHA MISSION CRITICAL OCCUPATIONS REPORT 1 (2015).

the VHA are often nurse and physician specialties essential to providing physical and mental health care to veterans.⁵⁷ These positions include, but are not limited to: Medical Officers (Physicians), Nurses, Medical Technologists, Diagnostic Radiologic Technologists, Psychologists, and Physician Assistants.⁵⁸ To make matters worse, the VA has had longstanding management issues.⁵⁹ For example, in 2019 the Government Accountability Office found that the VA failed to adhere to OPM's requirements by not updating its succession plan since 2009, resulting in staffing shortages that negatively impacted veterans' access to care.⁶⁰

While healthcare staffing shortages are not unique to the VA, veteran disability and suicide rates create a grave need for healthcare-based MCOs essential to fulfill the VA's mission to provide veterans with healthcare.⁶¹ VA clinicians serve in a unique capacity to help lower patients' risk of suicide.⁶² Shortages of clinical MCOs are especially significant considering that physically disabled individuals are three times more likely to attempt suicide, and that nearly 30% of the nation's veteran population has a service-connected physical disability.⁶³ Notably, the veteran suicide rate is nearly double that of the general population.⁶⁴

The recent near-miss with proposed RIFs exposes the ever-present threat to VA implementation practices—highlighting vulnerabilities to partisan agendas, shifting political priorities, and budget realignment. It underscores

57. *See id.* (listing the 2015 top ten mission critical occupations).

58. *Id.*

59. U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-15, IMPROVED SUCCESSION PLANNING WOULD HELP ADDRESS LONG-STANDING WORKFORCE PROBLEMS 6 (2019).

60. *Id.* at 8.

61. *See* Jasmine Laws, *America's Health Care Time Bomb*, NEWSWEEK (Sept. 23, 2025, 5:26 AM), <https://www.newsweek.com/america-health-care-staffing-shortage-problem-survey-2132365> [<https://perma.cc/RD58-PXJ8>] (“Health care staffing shortages have been increasing across the country, impacting Americans’ access to care and health outcomes. At the same time, health care professionals are reporting higher rates of burnout and emotional fatigue.”).

62. U.S. DEP'T OF VETERANS AFFS., DISABILITY, FUNCTIONAL LIMITATIONS, AND SUICIDE RISK (2024), https://www.mentalhealth.va.gov/suicide_prevention/docs/FSTP-Disability-Functional-Limitations-and-Suicide-Risk.pdf [<https://perma.cc/4K75-5RJ5>].

63. “Among [U.S.] adults aged 18 years or older, 29.9% of Veterans and 14.2% of non-Veterans have a disability.” *See id.* A service-connected physical disability is defined as “a disability, disease, or injury incurred or aggravated during active military service.” *Id.*

64. Frank Ruiz, Lucile Burgo-Black, Stephen C. Hunt, Matthew Miller & Juliette F. Spelman, *A Practical Review of Suicide Among Veterans: Preventive and Proactive Measures for Health Care Institutions and Providers*, 138(2) PUB. HEALTH REPS. 223 (2023) (“The rate of suicide is 1.5 times higher among all veterans and 2.1 times higher among female veterans compared with the general population.”).

the risk of delaying former servicemembers' care and illustrates the need to insulate and preserve positions critical to performing mission specific duties, like PACT Act implementation, until deliberate review can be performed.

II. REGULATORY FRAMEWORK

A. *The Veterans' Benefits Code*

To provide a comprehensive framework for benefits and services for service-members, veterans, and their families, Congress created Title 38 of the U.S. Code—known as the “Veterans’ Benefits” code—to “consolidate into one Act all of the laws administered by the [then] Veterans’ Administration.”⁶⁵ Title 38 establishes a specialized personnel framework for VA healthcare employees beyond the Title 5 civil service models. Title 38 is consistent with congressional judgment that intra-agency authority is necessary to improve “recruitment, retention, and personnel management” to enhance the VA’s “ability to compete effectively with other Federal agencies and private sector entities providing health-care services.”⁶⁶ Under Title 38, the VA exercises broad discretion over personnel administration matters, including conditions of employment, leaves of absences, work hours, and employee appointments and removals.⁶⁷

Generally, VA employees are either governed by the Title 38 personnel system or the Title 5 personnel system that typically govern general federal employees under OPM’s civil service rules.⁶⁸ Alongside these employees exist hybrid Title 38 employees—a group of employees governed by both Title 38 and Title 5 personnel provisions.⁶⁹ Title 38 offers employees more flexibility for hiring and pay ranges but provides far fewer civil service rights than those held by Title 5 employees, including the inability to appeal adverse actions to the Merit Systems Protection Board (MSPB).⁷⁰ In contrast, Title 5 provides employees greater civil service protections, like full bargaining rights and the ability to appeal adverse actions to the MSPB, but experience more rigidity in pay, leave, and performance review structures.⁷¹

65. Veterans’ Benefits Act, Pub. L. No. 85-857, 72 Stat. 1105 (1958).

66. See 38 U.S.C. § 7401 (establishing the VA Secretary’s general authority to manage VA personnel and facilities); 5 U.S.C. §§ 1101–1508 (governing general government employees’ civil service functions and responsibilities and establishing the Office of Personnel Management’s authority); S. REP. NO. 96-747, at 27 (1980).

67. See 38 U.S.C. §§ 7421–7426.

68. THE TITLE 38 PERSONNEL SYSTEM IN THE DEPARTMENT OF VETERANS’ AFFAIRS: AN ALTERNATE APPROACH, MERIT SYS. PROT. BD. 7 (1991).

69. *Id.*

70. *Id.* at 41.

71. *Comparison Guide: Title 38, Hybrid Title 38 and Title 5*, AM. FED. OF GOV’T EMPs. LOCAL

In the event that the two statutes conflict, 38 U.S.C. § 7425(b) provides that Title 38 provisions override Title 5 provisions, unless otherwise stated.⁷² These provisions include Title 5 regulations pertaining to the government-wide civil service system, like appointments, collective bargaining, and general personnel administration, that are inconsistent with Title 38.⁷³ When challenged, several circuits recognized that “in the absence of any evidence of [c]ongressional intent to override or modify a provision of Title 38, Section 7425(b) must preclude any such modification.”⁷⁴ The Title 38 personnel framework bolsters the VA’s internal discretion to manage its Title 38 personnel to maintain its continuity of care and ensure that veterans’ entitlement to healthcare services is not undermined.⁷⁵

However, Title 5 and Title 38 personnel systems are not completely separate. In *James v. Von Zemensky*,⁷⁶ a nurse separated from the VA during a RIF argued that she should be afforded the general protections for federal employees under Title 5 instead of the VA’s internal Title 38 separation procedures promulgated in its handbooks.⁷⁷ The court agreed, holding that 38 U.S.C. § 7425(b) did not viably override Title 5 RIF procedures because Congress itself had not enacted a Title 38 specific RIF statute, and that the language in Chapter 74 of Title 38, granting the VA Secretary authority to control “conditions of employment,” did not sufficiently encompass “the circumstances in which employees are separated from employment.”⁷⁸ The court further found that because the VA promulgated Title 38 separation procedures in its handbooks rather than by statute, there was “a conflict between statutory provisions in Title 5 (the RIF statutes)

910 (2019), <https://www.afge910.com/wp-content/uploads/2019/10/Comparison-Guide-Title-38-Title-38-Hybrid-and-Title-5.pdf> [<https://perma.cc/J4T6-4Q38>].

72. See 38 U.S.C. § 7425(b) (enumerating provisions that Title 38 employees are not subject to); *Cerwonka v. Dep’t of Veterans Affs.*, 915 F.3d 1351, 1357 (Fed. Cir. 2019) (“Congress has resolved any inconsistency . . . and has made clear that, in the event of a conflict, Title 38 overrides Title 5, unless otherwise stated.”).

73. See 38 U.S.C. § 7425(a) (listing relevant provisions); *Cerwonka*, 915 F.3d at 1357 (discussing which Title governs Title 38 employees’ removal standards).

74. *Harding v. Dep’t of Veterans Affs.*, 448 F.3d 1373, 1376 (Fed. Cir. 2006); see *Am. Fed. of Gov’t Emps., AFL-CIO v. Fed. Lab. Rel. Auth.*, 850 F.2d 782, 787–88 (D.C. Cir. 1988) (holding Title 38 statute governing Chapter 74 medical employees precluded application of Title 5 collective bargaining provisions under § 7425(b)); *Am. Fed. of Gov’t Emps., Local 3306 v. Fed. Lab. Rel. Auth.*, 2 F.3d 6, 10 (2d Cir. 1993) (similar); *Veterans Admin. Med. Ctr. v. Fed. Lab. Rel. Auth.*, 705 F.2d 953, 958 (8th Cir. 1983) (similar).

75. THE TITLE 38 PERSONNEL SYSTEM IN THE DEPARTMENT OF VETERANS’ AFFAIRS, *supra* note 68, at 2.

76. 284 F.3d 1310.

77. *Id.* at 1313.

78. *Id.* at 1317.

and a [VA] policy (Directive 5111), not a conflict between statutory provisions in Title 5 and Title 38.”⁷⁹ Like all federal agencies, the VA must comport with Title 5 RIF regulations and procedures when separating an employee under a RIF.⁸⁰ Currently, VA Human Resources offices utilize any relevant guidance in conjunction with Title 5 provisions, OPM handbooks, and VA handbooks.⁸¹ However, VA rulemaking authority offers methods to retain substantial managerial discretion throughout RIF processes while remaining in compliance with these regulations.⁸²

B. *The VA & Rulemaking*

Generally, the VA has broad rulemaking authority to issue policy guidance, create reporting and oversight requirements for internal operations, and implement administrative and procedural rules so long as they relate to statutory mandates and veterans’ benefits and services.⁸³ The VA derives this general rulemaking authority from 38 U.S.C. § 501, granting the VA Secretary the authority to “prescribe all rules and regulations that are necessary or appropriate to carry out the laws administered by the Department.”⁸⁴ Additionally, Chapter 5 of Title 38 grants the VA Secretary delegatory authority to “assign functions and duties, and delegate, or authorize successive redelegation of, authority to act and to render decisions, with respect to all laws administered by the Department, to such officers and employees as the Secretary may find necessary.”⁸⁵ Due to the Department’s complex size and structure, the VA Secretary regularly delegates specific authorities to the VA General Counsel, the Under Secretary for Health, the Under Secretary for Benefits, and the Under Secretary for Memorial Affairs for the VHA, VBA, and NCA, respectively.⁸⁶

79. *Id.* at 1320; *see infra* text accompanying note 104.

80. *See* Reduction in Force, 5 C.F.R. § 351.205 (governing federal agencies’ reduction in force (RIF) conduct).

81. *Reduction in Force*, U.S. DEP’T OF VETERANS AFFS., <https://department.va.gov/workforce-optimization-hub/reduction-in-force/> [<https://perma.cc/2FHE-58EQ>] (last updated July 22, 2025).

82. OFF. OF PERS. MGMT., WORKFORCE RESHAPING HANDBOOK 27 (2017) (“At its discretion, an agency may reassign an employee, without regard to RIF procedures, to a vacant position at the same grade and rate of pay.”).

83. *See* 38 U.S.C. § 501(a); *Snyder v. McDonough*, 1 F.4th 996, 1003 (Fed. Cir. 2021) (explaining that “[s]uch broad authority, defined in general terms, encompasses particular topics that are not themselves expressly mentioned as long as they come within the generally defined grant.”).

84. 38 U.S.C. § 501(a).

85. 38 U.S.C. § 512(a).

86. *See* 38 C.F.R. § 2.6 (delegating authorities to the employees occupying or acting in the positions included therein).

Notably, the Administrative Procedure Act dictates the processes and procedures that federal agencies must rely on while engaging in both formal and informal rulemaking.⁸⁷ Informal rulemaking, discussed herein, is the most common method federal agencies use to create regulations efficiently.⁸⁸ Any federal agency engaging in legislative rulemaking—substantive rules “made pursuant to congressionally delegated authority”—must adhere to the APA’s informal rulemaking procedures.⁸⁹ Informal rulemaking procedures for promulgating legislative rules include a public notice-and-comment process whereby federal agencies must publish a notice of proposed rulemaking, offer an opportunity for the public to submit written comments on the proposed rule and integrate any necessary public suggestions or revisions to the original proposition, and ultimately issue the final rule including a concise statement of basis and purpose.⁹⁰ When created through notice-and-comment procedures pursuant to the APA, legislative rules carry the force of law and can create new rights or duties.⁹¹

Like many federal agencies, the VA employs notice-and-comment rulemaking to promulgate substantive legislative rules. In 2020, the VA enacted notice-and-comment rulemaking to expand veterans’ benefits access, modifying the regulatory discharge standards controlling former servicemembers’ benefit eligibility.⁹² Generally, to receive VA benefits, a veteran’s character of discharge must be under conditions other than dishonorable, and those veterans dishonorably discharged from service are statutorily barred from

87. See Administrative Procedure Act, 5 U.S.C. §§ 551–559 (governing the general procedures of administrative law, including rulemaking and adjudication).

88. TODD GARVEY, CONG. RSCH. SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW 1 (2017) [hereinafter A BRIEF OVERVIEW OF RULEMAKING] (“[N]otice-and-comment rulemaking procedures of § 553 of the APA represent the most commonly followed process for issuing legislative rules.”).

89. See *id.*; 5 U.S.C. § 553 (detailing informal rulemaking procedures); *Distinguishing Between Legislative Rules and Non-Legislative Rules*, ACUS (Feb. 2024), <https://www.acus.gov/sites/default/files/documents/34%20Distinguishing%20Between%20Legislative%20Rules%20and%20Non-Legislative%20Rules.pdf> [<https://perma.cc/WBQ5-CNYX>] (“Legislative rules are substantive regulations that agencies issue to implement their statutory authorities.”).

90. See 5 U.S.C. § 553(c) (outlining the relevant aforementioned notice-and-comment procedures); U.S. DEP’T OF VETERANS AFFS., VETERANS HEALTH ADMIN. DIRECTIVE 8101(3), 1, (May 7, 2020) [hereinafter DIRECTIVE 8101(3)] (relaying that substantive or legislative rules under the Administrative Procedure Act (APA) have “the force of law and imposes new duties or delineates benefits for eligible individuals”).

91. See Jessica Mantel, *Procedural Safeguards for Agency Guidance*, 61 ADMIN. L. REV. 343, 350 (2009).

92. Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge, 85 Fed. Reg. 41,471 (July 10, 2020).

receiving most benefits.⁹³ Accordingly, the Department published a proposed rule in the Federal Register seeking to modify the standards for discharges considered dishonorable and update veterans' character of discharge determinations to be more considerate of the "compelling circumstances" surrounding veterans' discharge.⁹⁴ This proposed rule provided a sixty-day comment period lasting from July 10, 2020, to September 8, 2020, in which the Department received seventy comments.⁹⁵ Public comments addressed various topics ranging from congressional intent, to veterans discharged under other than dishonorable conditions automatically becoming eligible for VA benefits.⁹⁶ In its response to these comments, the VA produced a Request for Information in 2021 to ask the public what factors should be included in compelling circumstance evaluations.⁹⁷ The final rule, published in 2024, provided reasoned explanations for modifications, adoptions, or declinations of suggested changes and provided a concise statement of basis and purpose.⁹⁸

Importantly, the notice-and-comment process fosters agency transparency and accountability, acting in the public interest by providing a medium for affected parties to present concerns before regulations become binding.⁹⁹

93. See Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge, 89 Fed. Reg. 32,361, 32,361 (Apr. 26, 2024) ("In October 1946, VA codified 38 CFR 2.1064, which reiterated that, for a former [service member] to obtain benefits, the [service member] must have been terminated under conditions 'other than dishonorable.'"). Conditions other than dishonorable include honorable discharge or discharge under honorable conditions. See *Applying for Benefits and Your Character of Discharge*, U.S. DEP'T OF VETERANS AFFS., https://www.benefits.va.gov/benefits/character_of_discharge.asp [<https://perma.cc/T2WQ-RFYW>] (last updated Apr. 16, 2025).

94. 85 Fed. Reg. at 41,471. At the time this proposed rule was enacted, a service member's discharge or release due to "homosexual acts involving aggravated circumstances or other factors affecting the performance of duty" were considered to be discharges under dishonorable conditions. See Pension, Compensation, and Dependency and Indemnity Compensation; Character of Discharge, 45 Fed. Reg. 2,318 (Jan. 11, 1980). The proposed rule sought to modify the "homosexual acts" bar, as it unnecessarily centered on a service member's sexual orientation, introducing discriminatory implications. 85 Fed. Reg. at 41,473.

95. See 85 Fed. Reg. at 41,471; see also 89 Fed. Reg. at 32,361 (stating that the proposed rule received 70 comments, VA's issuance of a Request for Information yielded over 45 comments, and a 2021 two-day listening session received additional oral comments).

96. See 89 Fed. Reg. at 32,363–70.

97. 86 Fed. Reg. 50,513, 50,513 (Sept. 9, 2021) ("The Department of Veterans Affairs (VA) is requesting information to assist in the modification of the regulatory framework for discharges considered 'dishonorable' for VA benefit eligibility purposes."); see 89 Fed. Reg. at 32,361 (stating that the Request for Information yielded over 45 additional comments).

98. See 89 Fed. Reg. at 32,363–70 (responding to comments).

99. See Mark Seidenfeld, *Rethinking the Good Cause Exception to Notice-and-Comment Rulemaking in Light of Interim Final Rules*, 75 ADMIN. L. REV. 787, 787 (2023) ("Scholars have recognized the benefits of [the notice-and-comment] process for generating rules that reflect more

But, many scholars recognize that this process has become both costly and burdensome to agencies engaging in rulemaking.¹⁰⁰ Accordingly, there are multiple exceptions to the APA's procedural notice-and-comment requirements, exempting agencies from initiating notice-and-comment procedures to create regulations where the process may be unduly cumbersome or contrary to statutory intent.¹⁰¹

Agencies creating rules relating to “agency management or personnel” are exempt from APA notice-and-comment procedure.¹⁰² Rules relating to agency management or personnel generally refer to rules that govern matters between the agency and its employees regarding the “internal management” of an agency—with little to no effect on those outside of the agency.¹⁰³ These rules are not binding on the public and may include agency rules relating to staffing adjustments issued within personnel handbooks or manuals, internal directives governing staffing, and duty restructuring and role redefinitions.¹⁰⁴

Agencies may also dispense with notice-and comment procedures where the agency “for good cause finds” that notice-and-comment procedures would be “impracticable, unnecessary, or contrary to the public interest.”¹⁰⁵

inclusive public preferences and values and that are more carefully drafted to better serve the public interest.”).

100. See Michael Asimow, *Interim-Final Rules: Making Haste Slowly*, 51 ADMIN. L. REV. 703, 708 (1999) (“APA rulemaking procedure is commonly perceived as becoming ever more cumbersome and costly.”); E. Donald Elliott, *Re-Inventing Rulemaking*, 41 DUKE L.J. 1490, 1492 (1992) (“What was once (perhaps) a means for securing public input into agency decisions has become today primarily a method for compiling a record for judicial review.”).

101. See 5 U.S.C. § 553(a)(1)–(a)(2), (b)(A)–(b)(B).

102. § 553(a)(2) (stating § 553 rulemaking procedures apply to the outlined provisions “except to the extent that there is involved . . . a matter relating to agency management or personnel”); *Ysla v. United States*, 171 Fed. Cl. 333, 344 (Fed. Cl. 2024) (“Agencies, after all, are not obligated to use notice-and-comment procedures when regulating matters related to agency management or personnel.”).

103. See ATTORNEY GENERAL’S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT 18, 27 (1947) [hereinafter ATTORNEY GENERAL’S MANUAL] (“The exemption for matters relating to ‘agency management or personnel’ is self-explanatory and has been considered in the discussion of ‘internal management’ under section 3.”); *Dep’t of Air Force v. Rose*, 425 U.S. 352, 369–70 (1976) (finding that case summaries were not exempt from public disclosure under the Freedom of Information Act because they were not “matter[s] with merely internal significance” did not “concern only routine matters,” nor “matter[s] in which the public could not reasonably be expected to have an interest.”).

104. See *Ysla*, 171 Fed. Cl. 333 at 344 (regarding personnel manuals); *Conyers v. Sec. of Veterans Affs.*, 750 F. App’x 993, 997 (Fed. Cir. 2018) (“Such matters may include determinations of employee bonuses, the promulgation of a personnel manual or handbook, and hiring practices.”).

105. See 5 U.S.C. § 553(b)(B); ANDREW S. COGHLAN, CONG. RSCH. SERV., R44356, THE GOOD CAUSE EXCEPTION TO NOTICE AND COMMENT RULEMAKING 1 (2025) (examining

Notice-and-comment procedures are “impracticable” where the “due, timely, and required execution of agency functions would be unavoidably prevented by its undertaking public rulemaking proceedings.”¹⁰⁶ Notice-and-comment procedures are deemed to be “unnecessary” in cases of minor or technical amendments to rules “in which the public is not particularly interested.”¹⁰⁷ They are similarly “contrary to the public interest” in situations “in which the interest of the public would be defeated by any requirement of advance notice.”¹⁰⁸ Agencies often rely on the good cause exception for time-sensitive actions, in times of emergencies, or when delaying the issue of a rule could threaten public safety or welfare.¹⁰⁹ Rules created pursuant to the good cause exception are binding and carry the force of law.¹¹⁰

The VA invoked the good cause exception to “amend its adjudication regulations to add more presumptive exposure locations for radiation” under the PACT Act.¹¹¹ The PACT Act expanded veteran benefit eligibility by presuming veterans with certain medical conditions are automatically eligible for disability benefits when their military service occurred in locations known to be exposed to toxic materials and radiation.¹¹² In 2023, the VA issued a final rule to define activities like the cleanup of the Enewetak Atoll and nuclear responses in Palomares, Spain and Thule Air Force Base, Greenland as “radiation-risk” activities “for purposes of presumptions of service connection of certain disabilities by VA.”¹¹³ As the final rule merely served as regulation implementing prior legislative mandates, the VA Secretary found good cause to publish the rule effective immediately as prior public comment was unnecessary.¹¹⁴ In other words, because the PACT Act

agencies’ practice of “rely[ing] on the APA’s good cause exception to issue rules without any pre-publication notice and comment.”).

106. ADMINISTRATIVE PROCEDURE ACT: LEGISLATIVE HISTORY, S. DOC. NO. 79-248, at 258 (2d Sess. 1946).

107. *Id.*

108. ATTORNEY GENERAL’S MANUAL, *supra* note 103, at 30–31.

109. *See* COGLAN, *supra* note 105, at 8 (explaining that in times of emergencies, agencies invoking the good cause exception often claim lengthy rulemaking procedure are contrary to the public welfare).

110. *See id.* at 3–4 (discussing when direct and interim final rules used by agencies invoking the exception become effective).

111. Updating Presumptive Radiation Locations Based on the PACT Act, 88 Fed. Reg. 15277, 15277 (Mar. 13, 2023).

112. *See supra* text accompanying notes 21–24.

113. 88 Fed. Reg. at 15277.

114. *Id.* (“Because this rule is limited to incorporating text already enacted by Congress, without change or addition, advance notice and public comment beyond that provided in the legislation itself is unnecessary.”).

required the VA to identify and define locations exposed to toxic substances for the purpose of diagnosing veterans, and because delaying the rule would defeat that purpose, the rule's amendments were technical and could be issued effective immediately without prior public comment.¹¹⁵

Though not expressly required by the APA, agencies that subverted the notice-and-comment process for good cause can issue a direct or interim final rule, allowing opportunity for public comment after a rule is published.¹¹⁶ Agencies implement a direct final rule when they determine that the regular notice-and-comment procedure is unnecessary or inefficient because a rule relates "only to routine or noncontroversial matters."¹¹⁷ An agency publishes direct final rules in the Federal Register accompanied by a statement that the rule will go into effect on a specified date unless the agency receives substantive adverse comments or a written notice that someone will submit an adverse comment within the comment period.¹¹⁸ In the event that the agency receives any adverse comments, they are required to withdraw the direct final rule before its effective date.¹¹⁹ The agency can then recommence the normal notice-and-comment process, publishing its objectives as a proposed rule, or may choose to stop the rulemaking process entirely.¹²⁰ Direct final rules enable an agency to condense the rulemaking process in noncontroversial matters, dispensing of the criticized cumbersome deliberation period at a rule's proposal stage while still soliciting public engagement and feedback.¹²¹ An interim final rule on the other hand is adopted without prior public engagement and becomes effective immediately upon publication.¹²²

115. See Promise to Address Comprehensive Toxics (PACT) Act, Pub. L. No. 117-168, 136 Stat. 1759 (2022); 88 Fed. Reg. at 15,277 ("[B]ecause this rule merely chronicles in regulation what is already law, there is good cause for the rule to be effective immediately.").

116. See COGHLAN, *supra* note 105, at 3-4 (explaining that agencies provide the public an opportunity to comment on rules after publication by issuing direct final rules or interim final rules); see also Ronald M. Levin, *Direct Final Rulemaking*, 64 GEO. WASH. L. REV. 1 (1995) (similar).

117. See Levin, *supra* note 116 (detailing how agencies use direct final rulemaking procedures); DIRECTIVE 8101(3), *supra* note 90, at 1 ("An interim final rule is effective immediately upon publication and the agency typically solicits public comment on the rule. Rarely, an agency may publish a direct final rule, when the agency determines that a proposed rule is not necessary because it relates only to routine or noncontroversial matters.").

118. See Levin, *supra* note 116; COGHLAN, *supra* note 105, at 3-4.

119. See COGHLAN, *supra* note 105, at 3-4.

120. See Levin, *supra* note 116.

121. See *id.* at 2 ("In an era in which the rulemaking process has been criticized as too cumbersome . . . administrators have strong reasons to take note of the efficiencies that direct final rulemaking offers.").

122. See *id.* (distinguishing direct final rulemaking from interim final rulemaking).

Agencies invite public feedback after the fact on the stipulation that it will alter this interim rule if implored by adverse comments.¹²³

Interim final rules are employed when time is of the essence. In 2023, the VA issued an interim final rule to amend its medical regulations in accordance with the Veterans Comprehensive Prevention, Access to Care, and Treatment Act of 2020 (COMPACT Act).¹²⁴ The COMPACT Act directs the VA to provide, reimburse, or pay for emergent suicide care for eligible individuals.¹²⁵ Using its general rulemaking authority under § 501 and other relevant statutes, the VA issued an interim final rule establishing a framework to pay for and provide emergency suicide care, transportation, and necessary follow-up treatments for affected veterans.¹²⁶ In accordance with APA requirements, the VA Secretary concluded that there was good cause to publish the rule effective immediately without prior opportunities for public comment because the rate of veteran suicide nationwide constituted a national public health concern, making notice-and-comment procedure impracticable and contrary to the public interest.¹²⁷ After publishing the rule, the VA solicited public comments for roughly sixty days to fine-tune implementation and consider relevant input.¹²⁸

While the good cause exception serves as a practical and efficient avenue for rulemaking, the APA's legislative history shows favor to the "legislative functions of administrative agencies" being "exercised only upon public participation after notice."¹²⁹ Accordingly, courts—as the final arbiter of whether good cause exists—closely scrutinize agencies' findings of good cause, narrowly construing the exception.¹³⁰ The good cause exception is

123. *Id.*

124. Emergent Suicide Care, 88 Fed. Reg. 2,526, 2,526 (Jan. 17, 2023).

125. *Id.*

126. *See id.* at 2,535 (listing relevant statutory authorities).

127. *Id.* at 2,533–34 (finding good cause under 5 U.S.C. § 553(d)(3) to publish the rule with an effective date less than thirty days from the date of publication).

128. *See id.* at 2,534 ("The Secretary will consider comments that are received within 60 days after the date that this interim final rule is published in the Federal Register and address them in a subsequent Federal Register document announcing a final rule incorporating any changes made in response to the public comments.").

129. ADMINISTRATIVE PROCEDURE ACT: LEGISLATIVE HISTORY, S. DOC. NO. 79-248, at 257 (2d Sess. 1946) ("The principal purpose of this section is, where other statutes do not require a hearing, to provide that the legislative functions of administrative agencies shall so far as possible be exercised only upon public participation on notice as provided . . .").

130. *See* 5 U.S.C. §§ 702, 706; COGHLAN, *supra* note 105, at 5 ("Courts, not agencies, have the last word on whether good cause exists to forgo ordinary rulemaking procedures."); *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001) ("[T]he 'good cause' exception is to be 'narrowly construed and only reluctantly countenanced.'" (quoting *Tenn. Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir. 1992))).

not an “escape clause[]” that may be arbitrarily utilized at [an] agency’s whim,” and is only to be relied on in limited instances.¹³¹ Invoking the good cause exemption arbitrarily is risky as courts can, and do, strike down rules where findings of good cause are weak.¹³²

1. *VA Nonlegislative Rules and Guidance Documents*

Nonlegislative rulemaking is also exempt from the APA’s notice-and-comment requirements.¹³³ Nonlegislative rules—often referred to as guidance documents—include interpretive rules that lay out how an agency construes the statutes and regulations it administers, “general statements of policy” that describe how an agency may exercise future discretion, and rules of “agency organization, procedure, or practice” typically regulating the form of agency action.¹³⁴ Agencies issue nonlegislative rules in many different forms, publishing them in the Federal Register, integrating them in manuals or handbooks, or publishing them on agency websites.¹³⁵ Nonlegislative rulemaking provides the VA with a quicker way to announce and explain policies or integrate intra-agency procedures.¹³⁶ The VA frequently issues guidance documents in the form of directives, handbooks, and policy issuances.¹³⁷ Presently, the VA uses a series of personnel handbooks to prescribe mandatory internal procedures and operational requirements.¹³⁸ These guidance documents serve as a principal mechanism for implementing the VA Secretary’s

131. See *Am. Fed. of Gov’t Emps., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (quoting S. REP. NO. 752, 79th Cong. 1st. Sess. (1945), *reprinted in* ADMINISTRATIVE PROCEDURE ACT, LEGISLATIVE HISTORY, 79TH CONG. 1944–46, at 200–01 (1946)).

132. See *Solid Waste*, 236 F.3d at 755 (“[N]othing EPA said in promulgating the amendment suggested that it needed to forego notice and comment in order to prevent the amended rule from being evaded.”).

133. See § 553(b)(A); A BRIEF OVERVIEW OF RULEMAKING, *supra* note 88, at 7 (“The APA’s notice-and-comment requirements also do not apply to interpretive rules and general statements of policy.”).

134. See § 553(b)(A) (describing what are known as nonlegislative rules as “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”); A BRIEF OVERVIEW OF RULEMAKING, *supra* note 88, at 6–7 (categorizing nonlegislative rules as “Rules of Agency Procedure, Interpretative Rules, and General Statements of Policy”).

135. See, e.g., *VA Publications*, U.S. DEP’T OF VETERANS AFFS., <https://www.va.gov/vapubs> [<https://perma.cc/7AQK-WQDT>] (last updated Feb. 10, 2026) (housing all VA publications).

136. See *Distinguishing Between Legislative Rules and Non-Legislative Rules*, *supra* note 89 (describing “drawbacks” to the implementation of nonlegislative versus legislative rules).

137. See, e.g., U.S. DEP’T OF VETERANS AFFS., VA HANDBOOK 5005 MASTER: STAFFING (2026) [hereinafter VA HANDBOOK 5005 MASTER: STAFFING].

138. See *id.*; see, e.g., U.S. DEP’T OF VETERANS AFFS., VA HANDBOOK 5007/63: PAY ADMINISTRATION (2024) (governing VA pay administration procedures).

Title 38 personnel management authority, allowing the Department to create uniform personnel practices while retaining discretion to shape personnel administration through internal guidance.¹³⁹ Most commonly, the VA first issues directives providing “mandatory Department-wide policies.”¹⁴⁰ Then, the Department prescribes mandatory procedures in its handbooks, implementing the applicable directives’ policies.¹⁴¹ Nonlegislative rules do not create new rights or obligations for the public, so their promulgation is normally not beholden to follow notice-and-comment procedures.¹⁴²

The VA creates interpretive rules to “advise the public of the agency’s construction of the statutes and rules which it administers.”¹⁴³ In the event that interpretive rules have substantive effects on outside parties, courts consider whether the rule itself creates new rights or duties, modifies existing laws, or explains or clarifies existing law or regulations.¹⁴⁴ The court in *National Organization of Veterans’ Advocates, Inc. v. Secretary of Veterans Affairs*¹⁴⁵ considered whether the VA’s revision to 38 C.F.R. § 3.22(a), restricting the award of dependency and indemnity compensation benefits to survivors, was a substantive rulemaking requiring notice-and-comment procedures.¹⁴⁶ After the Court of Appeals for Veterans’ Claims released multiple decisions contrary to § 3.22(a)’s statutory intention, the VA published revisions to the

139. See generally *VA Publications*, U.S. DEP’T OF VETERANS AFFS., <https://www.va.gov/vapubs> [<https://perma.cc/7AQK-WQDT>] (last updated Feb. 10, 2026) (housing VA publications). See *Ysla v. United States*, 171 Fed. Cl. 333, 344 (Fed. Cl. 2024) (“[W]hen a government agency’s issuance ‘is a personnel manual, it does not necessarily lose its status as a regulation simply because it was not promulgated and published in accordance with the requirements of the APA.’”) (quoting *Hamlet v. U.S.*, 63 F.3d 1097, 1103 (Fed. Cir. 1995)).

140. *Office of Acquisitions and Logistics (OAL)*, U.S. Dep’t of Veterans Affs., <https://www.va.gov/oal/library/dms.asp> [<https://perma.cc/DN4V-DUGM>] (last updated, Aug. 16, 2024).

141. *Id.*

142. See *Distinguishing Between Legislative Rules and Non-Legislative Rules*, *supra* note 89. Although guidance documents are generally exempt from notice-and-comment requirements, the VA typically publishes “significant” guidance documents in the Federal Register allowing a thirty-day notice-and-comment period to ensure compliance, limiting the VA’s ultimate discretion, and ensuring clarity. See 5 U.S.C. § 552(a)(1)(D) (requiring statements of general policy be published in the Federal Register for the guidance of the public); Administrative Procedures: Guidance Documents, 85 Fed. Reg. 72,569 (Nov. 13, 2020) (outlining VA processes and procedures for establishing guidance documents pursuant to Executive Order 13,891).

143. ATTORNEY GENERAL’S MANUAL, *supra* note 103, at 30 n. 3.

144. See *id.*; *Paralyzed Veterans of Am. v. West*, 138 F.3d 1434, 1435–36 (Fed. Cir. 1998) (holding that the VA was not required to provide an advance notice-and-comment period before repeal of a regulation that was an interpretive rule).

145. 260 F.3d 1365.

146. *Id.* at 1370–72.

statute to ensure that it clearly expressed the VA's interpretation of 38 U.S.C. § 1318(b)—the statute that entitled survivors of eligible veterans dependency and indemnity compensation benefits.¹⁴⁷ The VA's clarification consequently prevented survivors of certain veterans from receiving benefits.¹⁴⁸ Petitioners brought suit asserting that the VA's statutory revision constituted substantive rulemaking because it modified existing law by overturning precedent set by the Court of Appeals for Veterans Claims.¹⁴⁹ The Federal Circuit denied this assertion, finding that the previous precedent rested on the judiciary's incorrect interpretation of the statute and that the VA's subsequent statutory revision simply clarified “that those judicial decisions did ‘not accurately reflect the requirements of the statute . . . and the [Department of Veterans Affairs]’ intention in issuing that regulation.”¹⁵⁰ The court found that a rule that merely clarifies the interpretation of a statute is “necessarily interpretive in character” and thus not subject to the APA's notice-and-comment requirements, “even if that interpretation has consequences for the rights of the parties.”¹⁵¹

The general statements of policy exception to notice-and-comment rulemaking is used to swiftly issue internal guidance within an agency.¹⁵² To determine whether a rule is a general statement of policy rather than a legislative rule carrying the force of law, courts consider whether the agency has “established a binding norm on the public.”¹⁵³ In 2022, using its general rulemaking authority under § 501, the VA amended its regulations concerning the ethical conduct standards of its employees by creating an ethics framework for accessing and using veteran data.¹⁵⁴ The VA determined that internal guidance establishing a tangible intra-agency data framework was integral to achieve its goals, as existing regulations and policies did “not always provide definitive guidance about how VA should manage access,

147. *See id.*; *see also* DIC Benefits for Survivors of Certain Veterans Rated Totally Disabled at Time of Death, 65 Fed. Reg. 3,388 (Jan. 21, 2000) (clarifying statutory intent after the Court of Appeals for Veterans Claims' incorrect interpretation).

148. *See* 65 Fed. Reg. at 3,388 (clarifying that dependency and indemnity compensation (DIC) is only available to survivors of eligible veterans).

149. *Nat'l Org. of Veterans' Advocs. v. Disabled Am. Veterans*, 260 F.3d 1365, 1375 (Fed. Cir. 2001).

150. *Id.* at 1375–76.

151. *Id.* at 1376.

152. *See* JARED P. COLE & TODD GARVEY, CONG. RSCH. SERV., R44468, GENERAL STATEMENTS OF POLICY: LEGAL OVERVIEW (2016) (“Agencies frequently use guidance documents to set regulatory policy.”).

153. *Id.*

154. Principle-Based Ethics Framework for Access to and Use of Veteran Data, 87 Fed. Reg. 40,451 (July 7, 2022).

sharing, or use of veteran data when regulation and policy permit organizational discretion.”¹⁵⁵ The VA’s ethical data governance framework incorporated nine principles that “[a]ll parties who have or obtain access to and use VA veteran data are encouraged to carefully consider and apply” when not contradicted by other standards.¹⁵⁶ The VA Secretary found that this rulemaking was a general statement of policy serving as a nonbinding source of guidance for agency practices and procedures, and as a result, was exempt from APA notice-and-comment procedures.¹⁵⁷

As nonlegislative “rules of agency organization, procedure, or practice” are not explicitly defined in the APA, courts—guided by precedent and a detailed legislative history—have worked to determine what constitutes a procedural rule.¹⁵⁸ To distinguish whether a rule is procedural or substantive, many courts consider whether the rule “encodes a substantive value judgment or puts a stamp of approval or disapproval on a given type of behavior.”¹⁵⁹ A rule that satisfies the procedural exception encompasses “agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which parties present themselves or their viewpoints to the agency.”¹⁶⁰ The VA invoked the procedural exception to amend regulations to allow Veteran Readiness Employment Officers (VREOs) to delegate their authority to extend veterans’ entitlements to rehabilitation programs pursuant to the VA’s delegation authority under 38 U.S.C. § 512(a).¹⁶¹ Allowing VREOs to delegate their authority to extend entitlements decreased approval times and prevented a delay in delivering services where these officers were out of the office or otherwise unavailable.¹⁶² The VA Secretary clarified that the delegation of authority within 38 C.F.R. § 21.78(d), the governing statute, was procedural in nature and would not amend the substantive content of the statute, nor substantively impact or alter the rights or interests of the public.¹⁶³ Ultimately, this rulemaking

155. *Id.*

156. *See id.* at 40,451–52 (listing nine principles outlining the goal and recommended practices of veteran data access and usage).

157. *Id.*

158. *See Procedural Rules for Agency Adjudication*, ACUS (June 2023), https://www.acus.gov/sites/default/files/documents/29-Rules-of-Procedure-and-Practice-in-Agency-Adjudication_0.pdf [<https://perma.cc/BRM7-KQKY>].

159. *See Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987) (discussing the court’s gradual shift in analysis when applying a § 533 exemption to procedural rules).

160. *AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023).

161. Veteran Readiness and Employment Program: Delegation of Concurrence for Entitlement Extensions, 89 Fed. Reg. 66,579, 66,579 (Aug. 16, 2024); *see* 38 U.S.C. § 512(a).

162. 89 Fed. Reg. at 66,579.

163. *Id.*

affirmed the VA Secretary's authority to regulate intra-agency procedure, independent from notice-and-comment requirements.¹⁶⁴

III. RECOMMENDATIONS

A. *VA NPRM Initiation Establishing Mission Critical Occupation Classification Requirements*

The VA should use its general rulemaking authority to promulgate a legislative rule formally designating VA-wide mission critical occupations—distinguishable from the general federal government mission critical occupation definition.¹⁶⁵ At present, the VA primarily implements its MCO designation framework through internal guidance documents, establishing procedures for identifying, managing, and even recruiting for positions deemed to be essential to the agency's healthcare mission.¹⁶⁶ Because they stand as policy guidance, these handbooks do not carry the force and effect of the law and are vulnerable to legal challenges, may be subject to unilateral modification, and lack the transparency associated with notice-and-comment procedures.¹⁶⁷ Codifying MCO classification through notice-and-comment rulemaking takes a big step toward providing stability to VA employees by insulating essential personnel, and proffering a smoother administrative transition in times of political shift.¹⁶⁸ Veterans and lawmakers alike note that the threat of large-scale reduction in VA positions, specifically within the VHA, risk eroding progress made after implementation of the PACT Act.¹⁶⁹ This is doubly important as the VA is currently exploring “a number of additional reforms to improve operational efficiency” including centralizing and streamlining the “costly” and duplicative functions of the VHA, VBA and NCA.¹⁷⁰ Further, as the current Administration has emphasized that upwards of 300,000 “positions critical to delivering health care to veterans”

164. *Id.*

165. 38 U.S.C. § 501; VA HANDBOOK 5002, *supra* note 52, at 13 (differentiating government-wide mission critical occupations (MCOs) defined by the federal government's Chief Human Capital Officers council from VA-wide MCOs defined and determined by the VA).

166. See VA HANDBOOK 5002, *supra* note 52, at Appendix III. Related handbooks in the VA Handbook 5000 series cover internal policy guidance for the VA's personnel system covering appointment, pay authorities, qualification standards, and position designations for Title 38 employees. See generally *VA Publications*, U.S. DEP'T OF VETERANS AFFS., <https://www.va.gov/vapubs> [<https://perma.cc/7AQK-WQDT>] (last updated Feb. 10, 2026).

167. See *supra* text accompanying note 79.

168. See *supra* text accompanying note 91; VA HANDBOOK 5002, *supra* note 52.

169. See *supra* text accompanying note 32.

170. *VA to Reduce Staff by Nearly 30K by End of FY2025*, *supra* note 34.

were an exception to the previously intended RIFs, this specification would clearly insulate these positions if future workforce threats arise.¹⁷¹

In accordance with notice-and-comment rulemaking procedures outlined by the APA, the VA should first publish a notice of proposed rulemaking pursuant to its § 501 general rulemaking authority. This would anchor Title 38, Chapter 74 provisions granting the VA authority to prescribe regulations for the conditions of employment and the parameters surrounding the appointment and qualification standards of Title 38 clinical employees.¹⁷² Consistent with the substance in VA internal handbooks, the proposed rule's components should establish a framework formalizing employment and retention procedures encompassing definitional criteria, designation processes, and biannual evaluations and reporting.¹⁷³

Next, the VA must develop the rule's substance. To prioritize succession planning, at a minimum, the rule's definitional criteria should define Title 38 MCOs as those essential to healthcare services or benefits central to the VA's mission and those occupations with requisite specialty or subspecialty healthcare training.¹⁷⁴ In incorporating the designation process, the rule should include the VA handbook's internal workforce analysis process—the biannual VA MCO Determination and Validation process that identifies and reviews MCOs to pinpoint competency and skills gap to ensure mission success.¹⁷⁵ To promote ongoing transparency and ensure compliance, the rule should also include retention metric reporting requirements for incorporation into VA Workforce Dashboards.¹⁷⁶ In doing so, the VA must provide a public comment period for a minimum of thirty days.¹⁷⁷ Considering the breadth of the VA's services and the size of its workforce, comments

171. Patricia Kime, *VA Declares 300,000 Health Care Jobs Exempt from Ordered Freeze on Federal Hiring*, MIL. NEWS (Jan. 23, 2025, 3:50 PM), <https://www.military.com/daily-news/2025/01/23/roughly-300000-va-jobs-exempted-federal-hiring-freeze-bid-protect-veteran-services.html>. [<https://perma.cc/PSK5-PK6K>].

172. 5 U.S.C. § 553; 38 U.S.C. § 501; *see* 38 U.S.C. §§ 7421–7426 (regulating personnel administration).

173. *See supra* text accompanying note 52.

174. *See generally* VA HANDBOOK 5002, *supra* note 52, at 9; U.S. DEP'T OF VETERANS AFFS., VA DIRECTIVE 5002: STRATEGIC WORKFORCE AND SUCCESSION PLANNING 9 (2024) [hereinafter VA DIRECTIVE 5002]; VA HANDBOOK 5005 MASTER: STAFFING at 5005/61 IV-D-3 (explaining that specific occupations lack position descriptions but make a showing of certifications in specialties or subspecialties).

175. *See* VA HANDBOOK 5002, *supra* note 52, at 13; VA DIRECTIVE 5002, *supra* note 52, at 9 (referencing the VA MCO Determination and Validation Process).

176. *See generally* 23 U.S. DEP'T OF VETERANS AFFS. WORKFORCE DASHBOARD, *supra* note 36 (containing retention metric reporting for VA employees).

177. *See* DIRECTIVE 8101(3), *supra* note 90, at Appendix A-1.

attributed by interested parties serve as particularly informative tools promoting the VA's accountability and reinforcing its legitimacy in the face of judicial review.¹⁷⁸ The VA must consider, respond to, and incorporate if desired any relevant feedback when passing the final rule.¹⁷⁹ In light of nationwide staffing shortages, these comments may help refine implementation, revealing the practical implications or unintended consequences of staffing attrition.¹⁸⁰ Lastly, the VA must give notice of the rule's effective date when the final rule is published in the Federal Register.¹⁸¹ In implementing this rule, the VA should conduct comprehensive review of all mention of MCOs within the VA Handbook personnel series and associated Title 38 staffing directives to determine which provisions reflect operational instructions versus binding criteria.

B. Strengthen and Update Guidance Documents

Where notice-and-comment rulemaking could potentially limit the VA to strict regulatory mandates, nonlegislative rulemaking functions as a viable option to swiftly incorporate proactive procedures for reassigning employees. Pursuant to its authority under 38 U.S.C. § 7401, 7421(a) and its general rulemaking authority, the VA should initiate nonlegislative rulemaking to strengthen personnel qualification, appointment, classification, and retention standards for MCO and Title 38 clinical personnel based on existing handbook provisions.¹⁸² Implementing policy guidance or rules of agency organization, procedure, or practice provides the VA with an efficient mechanism to consolidate internal personnel guidance into an administrative framework without creating externally enforceable or binding obligations on the public.¹⁸³ With complex personnel requirements under Title 38, Title 5, and hybrid personnel, creating internal consistency throughout the VA is particularly important in light of its size.¹⁸⁴ Strengthening existing guidance documents promotes consistent policy application across VHA facilities in all VISNs.¹⁸⁵ Internal guidance would govern matters between the VA and its employees

178. See U.S. DEP'T OF VETERANS AFFS., VA HUMAN CAP. OPERATING PLAN: FY 2020-2021 Appendix F (2020) (listing VA mission critical and shortage occupations).

179. DIRECTIVE 8101(3), *supra* note 90 (providing that comment periods can be reopened if the agency determines feedback was insufficient or the public lacked reasonable time to respond).

180. See *VA to Reduce Staff by Nearly 30K by End of FY2025*, *supra* note 34.

181. DIRECTIVE 8101(3), *supra* note 90.

182. See 38 U.S.C. § 7401; 38 U.S.C. § 421(a); *supra* text accompanying note 67.

183. See *supra* text accompanying notes 102–104.

184. See *supra* text accompanying notes 68–71.

185. Consistent policy application is particularly important considering the VA operates across the expanse of eighteen VISNs. See Biscontin, *supra* note 11.

regarding the management of employee duties, maintaining APA compliance and creating a workable framework for designation, reassignment, and strategic workforce and succession planning. In doing so, the VA should review all personnel guidance within the VA Handbook personnel series and integrate applicable MCO guidance into one cohesive personnel manual.

CONCLUSION

As a cabinet-level agency, the United States Department of Veterans Affairs' size, structure, and scope make it uniquely vulnerable to partisan shifts that accompany administration changes. As one of the federal government's most intricate agencies—and with the largest integrated healthcare system in the country—the VA depends on a stable workforce to fulfill its statutory duties of providing healthcare, disbursing benefits, memorializing veterans, and improving “the Nation’s preparedness for response to war, terrorism, national emergencies, and natural disasters.”¹⁸⁶ The absence of workable intra-agency personnel frameworks and agency-specific codification of mission critical occupations leaves it exposed to staffing shortages resulting in delayed veteran care.¹⁸⁷

This Comment provides two recommendations.¹⁸⁸ First, the Department of Veterans Affairs should use its rulemaking authority to promulgate regulations defining, classifying, and regulating mission critical occupations.¹⁸⁹ Formalizing these requirements through notice-and-comment rulemaking reinforces the VA’s compliance with the federal government’s workforce planning obligations and statutory mandates to provide and deliver services to veterans.¹⁹⁰ Second, the Department of Veterans Affairs should strengthen internal personnel guidance documents to create a workable administrative framework to insulate MCOs and manage workforce hiring and retention responsive to veteran need.

186. *About the Department*, *supra* note 8.

187. *VA to Reduce Staff by Nearly 30K by End of FY2025*, *supra* note 34.

188. *See supra* Part III.

189. 38 U.S.C. § 501.

190. *See supra* text accompanying note 54.