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Office of Special Reviews

DEPARTMENT OF VETERANS AFFAIRS

VA Improperly Awarded \$10.8 Million in Incentives to Central Office Senior Executives

**Administrative
Investigation**

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Executive Summary

On September 13, 2023, VA Secretary Denis R. McDonough was alerted by the Assistant Secretary for Management and Chief Financial Officer (CFO) Jon Rychalski that the Office of Management had detected unusual payment activity relating to senior executives.¹ The preliminary data provided to Secretary McDonough by Mr. Rychalski indicated that VA had paid 367 senior executives more than \$19.7 million over two pay periods in September with another 21 remaining to be processed (about 75 percent of VA’s entire senior executive staff).² Mr. Rychalski identified these payments as critical skill incentives (CSIs).

CSIs are a type of recruitment and retention incentive pay newly authorized for VA by Congress under the PACT Act, which dramatically expanded access to VA health care and benefits for millions of veterans exposed to toxic substances.³ In anticipation of a significant increase in new healthcare enrollments and benefits claims, the PACT Act included CSIs as a tool to enhance VA’s ability to meet the projected staffing requirements. CSIs are available to an employee who “possesses a high-demand skill or skill that is at a shortage” at a rate up to 25 percent of basic pay.⁴ VA’s first CSIs were approved in March 2023 for human resources specialists to support increased hiring.

In the days following the CFO’s disclosure to the Secretary on September 13, more data were gathered to confirm details regarding the CSIs and determine next steps. On September 22, 2023, VA provided a statement to members of Congress, 16 veteran service organizations, and others indicating that the Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA) had awarded CSIs to nearly all of their respective senior executives.⁵ This statement reported that the CSIs included payments reportedly totaling \$9.7 million to 170 senior

¹ The group of senior executives consisted of career Senior Executive Service (SES) members, Senior-Level employees, and Title 38 SES-equivalent employees (collectively, “senior executives”). Title 38 SES-equivalent employees include dentists and doctors appointed under the authorities contained in 38 U.S.C., chapters 73 and 74, who perform SES duties. VA Directive 5027, *Senior Executive Service*, April 15, 2002, para. 2.a-b.

² The total includes payments to both senior executives who work outside of headquarters (such as medical center directors) and those who work in the central office (such as leaders of VA program offices).

³ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759, 1815; VA, “PACT Act First Year in Review” (fact sheet), August 10, 2023.

⁴ PACT Act § 909(d), codified at 38 U.S.C. § 706(d). CSIs, like the other workforce provisions in the PACT Act, are set to expire on September 30, 2027. 38 U.S.C. § 706(k).

⁵ The statement was shared with staff of several congressional committees, including the Senate Committee on Veterans’ Affairs (SVAC); the House Committee on Veterans’ Affairs (HVAC); and the Senate and House Appropriations Subcommittees on Military Construction, Veterans Affairs, and Related Agencies. It was also shared with VA employee unions and a news reporter. Note that VHA awarded CSIs to all types of senior executives (SES, Senior-Level, and Title 38 SES-equivalent), whereas VBA only awarded CSIs to its SES members.

executives assigned to headquarters functions at the VA central office (VACO).⁶ VA also indicated that these payments to senior executives would be canceled because VA had made a “policy error” and “was overly broad in the way [it] implemented and executed this authority.” VA did not cancel the approximately 200 CSI awards made to “field executives”—that is, senior executives based outside of headquarters, including regional office and district directors in VBA, as well as medical center directors and Veterans Integrated Service Network (VISN) directors in VHA.⁷ That same day, Secretary McDonough also notified VA Inspector General Michael Missal of the cancellations and requested that the VA Office of Inspector General (OIG) review the facts and circumstances surrounding the issuance of the CSIs.

A few days later, the chairmen and ranking members of the House and Senate Committees on Veterans’ Affairs responded to VA’s statement. They stated that using “incentives . . . to boost pay of senior executives at VA rather than bolster staffing for critical shortage positions requiring highly skilled individuals” was “contrary to congressional intent.”⁸ They also supported the Secretary’s request for the OIG to conduct a full review.

The OIG initiated its oversight work on September 28, 2023, to examine VA’s compliance with law and policy in the issuance of CSIs to VACO senior executives at VHA and VBA. The investigation also included determining the rationale for the CSI payments and the chronology of decisions by the individuals accountable for implementing the incentives that VA subsequently determined were improper.⁹ During the investigation, OIG staff also received information through interviews and document reviews regarding the subsequent cancellation and announced recoupment of these payments, and this feedback is briefly summarized in this report. Because the recoupment is ongoing and its impact is not fully realized, an in-depth examination was outside the scope of this investigation.¹⁰

⁶ The tallies reported in VA’s statement are slightly inaccurate based on an OIG audit team’s analysis of VA human resources and payment data. The OIG determined that 182 executives were awarded CSIs, totaling \$10.8 million. VA’s disclosure excluded 12 CSIs that were not paid initially due to processing issues. The OIG determined that eight of these awards were canceled before being paid, but four were paid prior to cancellation resulting in a total of 174 executives being paid approximately \$9.9 million.

⁷ The National Cemetery Administration (NCA) did not issue CSI payments to its senior executives. VA also has senior executives who are aligned to central office functions that are not subcomponents of VHA, VBA, or NCA. CSIs were not issued to senior executives within these non-VBA and non-VHA components.

⁸ Joint letter from Sen. Jon Tester, SVAC Chairman; Sen. Jerry Moran, SVAC Ranking Member; Rep. Mike Bost, HVAC Chairman; and Rep. Mark Takano, HVAC Ranking Member, to Secretary Denis R. McDonough, September 26, 2023.

⁹ The OIG team conducting this administrative investigation included investigative attorneys, management analysts, administrative investigators, and audit staff. They are collectively referred to as “investigators” for the purposes of this report.

¹⁰ Similarly, the OIG did not undertake a thorough review of CSIs awarded to field executives or nonexecutive employees. However, some information about these awards identified during this investigation is included, and the OIG has recommended that VA conduct reviews of these CSIs that draw on the findings in this report.

Law, Policies, and Procedures for CSIs

As enacted, the PACT Act provided the VA Secretary with the authority to award CSIs of up to 25 percent of an employee’s basic pay if the employee commits to a period of service (a term of federal government employment) and the Secretary (or his designee) determines that the following three criteria are met:¹¹

- (A) the employee possesses a high-demand skill or skill that is at a shortage;
- (B) such skill is directly related to the duties and responsibilities of the employee’s position; and
- (C) employment of an individual with such skill in such position serves a critical mission-related need of the Department.¹²

VA’s policies regarding CSIs, which were formalized in a policy notice in February 2023, are nearly identical to the statute except that the policy allows CSIs to be awarded to either an employee or “a group of employees.”¹³ In addition, Secretary McDonough delegated to the under secretaries and other officials the authority to approve CSIs for “employees occupying positions centralized” to their respective offices, including senior executives.¹⁴ The delegation also explicitly excluded some employees from receiving CSIs, such as political appointees and non-career Senior Executive Service (SES), and required the Corporate Senior Executive Management Office (CSEMO) to perform a review of all proposed CSIs to senior executives.¹⁵

CSIs based on a “high-demand skill” (the justification presented for VHA and VBA senior executives’ incentives addressed in this report) were not detailed in VA guidance. The recommending official instead was required to identify the skill and show that it is in high demand through “market factors,” which “may include new employers creating competition for

¹¹ Basic pay is the “total amount of pay received at a rate fixed by law or administrative action for the position held by an employee” and includes special salary rates and locality-based pay. Office of Personnel Management, *Fact Sheet: Aggregate Limitation on Pay*, <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/aggregate-limitation-on-pay/>. For Title 38 employees, basic pay includes both base pay and market pay. Market pay adjusts VA physician pay up to a level closer to the local healthcare market. VA Handbook 5007/59, Part IX, *Pay for VHA Physicians, Dentists, and Podiatrists*, p. IX-1a.

¹² 38 U.S.C. § 706(d). The statute does not specify the length of service required. VA’s subsequent policy notice specified that the required period of service could range from 28 days to 364 days. VA Notice 23-03, *PACT Act, Critical Skill Incentive Implementation*, February 17, 2023.

¹³ VA Notice 23-03.

¹⁴ VA Secretary, “Incentives for Critical Skills,” memorandum for under secretaries, assistant secretaries, and other key officials, December 20, 2022. A second memorandum issued on September 27, 2023, rescinded this delegation, requiring that all future CSIs for senior executives be approved by the Secretary. VA Secretary, “Incentives for Critical Skills,” memorandum for the deputy secretary, chief of staff, under secretaries, and other key officials, September 27, 2023.

¹⁵ CSEMO is the human resources services office for all senior executives at VA.

candidates, consistent use of above minimums to hire candidates or other appropriate factors.”¹⁶ In contrast, to be awarded a CSI for a “skill that is at a shortage,” the employee’s (or group of employees’) position must be included on an approved list for which the criteria were established in advance of the award.¹⁷

Award of CSIs to Senior Executives

In March 2023, Under Secretary for Health Shereef Elnahal announced at a conference attended by many VHA senior executives that field executives (VISN directors and medical center directors) would be receiving CSIs at 25 percent of basic pay across the board. This was a surprise to Dr. Elnahal’s human resources team, as he had approved in a signed memorandum the previous day a two-tiered approach (25 percent CSIs for VISN directors and 20 percent CSIs for medical center directors) and not a flat 25 percent to all. That same day, VHA human resources staff changed Dr. Elnahal’s approval memorandum to reflect his conference statement to authorize a CSI of 25 percent across the board.

Shortly after the conference, VHA’s chief human capital management executive, Jessica Bonjorni, and her team discussed with Dr. Elnahal the possibility of also awarding CSIs to VACO senior executives. When Under Secretary for Benefits Joshua Jacobs learned that VHA was planning to pay CSIs to both field and VACO senior executives, he also began discussing with his senior human resources adviser and principal deputy under secretary for benefits whether VBA should do the same. The deputy under secretary for benefits, Michael Frueh, commented in mid-April, “I do not like the optics of paying execs, because it will add up to a number the public/Congress will question.” Despite this concern, VBA moved forward with plans that paralleled the VHA proposal to pay CSIs to its senior executives.¹⁸ National Cemetery Administration leaders were aware that VHA and VBA were planning to issue CSIs to senior executives at VACO, but they decided against offering them because, according to the principal deputy under secretary for memorial affairs, they did not believe they had “a justifiable reason to do so.”

Between early May and mid-July 2023, Secretary McDonough sought additional information from Dr. Elnahal and Mr. Jacobs about their plans to pay CSIs to senior executives. The Secretary expressed concerns about the cost of the incentives and his desire to ensure that PACT Act workforce authorities were used with care. In response, Dr. Elnahal did not disclose to the Secretary the plan for VHA central office executives, but rather provided information solely on the CSIs for field executives. In early June, the then acting deputy secretary requested that VHA and VBA obtain a review of their written plans by Human Resources and

¹⁶ VA Notice 23-03. “Above minimums” is not defined in the policy. The VA chief human capital officer explained to OIG staff that “above minimums” refers to setting the rate of basic pay above step 1 of the pay grade.

¹⁷ VA Notice 23-03.

¹⁸ VHA’s recipients included all categories of senior executives, but VBA’s only included SES.

Administration/Operations, Security, and Preparedness (HRA/OSP) and the Office of General Counsel (OGC) “to make sure we are compliant with the statute.” The effect of these requests was to slow down (or pause) the administrations’ efforts to execute their CSI plans for senior executives.

The OIG determined that from August 2023 through early September 2023, CSIs totaling \$10.8 million for 182 senior executives at VACO assigned to VHA and VBA were approved and submitted for processing through VA’s human resources system for payment (this included the 12 staff not accounted for in the VA statement of \$9.7 million awarded to 170 VACO senior executives). As noted above, on September 22, 2023, VA announced the cancellation of the CSI payments to VACO senior executives.

In late October, VA issued letters of indebtedness (collection notices) to all senior executives who received CSIs. Employees then had to decide whether to complete repayment by December 31, 2023 (in which case only the net amount paid would be due) or to repay the debt pursuant to a payment plan (requiring them to pay back the gross amount assuming it would not be paid off before the tax year ended).¹⁹ VA employees also could seek a waiver or challenge the debt and seek an appeal. This process is continuing. While the OIG has not examined this process, the investigative team received information during this investigation suggesting that VA’s handling of the CSIs had significantly damaged the morale of its senior executives at the central office, and that several had experienced financial hardship as a result of having to repay the incentives. In addition, two senior executives retired from VBA as a direct result, and another VBA official who retired in December told investigators that although he had already planned to retire soon, the recoupment made his decision easier.

Findings

The OIG found that the award of \$10.8 million in CSIs to all VHA and VBA central office executives was inconsistent with both the PACT Act and VA policy. In addition, the OIG found that breakdowns in leadership and controls and missed opportunities at multiple levels of VA contributed to this result. These two findings and eight recommendations are summarized below.

Finding 1. The Blanket Award of CSIs to VA Central Office Executives in VHA and VBA Was Inconsistent with the PACT Act and VA Policy

As stated above, CSIs were authorized to help VA recruit and retain employees in anticipation of new demands related to the PACT Act. Evidence suggests that VHA and VBA personnel involved in developing strategies to award CSIs for senior executives at VACO based them first on achieving a desired outcome—incentive awards of 20 or 25 percent of basic pay for all—and

¹⁹ VA Financial Policy, “Employee Debt,” in vol. 12, *Debt Management*, chap. 3, pp. 2, 11, 13.

then took steps weeks or months later to justify the awards with data.²⁰ With respect to VHA VACO executives, the OIG did not find evidence that any data were presented to justify the incentives until *after* the Secretary questioned the CSIs in mid-September, at which time VHA conducted a post-payment analysis that revealed weaknesses in the justification for the group. This approach did not satisfy the conditions in the PACT Act and VA policy, which require that the Secretary (or his designee) determine that each recipient of the incentive meets all required criteria.²¹ This was also inconsistent with VA’s approach to implementation for nonexecutives, which showed a more meticulous data analysis to support decisions regarding the occupational groupings to be awarded CSIs. This finding was based on the following determinations:

- **VHA and VBA each improperly grouped all of their respective eligible VACO senior executives together when recommending them for high-demand skill incentive pay.** Both administrations failed to comply with VA’s own policy requirement to “narrowly define” a group and could not then ensure that each recipient met the statutory criteria to receive a CSI based on a high-demand skill. In particular, because these groups consisted of executives with different skills and occupations serving in diverse positions, the administrations could not show that the “skill” being retained by the incentive was in high demand and that it was directly tied to their “duties and responsibilities.”²² The 148 VHA and 34 VBA senior executives awarded CSIs held positions across many occupational series (26 for VHA and six for VBA) with different position titles and job duties.²³ In contrast, nonexecutives, which represented over 90 percent of the total number of CSIs authorized as of October 13, 2023, were grouped for shortage-skill CSIs based on one or two different occupational series, such as human resources, housekeeping, food service, police, and medical supply.
- **The amounts awarded were determined without considering what was needed for retention.** VA policy requires that “the value of the incentive will be proposed by the recommending official based upon the needs of the Administration/Staff Office.” The OIG found that VHA and VBA awarded CSIs to their senior executives in the central office at the *maximum percentage* (25 percent of basic pay) based solely on concerns about parity rather than supporting evidence. Neither VHA nor VBA assessed whether the actual amounts awarded to the 182 VACO senior executives were necessary to retain

²⁰ Dr. Elnahal initially approved a two-tiered CSI (25 percent to a small group based on leadership in certain priority initiatives and 20 percent to the remaining VACO executives) but changed the amount to 25 percent for all shortly before the CSIs were awarded in September 2023.

²¹ 38 U.S.C. § 706(d); VA Notice 23-03.

²² 38 U.S.C. § 706(d).

²³ Dr. Elnahal and Mr. Jacobs described VACO senior executives as a diverse group in terms of job duties and skills and conceded that the group definitions used for these CSIs were, in hindsight, overbroad. Senior OGC attorneys reached a similar conclusion in mid-September 2023 after the CFO raised questions about the awards.

them. When VHA undertook an individual-level analysis *after* canceling the CSIs to determine whether to recoup all or some of them, they identified employees whose salaries were sufficiently high for their roles to make the CSIs unnecessary for retention.

- **VHA provided no market factors in support of its CSIs, and VBA’s justification was based on flawed assumptions, including that every senior executive was equivalent to a private sector CEO.** For CSIs based on high-demand skills, VA policy requires the recommending official to “list market factors.”²⁴ These include higher private sector pay, low numbers of qualified applicants, moderate-to-high vacancy rates/shortages and turnover, difficulty filling positions, and unique specialty or skillset. Yet, VHA identified no specific market factors in support of its recommendation to provide CSIs to all VHA VACO senior executives. The only justification was an identical short paragraph on a single form submitted for all VACO senior executives, citing a “much more competitive” job market “resulting in a very high demand of skills possessed by our experienced executive leadership team.” A senior executive in HRA/OSP, who had concerns about the awards, captured the starkness of the justification for VHA senior leaders’ CSIs as compared to requirements for much smaller incentives:

I can’t even give a GS employee a special contribution award for \$250 without writing an entire page about how great they are and forms and process. And this, with a stroke of a pen and three sentences, they’re saying these folks are critical because they’re critical, giving all these people this huge amount of money.²⁵

While VBA provided more analysis in its form and supporting memorandum, the justification relied on pay disparity with private sector executives to support its claim that its central office SES had high-demand skills. The justification did not support that the private sector pay rationale applied equally to all SES—implying any of them could be CEOs of a private sector company—or that incentives were needed to retain each executive.²⁶ In fact, Mr. Jacobs told OIG investigators that VBA’s “retention numbers are better than the six-year average” despite increasing workloads, which undercuts the proposed need for such a broad award of CSIs for retention.

²⁴ VA Notice 23-03.

²⁵ The deputy general counsel for legal operations, Brent Pope, had a similar reaction when he reviewed the justification in September. He told investigators, “When I saw the justification that [VHA] gave I honestly couldn’t believe it. I said, ‘Is that all that was there?’”

²⁶ A staff attorney in VA’s Office of General Counsel told VBA in June 2023 that they needed “to ensure the amounts being paid reflect what is needed for the retention.”

Finding 2. VA's Internal Controls Were Ineffective in Preventing Improper Awards of CSIs to Central Office Senior Executives

Federal employees have a responsibility for “safeguarding federal assets and the efficient delivery of services to the public.”²⁷ Federal agency leaders and managers are expected to fulfill this obligation in part by creating governance systems that adhere to enterprise risk management principles and by implementing effective internal controls. With respect to the CSIs for senior executives, before the incentives were awarded, the recommended CSIs were reviewed by HRA/OSP per VA policy, and the acting deputy secretary also separately instructed the administrations to have their written plans reviewed by HRA/OSP and OGC.²⁸ Yet the CSIs for central office executives were not identified as being improper until after most had been paid. There are several contributing factors to this result, which include the following:

- **There was insufficient transparency from VHA regarding VACO CSIs in response to the Secretary's requests for information about plans.** The Secretary did not learn that these executives had received incentives until September 13, 2023, when he was alerted by VA's CFO. VHA never disclosed to Secretary McDonough the details of VHA's plan to pay CSIs to all VACO senior executives despite specific requests from the Secretary regarding the planned use of these incentives in the months before they were awarded. The OIG found that VHA started developing its plan in late March 2023 and by early April its workforce management staff had prepared spreadsheets listing all potential recipients, their salaries, the amount of the CSI, total cost to VHA, and total individual compensation. Evidence suggests that the possibility of paying CSIs to VHA senior executives in the central office was mentioned by Dr. Elnahal at an under secretaries meeting on April 11. But when the Secretary requested that Dr. Elnahal provide information about the administrations' plans in May, the under secretary only provided a “justification paper” (white paper) regarding the proposed CSIs to *field* senior executives. Significantly, no information about VHA's plan for paying CSIs to their VACO executives was included in any of the three versions of this white paper that Dr. Elnahal provided in May, even though the total budget impact for these 148 VHA VACO executives was higher than that for their 159 field executives. In contrast, Mr. Jacobs shared information about VBA's plans to pay CSIs to both field and central office SES in

²⁷ Office of Management and Budget Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.

²⁸ As noted previously, the December 2022 delegation of authority required CSEMO (an office within HRA/OSP) to conduct technical reviews of CSIs recommended for senior executives. VA Secretary, “Incentives for Critical Skills,” memorandum, December 20, 2022. Per a different delegation regarding executive personnel actions, HRA/OSP's assistant secretary or principal deputy assistant secretary then reviewed to determine whether they would concur. VA Secretary, “Delegation of Authority to Approve Personnel Actions,” memorandum for the deputy secretary, chief of staff, under secretaries, and other key officials, July 26, 2023. In contrast, there was no affirmative requirement in VA policy for OGC review.

May 2023 with the Secretary and other senior leaders, although the documents did not specifically indicate that essentially *all* senior executives were included.

On August 26, VHA submitted its package of approved CSIs for senior executives in VACO to HRA/OSP for concurrence, which included the list of recipients. A few days before it was submitted, Dr. Elnahal requested that his staff confirm the Secretary's awareness, but this did not occur due to miscommunication among senior VHA leaders.

Dr. Elnahal acknowledged to OIG investigators that he should have provided information to the Secretary about the CSIs for VACO senior executives (including costs and other details) earlier in response to questions posed by the VA Secretary and then acting deputy secretary but stated he did not do so because he was unaware of the large number of SES at the central office. As he testified,

I had no idea the sheer number of SESs at VHA Central Office. I had no idea that we had upwards of 150 of them . . . I think if I had known that, my management instinct would be to get the same level of justifications together and the costs [as for the field executives].

Just before VHA submitted its CSI proposal to CSEMO in August, however, Dr. Elnahal had received an emailed spreadsheet containing the names and titles of more than 150 VACO senior executives in VHA recommended for CSIs. He explained in a follow-up interview that he was traveling when the email was sent to him and was viewing the message on his phone, and he had not opened each spreadsheet tab to see the full list.

- **There was an apparent reluctance of leaders in HRA/OSP to vet the CSI plans thoroughly or question the decisions of senior officials despite staff having concerns.** The then assistant secretary for HRA/OSP, Gina Grosso, her principal deputy, Jeffrey Mayo, and other leaders in HRA/OSP had multiple opportunities to review the CSI plans. Yet throughout these interactions, the OIG found that Ms. Grosso and Mr. Mayo seemed unwilling to challenge the recommendations and decisions made by the under secretaries and their principal deputies even when concerns were raised by HRA/OSP staff about the sufficiency of the justifications and the blanket approach to awarding the incentives.
- **OGC missed opportunities to identify substantial legal issues with CSIs until after the payments were made.** After CFO Rychalski raised concerns about the CSIs in mid-September 2023, the Secretary requested that OGC review the payments. Several OGC leaders quickly concluded that the awards were improper because the groups had been defined too broadly and the justifications were insufficient, and recommended the awards be canceled. While staff attorneys in OGC had reviewed the plans in June 2023, they were not provided all available information and may not have had the same broad perspective as the senior attorneys who later found the awards improper. Still, the OIG found that there were missed opportunities for the staff attorneys to raise more questions

based on the information they did have regarding the proposals that they reviewed, including VBA's plan to grant CSIs to all VACO senior executives. Finally, despite CSIs being newly authorized incentives that had the potential to present substantial risk to VA, OGC was not required under VA policy to review the administrations' implementation plans. As a result, if Acting Deputy Secretary Guy Kiyokawa had not requested that OGC review the VHA and VBA plans in early June 2023, they may not have seen them at all.

- **VA did not leverage its governance processes to ensure proper risk management of the new CSI authority by subjecting CSI proposals to a more robust VA-wide review.** The Office of Management is responsible for VA's financial management. It "promotes public confidence in the Department through stewardship and oversight of business activities that are consistent with national policy, law and regulations."²⁹ The Office of Management is led by Mr. Rychalski, and neither he nor any other senior Office of Management leaders were given information concerning the anticipated total recipients and cost of the CSIs before the payments were authorized. Had existing governance processes been leveraged, such as reviews by the VA Operations Board and the VA Executive Board, there would have been at least an opportunity for principal stakeholders and advisers to discuss the risks of the proposed strategies collectively—discussions that also would have included the Office of Management and OGC's deputy general counsel.

Recommendations

The OIG made eight recommendations for VA to revise its CSI policy to be consistent with the findings in this report, to undertake two reviews of other awarded CSIs (senior field executives and nonexecutive high-demand skill incentives) to ensure compliance with the statute and policy, and for the Secretary (or his designee) to work with OGC's ethics team to examine and address the potential conflict of interest issues identified in this report. The OIG also recommended that VA clarify the roles and responsibilities of the technical reviewer and human resources reviewer for vetting submitted justifications for CSIs, that OGC consider adopting a policy to govern its reviews when VA is implementing new legislation with the potential for substantial financial or reputational risk, and that VA review existing governance board policies to determine whether additional guidance is needed for vetting proposals relating to senior executive compensation. Lastly, the Secretary should take whatever administrative actions, if any, he deems appropriate related to the personnel involved in the process for granting CSIs for VA central office executives.

²⁹ "Management" (web page), VA Administrations and Offices, accessed December 5, 2023, <https://department.va.gov/administrations-and-offices/management>.

VA Comments and OIG Response

VA reviewed the draft report and responded by concurring with the OIG's two findings and eight recommendations. VA's full response is published as appendix B. The OIG acknowledges that VA has provided acceptable action plans and completion timelines in response to the recommendations and will monitor VA's progress until sufficient documentation has been received to close them as implemented.

VA provided general comments expressing two contentions: (1) that the OIG's draft did not provide adequate context regarding the sequencing of VHA's implementation of CSIs for first field and then VACO executives, stressing the lack of a finalized CSI package in May 2023 to present to the acting deputy secretary; and (2) that the OIG did not address with sufficient clarity that VHA leaders sought concurrence and Dr. Elnahal requested his staff to make the Secretary's office aware, but the Secretary did not receive the VACO documentation due to "timing, miscommunication, and inadvertence." The OIG did make one corresponding edit to the executive summary to elevate information that had been contained in the body of the report. The OIG did not agree that further clarification was warranted based on the information provided and maintains that this final report sufficiently addresses these and related issues.

VA also provided several pages of proposed line edits. The proposed revisions did not affect the OIG's substantive support for its findings but, instead, appear to be focused on contextualizing, clarifying, or recharacterizing certain statements in the draft report. Additional requested edits range from differences in style to changes to titles or how positions were referenced. One revision questioned the OIG's support for a statement. The OIG has indicated which VA-proposed edits were addressed in the section of this report on "VA Comments and OIG Response" beginning on page 57 and when proposed changes were not made due to lack of supporting evidence or other reasons.



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Abbreviations

CEO	chief executive officer
CFO	chief financial officer
CSEMO	Corporate Senior Executive Management Office
CSI	critical skill incentive
HRA/OSP	Human Resources and Administration/Operations, Security, and Preparedness
HVAC	House Committee on Veterans' Affairs
NCA	National Cemetery Administration
OCHCO	Office of the Chief Human Capital Officer
OGC	Office of General Counsel
OGE	Office of Government Ethics
OIG	Office of Inspector General
OPM	Office of Personnel Management
SES	Senior Executive Service
SVAC	Senate Committee on Veterans' Affairs
VACO	VA Central Office
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network



Introduction

This report examines the circumstances surrounding the approval of \$10.8 million in critical skill incentives (CSIs) to be paid to 182 Senior Executive Service (SES) members, Senior-Level employees, and Title 38 SES-equivalent employees (collectively, “senior executives”) in VA’s central office (VACO) in August 2023.³⁰ These included 148 senior executives in the Veterans Health Administration (VHA) and 34 SES members in the Veterans Benefits Administration (VBA). No other senior executives at VACO, including from the National Cemetery Administration (NCA) or any other VA program or staff office at headquarters, received CSIs.

Congress authorized VA to issue these incentives to improve recruiting and retention for positions that require individuals to possess skills in high demand or at a shortage.³¹ Specifically, CSIs were among the provisions added to the PACT Act legislation in anticipation of increased demands on VA’s workforce with the Act’s expansion of healthcare services and benefits to millions of veterans who have been exposed to toxic substances.³² As members of the Senate Committee on Veterans’ Affairs (SVAC) and the House Committee on Veterans’ Affairs (HVAC) stated in September 2023,

[The CSI authority] allowed VA to provide [this incentive] to employees with “a high-demand skill or skill that is at a shortage” and whose employment serves a critical need. The intended purpose of [the CSI] authority was to hire positions such as human resources specialists who can aid in hiring for other positions, information technology (IT) professionals to help improve and support VA’s IT systems, and police officers and housekeepers who have faced hiring shortages for years and are essential to the day-to-day operation of VA facilities.³³

³⁰ Title 38 SES-equivalent employees include dentists and doctors appointed under the authorities contained in 38 U.S.C., chapters 73 and 74, who perform SES duties. VA Directive 5027, *Senior Executive Service*, April 15, 2002, para. 2.a-b.

³¹ Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Pub. L. No. 117-168, § 909(d), 136 Stat. 1759, 1815. The workforce provisions of the PACT Act are codified at 38 U.S.C. § 706.

³² Joint letter from Sen. Jon Tester, SVAC Chairman; Sen. Jerry Moran, SVAC Ranking Member; Rep. Mike Bost, HVAC Chairman; and Rep. Mark Takano, HVAC Ranking Member, to Secretary Denis R. McDonough, September 26, 2023 (noting one purpose was to “to build VA workforce capacity in response to an expected increase in demand for services”). VA has reported that in the first year alone since the statute was enacted there were over 840,000 PACT Act-related claims submitted, more than 330,000 new enrollees in VA health care, and over 4 million toxic exposure screenings. VA, “PACT Act First Year in Review” (fact sheet), August 10, 2023.

³³ Sen. Tester et al., letter to Secretary McDonough.

VA has used the CSI authority to award over \$230 million in incentives to nonexecutive employees in shortage occupations such as human resources specialists, housekeepers, food service workers, police officers, and medical supply technicians.³⁴

On September 13, 2023, VA Assistant Secretary for Management and Chief Financial Officer (CFO) Jon Rychalski informed VA Secretary Denis McDonough about the awards to VA senior executives made in the previous two months. Mr. Rychalski provided initial figures to the Secretary, which indicated that 367 senior executives had been paid more than \$19.7 million over two pay periods in September with another 21 pending (totaling 388 or approximately 75 percent of VA's entire senior executive staff serving in the field and at VACO).

Mr. Rychalski had been alerted to these CSIs after some executives contacted his staff about delays in their payments. Secretary McDonough, who was out of the office, convened a series of meetings starting that afternoon with Under Secretary for Health Shereef Elnahal, Under Secretary for Benefits Joshua Jacobs, and other senior leaders to gather more information.

On September 22, VA sent a prepared statement regarding the senior executive CSIs to members of Congress, veterans service organizations, and others.³⁵ The statement reported that \$9.7 million in payments were made to 170 senior executives at VACO.³⁶ VA stated it had been “overly broad in the way [it] implemented and executed this authority,” which was a “policy error,” and as a result VA was canceling the payments to headquarters senior executives.³⁷ Secretary McDonough also contacted Inspector General Michael Missal the same day and requested that the VA Office of Inspector General (OIG) conduct a review.³⁸

³⁴ This represents the total amounts awarded as reflected in VA's human resources system as of October 13, 2023. The term “awarded,” as used in this report, refers to incentives approved and entered into the system but not necessarily paid.

³⁵ The statement was distributed by VA to the staff of the SVAC, HVAC, and Senate and House Committees on Appropriations (Subcommittees on Military Construction, Veterans Affairs, and Related Agencies). It was also sent to 16 veterans service organizations, representatives of five unions of VA employees, and one news reporter.

³⁶ The tallies reported by VA in this statement were slightly inaccurate according to an OIG audit team's analysis of VA human resources and payment data. The audit team identified 12 CSIs not paid initially due to annual salary caps, of which eight were canceled before being paid and another four were paid. The OIG determined that, in all, 182 executives were awarded CSIs totaling \$10.8 million. Of those awarded, 174 executives were actually paid approximately \$9.9 million.

³⁷ VA did not cancel the CSIs to the “field executives”—that is, the approximately 200 senior executives based outside of headquarters, including regional office and district directors in VBA and medical center directors and Veterans Integrated Service Network (VISN) directors in VHA. While the OIG team has collected some information about field executives' CSIs to compare how the VACO executives' CSIs were implemented, the OIG did not undertake a detailed investigation of those CSIs and has recommended that VA conduct its own review consistent with the findings in this report.

³⁸ The chairmen and ranking members of the SVAC and HVAC also supported the Secretary's request for the OIG's review. Sen. Tester et al., letter to Secretary McDonough.

The OIG initiated its oversight work on September 28, 2023, to examine VA’s compliance with law and policy in the issuance of CSIs to VACO senior executives at VHA and VBA.³⁹ The investigation also included scrutinizing the rationale for the CSI payments and the chronology of decisions by the individuals accountable for implementing the incentives that VA subsequently determined were improper. Because the recoupment of these CSIs is ongoing, a detailed examination of that process was outside the scope of this investigation. However, this report does include anecdotal evidence related to the effects of the recoupment on some staff obtained during the investigation. In addition, there were several senior leaders who were engaged in decisions regarding awards and potential recoupment that were themselves given CSIs or were subject to their possible return. This matter was presented to a US Attorney’s office, which declined to open an investigation. The OIG made eight recommendations for corrective action. (For more on the administrative investigation’s scope and methodology, see appendix A.) The sections that follow detail the results of the OIG’s investigation.

Statutory Authority and VA Policies

The PACT Act authorized the VA Secretary to provide a CSI to an employee if the Secretary determines that

- (A) the employee possesses a *high-demand skill* or skill that is at a *shortage*;
- (B) such skill is *directly related to the duties and responsibilities* of the employee’s position; and
- (C) employment of an individual with such skill in such position *serves a critical mission-related need* of the Department.⁴⁰ (emphasis added)

The amount of the CSI may be up to 25 percent of the employee’s basic pay.⁴¹ As a prerequisite, the employee must sign a written agreement to complete an unspecified period of employment with VA.⁴² The statute did not exclude senior executives but provided the VA Secretary with the

³⁹ This investigation represents a collaborative effort between the OIG’s Office of Special Reviews and Office of Audits and Evaluations. The initial audit work began on September 28, 2023, and the administrative investigation was opened on October 11, 2023. The team consisted of investigative attorneys, management analysts, administrative investigators, and audit staff.

⁴⁰ 38 U.S.C. § 706(d)(1).

⁴¹ 38 U.S.C. § 706(d)(2). Basic pay is the “total amount of pay received at a rate fixed by law or administrative action for the position held by an employee.” 5 C.F.R. § 530.202. It includes special salary rates and locality-based pay. Office of Personnel Management (OPM), *Fact Sheet: Aggregate Limitation on Pay*, <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/aggregate-limitation-on-pay/>.

⁴² 38 U.S.C. § 706(d)(3).

authority to prescribe conditions and limitations on eligibility.⁴³ Like all of the workforce provisions in the PACT Act, the authority to issue CSIs is set to expire on September 30, 2027.⁴⁴

After the statute’s passage, VA issued a policy notice in February 2023 establishing guidance and procedures for awarding CSIs.⁴⁵ The policy mirrors language from the statute with the exception that VA policy expressly permits CSIs to be issued to a *group* of employees in addition to an individual employee.⁴⁶ The policy also states that the minimum required employment service period is 28 days and the maximum is 364 days (whereas the statute is silent on the length of service commitment required).⁴⁷

For a CSI based on a high-demand skill, VA policy requires the recommending official to “list market factors,” which “may include new employers creating competition for candidates, consistent use of above minimums to hire candidates or other appropriate factors.”⁴⁸ To support a CSI based on a skill that is at a shortage, the skill (or more specifically, the occupation related to that skill) must be listed on an “approved” shortage occupation list.⁴⁹

Relevant VA Administrations and Offices

VA has three administrations that deliver services and benefits to veterans (VHA, VBA, and NCA), each led by an under secretary. VA also has seven assistant secretaries and five “key officials,” including the general counsel.⁵⁰ The assistant secretaries “serve as the principal staff advisors” to the Secretary and Deputy Secretary and “oversee or administer programs in their respective areas of responsibility.” All of the under secretaries, assistant secretaries, and key officials were authorized to approve CSIs for employees within their line of supervision. This report focuses on the administrations and offices depicted in the organizational chart in figure 1 below.⁵¹ The administrations in the figure (VHA and VBA) have VA central office (or VACO) components that are the focus of this report. They support operations and give “centralized program direction to field facilities that provide diverse program services to Veterans and their families.”⁵² “Field” personnel refer to employees who work in VA facilities outside of the central

⁴³ 38 U.S.C. § 706(d).

⁴⁴ 38 U.S.C. § 706(k).

⁴⁵ VA Notice 23-03, *Department of Veterans Affairs Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, Critical Skill Incentive Implementation*, February 17, 2023, paras. 1–4.

⁴⁶ 38 U.S.C. § 706(d); VA Notice 23-03, para. 3.

⁴⁷ VA Notice 23-03, para. 4.c.; 38 U.S.C. § 706(d).

⁴⁸ VA Notice 23-03, para. 4.b. The VA chief human capital officer explained to OIG staff that “above minimums” refers to setting the rate of basic pay above step 1 of the pay grade.

⁴⁹ VA Notice 23-03, para. 4.a. The policy does not define what is meant by an “approved” list.

⁵⁰ VA Functional Organizational Manual, vol. 1, *Administrations*, September 30, 2021, pp. 2–5.

⁵¹ VA Secretary, “Incentives for Critical Skills,” memorandum for the under secretaries, assistant secretaries and other key officials, December 20, 2022, paras. 1, 5.

⁵² VA Functional Organizational Manual, *Administrations*, p. 3.

office where care or services are being provided directly to veterans, such as medical centers and VBA regional offices. CSIs to field personnel were not included in the scope of this investigation but are sometimes referred to as a means for comparison with the treatment of VACO senior executives.

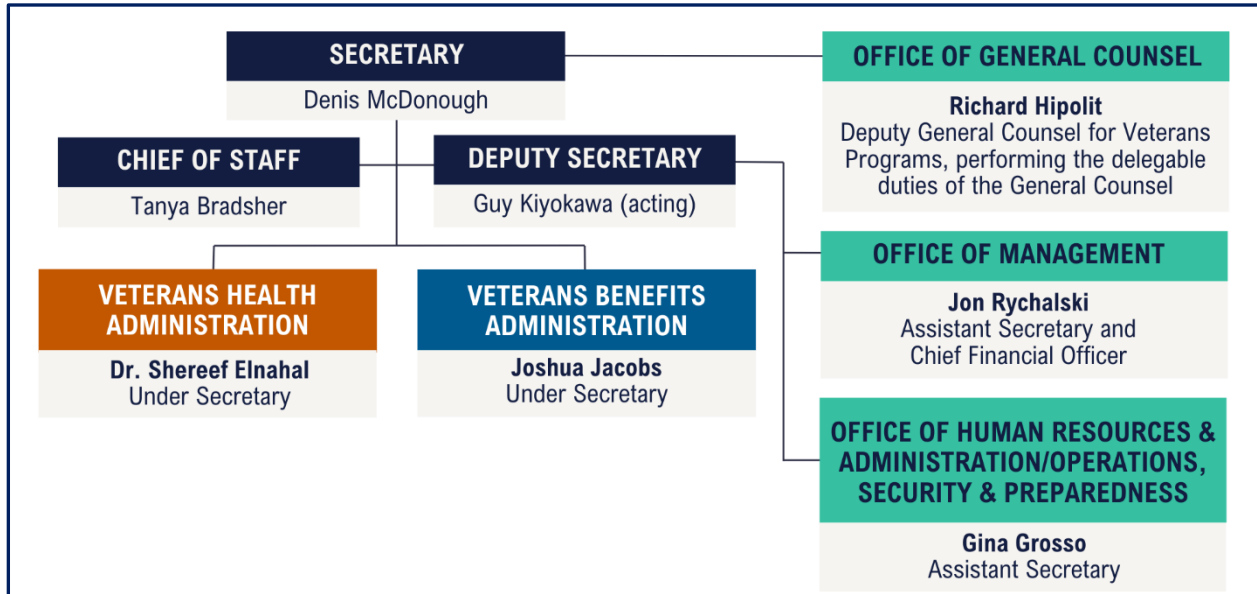


Figure 1. Organizational chart of key positions and offices related to the CSI award and recoupment decisions.

Source: OIG analysis of VA functional organizational chart and other sources.

Note: This reflects the individuals who held the positions from March 1 through September 20, 2023.⁵³

- Veterans Health Administration:** Discussions regarding VHA’s plans for awarding CSIs to central office senior executives principally involved a small group of leaders within VHA. The group included (1) Under Secretary Elnahal, (2) Deputy Under Secretary for Health Steven Lieberman, (3) VHA Chief of Staff Ryung Suh, (4) Chief of VHA Human Capital Management Jessica Bonjorni, and (5) VHA Workforce Management Consulting Chief Officer David Perry. VHA’s CFO was also consulted on whether funding for the incentive payments was available.⁵⁴
- Veterans Benefits Administration:** Similar to VHA, VBA had a core group that was involved in discussions regarding the CSIs for senior executives in the central office. The executive director of VBA’s Office of Human Capital Services,

⁵³ Mr. Kiyokawa was appointed to the acting deputy secretary position on April 1, 2023. When Tanya Bradsher was confirmed as the deputy secretary on September 20, 2023, Mr. Kiyokawa returned to his role as assistant secretary for enterprise integration, and an acting chief of staff was appointed.

⁵⁴ According to each administration’s CFO, VHA and VBA funded CSIs for VACO senior executives through existing funds used for employee salaries and not PACT Act-related funds. VBA used its general operating expenses, while each VHA program office funded CSIs for its own VACO executives through the office’s existing allocation.

Dr. Aaron Lee, was the primary advisor on human resources issues (including CSIs) to Under Secretary Jacobs. Dr. Lee’s office provided support and analysis for the CSIs to VBA senior executives at VACO. Principal Deputy Under Secretary Michael Frueh and VBA’s Chief of Staff Brandye Terrell were also involved at various points in the process. Like VHA, the VBA CFO’s role was limited to advising whether there was sufficient funding.

- **VA Office of General Counsel (OGC):** OGC was involved in advising VA on CSIs at multiple points and to varying degrees—from the time that congressional committees were drafting legislation through cancellation and recoupment—including conducting a review of VA policies related to CSIs. OGC is led by a general counsel, “the chief legal officer of the Department,” who “provides legal assistance to the Secretary concerning the programs and policies of the Department.”⁵⁵ Beginning in January 2023, the then Deputy General Counsel for Veterans’ Programs, Richard Hipolit, assumed the role of VA’s acting general counsel.⁵⁶ The two other deputy general counsel report to Mr. Hipolit. OGC’s Personnel Law Group was involved in the review of the CSI policies and some of the plans for CSIs (for VHA medical center directors and Veterans Integrated Service Network (VISN) directors as well as VBA regional and district directors and VACO SES). The chief counsel over the Personnel Law Group reports to the deputy general counsel for legal operations, Brent Pope.⁵⁷
- **Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP):** This office was led by Assistant Secretary Gina Grosso at the time of the events discussed in this report.⁵⁸ HRA/OSP was involved in CSI policy development and implementation. It also reviewed both the submitted proposals and the award forms for VHA and VBA senior executives’ CSIs. In particular, the Office of the Chief Human Capital Officer (OCHCO), a component of HRA/OSP, was responsible for issuing guidance and policy on CSIs. The Corporate Senior

⁵⁵ 38 U.S.C. § 311.

⁵⁶ Note that Mr. Hipolit’s official title is “Deputy General Counsel for Veterans’ Programs, Performing the Delegable Duties of the General Counsel.” He explained that because his actual position is two levels below that of the general counsel, his title is not “acting” general counsel. For ease of reference and readability, however, this report refers to him as the acting general counsel.

⁵⁷ According to the group’s VA intranet page, the Personnel Law Group “is responsible for a wide range of . . . legal issues relating to human resources and labor relations, and security and law enforcement.”

⁵⁸ Ms. Grosso resigned in December 2023. Her successor, Cassandra Law, was appointed on January 19, 2024. During a brief interim period, the principal deputy assistant secretary for HRA/OSP under Ms. Grosso, Jeffrey Mayo, served as the acting assistant secretary.

Executive Management Office (CSEMO) was responsible for reviewing and processing senior executive CSIs.⁵⁹

- VA Office of Management:** Led by the Assistant Secretary for Management/CFO, Mr. Rychalski, this office is responsible for overseeing VA’s budget for VA programs and operations; financial management, including payroll and payment processing, debt management and collections; and other department-wide financial services. The Financial Services Center, which is in the Office of Management, serves as a liaison to VA’s payroll service provider, including for issues related to processing and canceling the CSIs.

VA’s Use of CSIs

VA first began awarding CSIs in March 2023 to nonexecutive human resources professionals. By October 13, 2023, VA had extended these incentives to more than 29,000 individuals in various occupations, totaling approximately \$255 million. The vast majority of this amount—approximately 92 percent—was awarded to employees in nonexecutive positions in 35 different occupational series, such as human resources specialists, housekeeping aids, food service workers, police, and medical supply technicians. The remaining approximately eight percent (in red below) was awarded to VACO senior executives (about 4.24%) and to VHA and VBA field executives (about 3.89%), as shown in table 1.

Table 1. CSIs Awarded

Employee category	Total # of employees awarded CSIs	% of all employees awarded CSIs	Total amount awarded	% of total amount of CSIs awarded	Average amount per employee
VACO Senior Executives	182	0.63%	\$10,822,465	4.24%	\$59,464
Field Senior Executives	197	0.68%	\$9,917,770	3.89%	\$50,344
Nonexecutives	28,689	98.70%	\$234,346,936	91.87%	\$8,169

Source: PACT Act dashboard as of October 13, 2023.

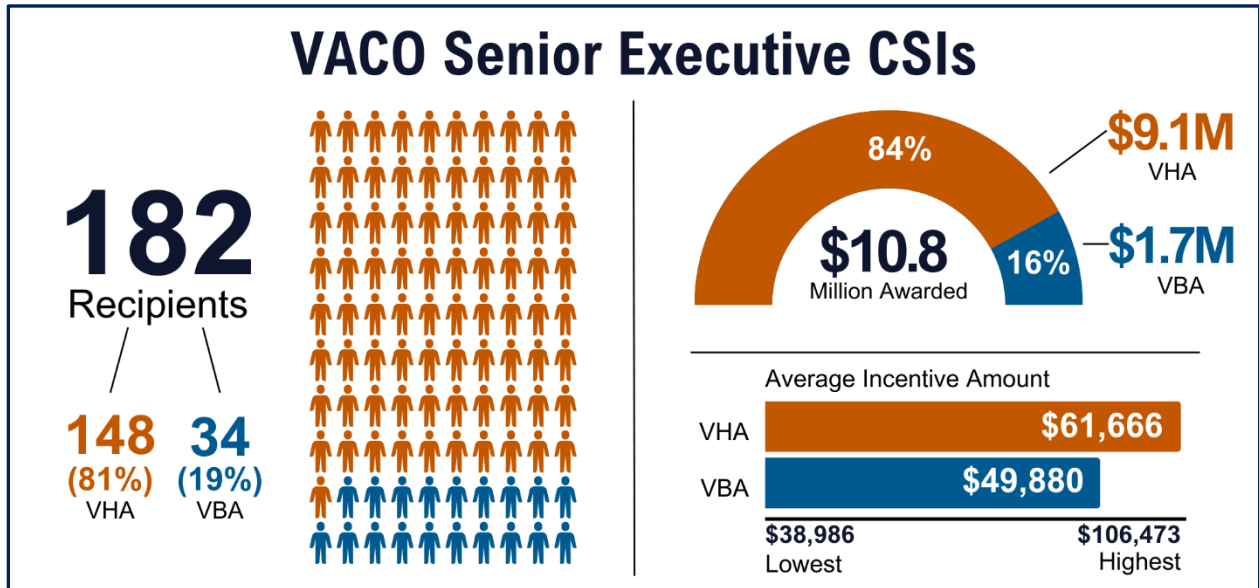
Note: Percentages may total to more than 100 percent due to rounding.

The 182 VACO senior executives represented less than one percent (.63%) of all employees who had been authorized to receive CSIs, yet the \$10,822,465 in incentives accounted for more than four percent of total monies awarded as of mid-October. Moreover, the average amount of a

⁵⁹ OCHCO Bulletin, March 21, 2023, para. 3.b.

VACO senior executive CSI was at least seven times greater than the average amount awarded to a nonexecutive.

A breakdown of the data specific to each administration’s awards to VACO senior executives is depicted in figure 2.



*Figure 2. CSIs approved for VACO senior executives in August 2023.⁶⁰
Source: OIG Analysis.*

The vast majority of the VACO senior executives who were awarded CSIs were in VHA. Within the VHA central office, seven senior executive leaders were approved to receive CSIs of more than \$100,000 each.

The OIG also found that, while VBA and VHA offered these incentives to nearly all central office senior executives in their administrations, neither NCA nor other VACO offices awarded any CSIs to their senior executives.⁶¹ The only VBA and VHA senior executives *not* offered CSIs were those considered ineligible under the delegation of authority (such as non-career SES and political appointees) and one senior executive in VHA due to performance concerns. There were a small number of executives who declined the CSIs at the time they were offered.

⁶⁰ The amount actually paid out by VA (\$9,946,718) was lower than the total shown in figure 2 because several awards were not processed initially due to annual salary caps.

⁶¹ The deputy under secretary for memorial affairs told OIG investigators that, while they were aware of VBA’s and VHA’s plans, NCA did not issue CSIs to central office senior executives because they did not believe they had “a justifiable reason to do so.”

Timeline of Senior Executives' CSIs

The award of CSIs to senior executives at VACO was discussed as early as March 23, 2023, the day Dr. Elnahal announced at a conference that medical center and VISN directors (field executives) would be receiving a 25 percent CSI. The small group of VHA senior leaders to discuss the approach for these incentive pay awards included Under Secretary Elnahal, Chief of VHA Human Capital Management Jessica Bonjorni, and VHA Workforce Management Consulting Chief Officer David Perry. With VHA leading the way, VBA leaders then began discussing whether to provide CSIs to their SES in regional and district offices and at VACO. Figure 3 is a timeline of milestones in the development and execution of the CSI plans for VHA and VBA senior executives up to cancellation to provide readers with an overview of the events discussed throughout the report.

IMPLEMENTATION OF CSI PAYMENTS IN 2023

FEBRUARY

17 HRA/OSP issues the CSI policy notice.

MARCH

22 Dr. Elnahal signs off on a proposal to award CSIs to medical center and VISN directors (VHA field executives) at 20 and 25 percent of basic pay, respectively.

23 Dr. Elnahal announces a 25 percent CSI to VHA field executives. VHA's HR staff revise his previously signed proposal to match his announcement. VHA begins discussing CSIs for VACO senior executives.

APRIL

3 VHA seeks HRA/OSP concurrence on the proposal to pay CSIs to field executives.

4 VHA plans a two-tiered CSI (20 and 25 percent) for VACO executives.

11 Dr. Elnahal mentions CSIs for field executives, as well as VACO, at a weekly under secretaries meeting.

12 Acting Deputy Secretary Kiyokawa asks HRA/OSP to ensure consistency VA-wide for CSIs. VBA leaders begin to discuss following VHA's lead on CSIs for senior executives.

24 HRA/OSP identifies concerns with VHA's plan to pay CSIs to its field executives but ultimately concurs on May 1.

MAY

4 VHA submits a white paper to Secretary McDonough with an explanation for CSIs to field executives without reference to VACO executives.

5 Dr. Elnahal approves CSIs (forms signed) for field executives.

9 VBA begins drafting a memo (mirroring VHA's white paper) to support CSIs for its regional office and district directors, and VACO executives.

23 Following a discussion at the weekly under secretaries meeting, VBA submits written explanation to Secretary McDonough for regional, district, and VACO executives' CSIs.

24 Secretary McDonough pauses CSI efforts by requesting information on the costs and impacts.

26 VHA sends a revised whitepaper to the VA Secretary in response to his questions, as well as to other leaders, which adds details on costs attributable to pay authorities that include CSIs. It only references field executives.

31 Dr. Elnahal sends a revised draft of the VHA white paper to Acting Deputy Secretary Kiyokawa to include examples of how incentives affect individuals' compensation totals (field executives only).

IMPLEMENTATION OF CSI PAYMENTS IN 2023 (CONTINUED)

JUNE

- 1** **Acting Deputy Secretary Kiyokawa** asks VHA and VBA to submit their plans to HRA/OSP and OGC for review. VBA submits plans for both field and VACO executives to HRA/OSP for review.
- 2** **VHA** submits documents for field executives only to OGC, as HRA/OSP had previously concurred on May 1.
- 6** **HRA/OSP** reviews VBA plans and clears them to move forward to OGC.
- 11** **OGC** completes a review of the VHA plan for field executives.
- 13** **OGC** completes a review of the VBA plans for field and VACO executives.
- 30** **VBA** seeks HRA/OSP's concurrence to pay CSIs to senior executives (both field and VACO).

JULY

- 14** **Secretary McDonough** releases the pause in the process.
- 30** **HRA/OSP** concurs on VBA packages to pay CSIs to senior executives (field and VACO).

AUGUST

- 1** **Mr. Jacobs** approves CSIs (forms signed) for VBA field and central office executives.
- 26** **VHA** seeks HRA/OSP concurrence on the request to pay CSIs to VACO executives at 20 and 25 percent, which Dr. Elnahal already approved but had not been previously disclosed to the Secretary. HRA/OSP concurs on August 28.

SEPTEMBER

- 6** **VHA** submits a request to HRA/OSP for concurrence on a revised CSI percentage for VACO executives (a flat 25 percent for all recipients), and HRA/OSP concurs the same day.
- 13** **VA CFO Rychalski** notifies Secretary McDonough about the substantial CSI payments he has learned were recently made to senior executives.
- 22** **VA** announces the cancellation of CSIs for VACO senior executives.

Figure 3. Timeline for Implementation of Senior Executive CSI Plans in 2023.
Source: OIG analysis.

VA's Subsequent Cancellation and Recoupment

As previously noted, VA announced on September 22, 2023, that it would be canceling the CSI payments to VACO senior executives. On or around October 25, 2023, VA issued notices of indebtedness to all senior executives who received CSIs. Employees were required to decide within 30 days of receiving the debt notice whether to complete repayment by December 31, 2023 (in which case only the net amount paid would be due) or to repay the debt pursuant to a payment plan that could extend past the end of the calendar year. If not paid in full by year's end, employees would be required to pay back the gross amount of their respective CSIs.⁶² Employees had two options to challenge the collection under standard VA financial policy: (1) request a debt hearing before an administrative law judge or other non-VA hearing officer to dispute the validity of the underlying debt within 30 days of their notice of indebtedness or (2) submit a waiver request anytime within three years seeking to discharge all or some of the debt.⁶³

As stated earlier, a legal review and accounting of the recoupment and related processes is outside the scope of this investigation. However, OIG interviews with senior executives and comments during VA town hall meetings made by executives receiving a retention incentive confirmed the recoupment negatively affected employee morale. One executive summarized the concerns at a town hall meeting in early October 2023:

Folks don't have this money that was given to them . . . Folks paid college tuition for their children. People paid off debt. People did all types of things to better their lives and now VA says we made an error [and we] want that money back. I think leadership really needs to see the human factor of what they're doing because the accountability is gone, and the trust is absolutely shot.

In addition, according to witnesses the OIG team interviewed, two individuals retired from VBA because of the CSI recoupment. A third VBA official told investigators that although he had planned to retire soon, he had not decided the timing. He then agreed to delay retiring in exchange for the incentive pay. When the CSIs were canceled, he announced his retirement, and told OIG staff that the recoupment made his decision easier.

⁶² The gross amount of the CSI includes the net amount of the CSI deposited in the employee's bank account plus any amounts paid out by VA on the employee's behalf, such as taxes on the award or benefits payments.

⁶³ VA Financial Policy, "Employee Debt," in vol. 12, *Debt Management* (March 2022), chap. 3, pp. 2, 11, 13. Employees were required to submit the waiver request within 30 days of the notice of collection if they wished to suspend automatic repayment while the waiver request was pending. VA Financial Policy, "Employee Debt," p. 11. Waiver requests are considered by VBA's Committee on Waivers and Compromises, for which the employee is acknowledging validity of the debt but seeking equitable consideration with respect to the underlying debt collection. 38 C.F.R. § 1.963a(b); VA Financial Policy, "Employee Debt," pp. 4, 13.

Findings and Analysis

Finding 1: The Blanket Award of CSIs to VA Central Office Executives in VHA and VBA Was Inconsistent with the PACT Act and VA Policy

The purpose of the CSIs was to “support the Department’s ability to recruit and retain VA personnel.”⁶⁴ Consistent with this purpose, as VA sought to implement the CSI authority for *nonexecutives*, human resources staff gathered and analyzed data to identify shortage skills and market factors suggesting that an incentive was needed. In contrast, when planning CSIs *for senior executives*, neither VHA nor VBA sought to determine whether an incentive was justified or necessary based on objective factors—or even to identify some specific high-demand skill that the executives possessed. The approach instead focused on a desired outcome—a 20 or 25 percent of basic pay bump for the year for all senior executives—and then compiled generic justifications for the additional pay that cited the importance of these executives in leading their administrations or offices. VHA’s leaders and human resources professionals undertook some analysis of whether the CSI recipients each met the qualification criteria *after* the CSIs had been approved and paid in response to questions raised by the Secretary and others about the appropriateness of the CSIs. This assessment revealed that the payment of CSI awards to the group as a whole was improper because the requisite criteria were not met. At VBA, while some statistics and market comparisons were cited prior to approving the CSIs, the analysis was deficient in multiple respects.

The OIG found that both VHA and VBA’s approaches were inconsistent with the statute and with VA’s own policies. This finding was based on the following determinations:

- CSIs were authorized to help VA recruit and retain employees in anticipation of new demands related to the PACT Act.
- VHA and VBA failed to comply with VA’s own policy requirement to narrowly define a group and could not then ensure that each VACO senior executive met the statutory criteria to be awarded a high-demand CSI.
- VHA and VBA made decisions on percentages to award the senior executives without regard to what amounts, if any, may have been necessary to retain them.
- VHA provided no information on market factors to justify incentives based on high-demand skills, and VBA’s market analysis was inadequate.

⁶⁴ VA Secretary, “Incentives for Critical Skills,” memorandum, December 20, 2022, para. 4.

The Purpose of the Critical Skill Incentives Was to Enhance Staff Recruitment and Retention

In the spring of 2022, Secretary McDonough and then Assistant Secretary for HRA/OSP Gina Grosso testified before Congress regarding the need for additional staff to meet anticipated increases in the demand for healthcare and benefit claims services associated with the PACT Act.⁶⁵ Secretary McDonough reiterated that goal in an interview with OIG investigators:

What I was hoping to accomplish is that we could retain the . . . high performing workforce that we have, and that we could use those provisions to recruit additional workforce members because any reasonable read of the [PACT Act] more generally is that it's going to lead to more veterans filing claims and more veterans getting care.⁶⁶

In addition, statements made by Representatives Mike Bost and Matt Rosendale at the time the final amendment was passed by the US House of Representatives in July 2022 also tie the purpose of the workforce provisions back to the need for VA to recruit and retain personnel to implement the PACT Act.

To ensure that the VA has the staff capacity it needs to better serve toxic-exposed veterans, this bill . . . make[s] it easier for VA to *recruit and retain the staff it needs to implement the bill.*" (emphasis added)⁶⁷

In addition, this legislation includes workforce enhancements, and other changes, to ensure the VA can improve services to toxic-exposed veterans without compromising care and benefits.⁶⁸

The statute did not limit the application of CSIs to employees involved in providing services to veterans under the PACT Act.⁶⁹ There also is no explanation of what is meant by "high-demand skills."⁷⁰ However, a section-by-section analysis of the Senate bill from SVAC staff dated May 24, 2022, states that this section,

⁶⁵ *Honoring Our Promise to Address Comprehensive Toxics Act of 2021, Before the Senate Committee on Veterans' Affairs*, 117th Cong. (March 29, 2022) (statement of Denis McDonough, Secretary of Veterans Affairs); *The VA Workforce: Assessing Ways to Bolster Recruitment and Retention, Before the Senate Committee on Veterans' Affairs*, 117th Cong. (May 3, 2022) (statement of Gina Grosso, then Assistant Secretary for HRA/OSP, Department of Veterans Affairs).

⁶⁶ Members of Congress also signaled in the hearings that they had concerns about VA's ability to meet these operational challenges should the PACT Act become law, including Sen. Marsha Blackburn at the March hearing and Sen. Thom Tillis at the May hearing.

⁶⁷ 168 Cong. Rec. H6019 (daily ed. July 13, 2022) (statement of Rep. Mike Bost).

⁶⁸ 168 Cong. Rec. H6021 (daily ed. July 13, 2022) (statements of Rep. Matt Rosendale).

⁶⁹ 38 U.S.C. § 706(d). The provision does not prohibit members of the SES or other senior executives from receiving CSIs.

⁷⁰ 38 U.S.C. § 706(d).

[p]rovides VA authority for critical skills incentives as an additional tool to compete with private healthcare providers in recruiting high-demand and specialized skill positions, such as OIT [Office of Information Technology] and other high technology specialists, health care workers, cemetery caretakers, and claims examiners.

The examples of positions cited by SVAC staff suggest that the term “high-demand skills” was intended to refer to workers with specific and identifiable skills. This interpretation is consistent with the letter to the Secretary from the chairmen and ranking members of the SVAC and HVAC after they learned of the CSI payments in September: “Contrary to congressional intent, incentives were used to boost pay of senior executives at VA rather than bolster staffing for critical shortage positions requiring highly skilled individuals.”⁷¹

VHA and VBA Did Not “Narrowly Define” a Group for Awarding CSIs to All VACO Senior Executives That Justified the Need for Retention

The CSIs for VACO senior executives were awarded by both VHA and VBA to the executives as a group without regard to whether each executive met the criteria under the statute and VA policy to justify a CSI for retention. The OIG found that treating these executives as a group was not consistent with law or policy.

Overview of VHA and VBA Approval Processes and CSI Packages

Within VHA and VBA, recommending and approving officials had a shared obligation to ensure that each proposed VACO senior executive’s incentive complied with all requirements.⁷² The recommending officials for each were the deputy under secretaries (Dr. Lieberman for VHA and Mr. Frueh for VBA), and the approving officials were the under secretaries (Dr. Elnahal for VHA and Mr. Jacobs for VBA). The under secretaries told OIG investigators that they relied on their senior human resources executives for advice in carrying out these duties.

CSIs followed a similar process for submission, review, and concurrence as other VA retention incentives. The recommending official completes and signs a form (Form 10017-A) indicating the recipient(s), the basis for the CSI, and other details.⁷³ The form is then submitted to CSEMO for a technical review and to either the assistant secretary for HRA/OSP or their designee for

⁷¹ Sen. Tester et al., letter to Secretary McDonough.

⁷² OCHCO Bulletin, March 21, 2023, para. 3.a.

⁷³ OCHCO Bulletin, March 21, 2023, para. 3.a.

concurrence.⁷⁴ Once their review is completed, and if they concur, it goes back to each respective under secretary for approval and signature.⁷⁵ CSEMO then processes the CSIs in VA's human resources system.

Ethical Considerations for Individuals Engaged in the Process

Of note, the Standards of Ethical Conduct for Employees of the Executive Branch prohibit employees from working on matters that affect their own financial interest.⁷⁶ The OIG determined that several individuals within VBA and VHA who received CSIs were also involved in the decision-making processes that resulted in the granting and cancellation of those awards. None of these individuals served as the recommending or approving official for their own CSI award, and they were not the ultimate decision-maker for the cancellation of the awards. Nonetheless their participation in the process could potentially implicate 18 U.S.C. § 208, which is a criminal statute that prohibits federal employees from participating personally and substantially in government matters in which they have a financial interest. The OIG referred the facts relating to the receipt of CSI payments by nine VHA and VBA SES employees to the Fraud, Public Corruption, and Civil Rights section of the US Attorney's Office for the District of Columbia, which declined to open a criminal investigation as of this writing.⁷⁷ Standards of ethical conduct for employees of the executive branch are also set forth in 5 C.F.R. Part 2635. These standards prohibit federal employees from using public office for private gain and incorporate criminal conflict of interest statutes, including 18 U.S.C. § 208, which also must be taken into account when determining whether conduct is proper.

Office of Government Ethics (OGE) regulations exempt employees from prosecution when participating in particular matters involving federal government salaries or benefits, so long as they do not make determinations that individually affect their own salary or benefits.⁷⁸ Where, as here, the payment determinations related in equal measure to a group of individuals, OGE interpretations indicate that the size of the affected group is a relevant consideration. Available OGE guidance is not sufficiently prescriptive for the OIG to conclude that individuals acted inconsistent with their ethical obligations by participating in the CSI decision-making process

⁷⁴ OCHCO Bulletin, March 21, 2023, para. 3.b; VA Secretary, "Incentives for Critical Skills," memorandum, December 20, 2022, para. 4; VA Secretary, "Delegation of Authority to Approve Personnel Actions," memorandum for the deputy secretary, chief of staff, under secretaries, and other key officials, July 26, 2023, paras. 1.c, 4.a. A "technical review" is not defined, but CSEMO's executive director explained that it includes a review of the CSI packages to make sure the VA Form 10017-A is completed and that the administrative information is accurate. OCHCO Bulletin, March 21, 2023, para. 3.b.

⁷⁵ OCHCO Bulletin, March 21, 2023, para. 3.c.

⁷⁶ 5 C.F.R. § 2653.401, et. seq.

⁷⁷ The OIG confirmed that none of these individuals sought advice or waivers regarding their involvement in the process from the OGC Ethics Specialty Team regarding their participation in the CSI award or recoupment decisions.

⁷⁸ 5 C.F.R. § 2640.203(d)(1); 60 Fed. Reg. 447,075.

affecting 182 central office senior executives, for which all were awarded a CSI at the same percentage of basic pay.⁷⁹ The OIG recommends, therefore, that VA seek a determination from the OGC Ethics Specialty Team as to whether individuals involved in the decision-making process for awarding CSIs were free of any actual or apparent conflicts of interest and ensure those involved have no such conflicts going forward.

Nothing in this report (including the criminal declination) should be interpreted as precluding or excusing VA from undertaking its own review to determine whether any administrative action is appropriate to retrospectively address conduct or to prospectively address potential ethical issues as VA continues to implement the CSI and other authorities that may affect the financial interests of individuals involved in the decision-making process.

The CSI Packages Submitted

VHA and VBA each prepared a single VA Form 10017-A intended to cover the justifications for all senior executives assigned to VACO and attached lists identifying the intended recipients.⁸⁰ VHA described its headquarters group as “VHACO [VHA Central Office] senior executive leaders,” as shown in figure 4.

SECTION D - GROUP INCENTIVES
19. CRITERIA FOR GROUP INCENTIVES <i>(Enter criteria to narrowly define employees eligible for a group incentive.)</i> VHACO senior executive leaders.

Figure 4. VHA description of criteria defining the group to receive the incentive on Form 10017-A
 Source: VA

On the VBA form, the intended recipients were similarly described as “VBACO [VBA Central Office] Senior Executives.”⁸¹

In completing their forms, VHA and VBA made short statements in the designated fields justifying the CSIs. VBA also included a six-page memorandum focused on pay inequities when comparing VBA executives’ salaries to those of CEOs in the private sector.

⁷⁹ Compare OGE Memorandum to Designated Agency Ethics Officials DO-99-035, September 9, 1999, p. 2. (finding that the section 203(d) exemption permit an employee to participate in a decision respecting a group of 500 individuals in which the employee is included) and 5 C.F.R. § 2640.203(d), Example 10 (finding that an official could not decide which of five SES positions should be eliminated if his own was one of the positions at stake).

⁸⁰ VHA and VBA used group justifications for CSIs awarded to senior executives *not aligned to the central office*.

⁸¹ The two administrations took slightly different approaches with respect to defining the membership of “senior executives.” VHA included all members of the senior executive service (and their title 38 equivalents) as well as Senior-Level positions. VBA did not include Senior-Level positions.

Groups Are Required to Be Defined Narrowly

The PACT Act states that a CSI may be awarded to “an employee” who meets the required criteria.⁸² VA policy permits CSIs to be awarded to “employees, or a group of employees” but does not define what is meant by a group.⁸³ The OIG identified only one CSI-specific instruction relating to group incentives, which is found in Form 10017-A used for CSI requests. It instructs the recommending official to “enter criteria to *narrowly define* employees eligible for a group incentive.” (emphasis added)

Although VA did not provide CSI-specific guidance for narrowly defining the group of intended recipients, the accountable officials did have comparable examples in existing VA guidance for other types of recruitment and retention pay incentives.⁸⁴ The CSI policy references VA Handbook 5007, which provides “mandatory guidance and procedures for pay administration.”⁸⁵ Among other related topics, the handbook includes VA’s policy for payment of recruitment and retention incentives, which are submitted on Forms 10016 and 10017.⁸⁶ Both justification forms include the same instructional text as the CSI justification Form 10017-A: “Enter criteria to narrowly define employees eligible for a group incentive.” Unlike the CSI justification form, however, the other VA recruitment and retention forms are accompanied by a detailed, box-by-box instructional memo.⁸⁷ The instructions for completing the group justification box are reflected in table 2.

Table 2. Instructions for Narrowly Defining Group Authorizations

VA Form 10016 for recruitment incentives	VA Form 10017 for retention incentives
<p>For group authorizations, <i>narrowly define the group of employees covered by this authorization</i>. The factors considered must include the occupation series, title, grade level(s), distinctive job duties, unique competencies required for the positions, organization or team designation(s), and geographic location(s).</p>	<p>For group authorizations, enter criteria to <i>narrowly define the group of employees covered by this authorization</i>. The criteria must include occupation series, grade level(s), distinctive job duties, unique competencies required for the position(s), a minimum required rating of record, organization or team designation(s), geographic location(s), special project assignment(s) and a minimum service requirement.</p>

Source: VA Handbook 5007/58, part VI, appx. A and C. Excerpts from instructions for forms 10016 and 10017. Emphasis added.

⁸² 38 U.S.C. § 706(d)(1).

⁸³ VA Notice 23-03, para. 3.

⁸⁴ A VBA human resources staff member reported to OIG investigators that OCHCO had told them that, wherever CSI guidance was lacking, they should refer to the guidance for other VA recruitment and retention incentives.

⁸⁵ VA Notice 23-03, para. 8; VA Handbook 5007/30, *Pay Administration*, December 6, 2007, para. 1.

⁸⁶ VA Handbook 5007/58, *Pay Administration*, June 22, 2020, part VI, appx. A, C. Form 10017-A was derived from existing Form 10017.

⁸⁷ VA Handbook 5007/58, part VI, appx. A and C.

As reflected by the excerpts in table 2, guidance for VA’s preexisting incentives covered by VA Handbook 5007 required a nearly identical analysis addressing multiple factors that, taken together, would describe a group of individuals who share substantially similar job functions and circumstances, which would make it appropriate to treat them similarly.⁸⁸

The PACT Act’s authorizing text allowing the Secretary to pay CSIs does not specifically permit or exclude group incentives.⁸⁹ The OIG determined that it was not incompatible with the statutory language for VA to infer that group justifications could be used if the factors justifying the incentive apply to every member of the group. Ensuring applicability of the justification to all members of the group would be consistent with VA’s own guidance on Forms 10016 and 10017, above in table 2, that compels the group definition to be based on “distinctive job duties [and] unique competencies required for the position(s).”⁹⁰ Moreover, the requirements applicable to CSIs suggest that an even more narrow definition of “group” is required, based on a skill rather than a position: that an “*employee* possesses a high-demand skill,” that those skills are “directly related to the duties and responsibilities of *the employee’s* position,” and that “employment of *an individual* with such skill in such position serves a critical mission-related need of the Department.”⁹¹ (emphasis added)

VHA’s chief human capital management executive, Ms. Bonjorni, and other human resources staff told OIG investigators that CSI policy was designed to provide VA with a broader and more flexible authority than the existing retention and recruitment incentives. Indeed, there are prohibitions for other types of incentives that do not apply to CSIs. For example, retention incentives, which are governed by Office of Personnel Management (OPM) rules, may only be paid to employees who are considering leaving for a private sector position and not for another federal agency, whereas CSIs are not subject to this restriction and may be paid to employees regardless of whether the risk of loss is to another federal agency or the private sector.⁹² In addition, CSIs do not require requestors to demonstrate recent difficulty recruiting employees to

⁸⁸ OPM is responsible for regulations and guidance for implementing retention bonuses. 5 U.S.C. § 5754. With respect to the “group” definition, OPM guidance states, “An agency must narrowly define the targeted group of employees to be paid a group retention incentive using factors that relate to the employees’ unusually high or unique qualifications or the special need for the employees’ services that makes it essential to retain the employees in the group and their likelihood to leave. Appropriate factors may be occupational series, grade level, distinctive job duties, unique competencies, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and required rating of record. (While a rating of record of higher than ‘Fully Successful’ may be a factor used in defining the targeted category, a rating of record by itself is not sufficient to justify a retention incentive.)”

⁸⁹ 38 U.S.C. § 706(d).

⁹⁰ VA Handbook 5007/58, part VI, pp. VI-A-5a, VI-C-10. The OIG notes that VA policy pertaining to other preexisting retention and recruitment incentives specifically prohibits the award of incentives to members of the senior executive service as part of a group. VA Handbook 5007/59, *Pay Administration*, October 2, 2020, part VI, pp. VI-11, VI-21a.

⁹¹ 38 U.S.C. § 706(d)(1).

⁹² 38 U.S.C. § 706(d)(1); 5 C.F.R. § 575.305(a)(2).

similar positions or a description of nonmonetary efforts to retain the relevant employee.⁹³ Providing a more flexible incentive does not, however, mean that Congress intended that VA could grant CSIs without ensuring that each recipient met the statutory criteria.

OIG Investigators Determined, and VA Leaders Acknowledged, That VACO Senior Executive Groups Were Overinclusive

The 148 VHA and 34 VBA senior executives who were awarded CSIs comprised many occupational series (26 for VHA and six for VBA).⁹⁴ In VHA, the recommended recipients included senior executives at varying levels of seniority in different positions across program offices and other functions, with no effort to distinguish between them in the justifications provided either in the CSI forms or VHA’s supporting memorandum. Similarly, the group of CSI recipients in VBA included the deputy directors of program offices, such as the Compensation Service, as well as more senior leaders, such as VBA’s chief of staff, chief financial officer, and deputy under secretaries.

The CSIs for the nonexecutives, however, were based on shortage skills and had been grouped based on one or two different occupational series, such as human resources specialists, housekeeping aids, food service workers, police officers, and medical supply technicians. Notably, these occupational groupings had previously been identified as having shortages as well. Similarly, with respect to CSIs awarded to senior executives in the field (VBA regional office and district directors and VISN and medical center directors in VHA), the groups were defined based on only one or two occupational series and position titles. A senior executive in VHA’s workforce consulting group explained that when CSIs are awarded to a group of employees who have that same specialized skill, “you’re basing [the CSI] on the skillsets inherent for that occupation or that function.” In other words, a specific occupation or function can be a proxy for identifying a skill for purposes of recommending CSIs.

According to Dr. Elnahal’s testimony to OIG investigators, he now believes that the group justifications for central office executives were improper because “definitionally, they all have different jobs because they have different things they oversee for the system.” Similarly, Mr. Jacobs said that VBA should have supported its CSI determinations with “individual justifications . . . particularly in central office where the types of jobs, the skills, are so variable.”

With respect to VHA, OIG investigators identified instances in which the overbreadth of the group definition contributed to the payment of CSIs to individuals whose circumstances did not align with the rationale described in the blanket justification. Although the OIG did not review the circumstances of all 148 recipients, VHA had conducted a post-payment analysis of CSIs in

⁹³ 38 U.S.C. § 706(d)(1); 5 C.F.R. §§ 575.306(b)(3), (b)(5).

⁹⁴ An occupational series is a “job family consisting of positions similar as to specialized line of work and qualification requirements.” OPM, *Handbook of Occupational Groups and Families*, December 2018, p. 4.

September 2023 in an initial attempt to provide individual justifications for at least some of the recipients. In discussions regarding this analysis, Dr. Elnahal noted that some executives did not appear to meet the criteria for CSI awards based on an absence of market salary competition. He explained that “with the proposed CSI, the salaries [of some executives] end up well above the private sector averages.” In addition, he indicated that VHA’s post-payment review included identifying positions where an individual’s clinical occupation, which established higher salary rates, was “not germane to their executive role.” As Dr. Elnahal explained to OIG investigators, he was referring to individuals who were employed as healthcare clinicians “but the job they’re doing for VA is not a clinical job,” so benchmarking against private sector clinician salaries “does not seem like an appropriate comparison.” These two examples highlight the need for a more individualized treatment of the circumstances of each VHA executive to ensure that the incentive is appropriately tailored to meet the retention purpose.

Moreover, because the group was defined so broadly, VHA and VBA were unable to identify a specific “high-demand skill” that the employees possessed as a group that was “directly related to the duties and responsibilities of the employee’s position.”⁹⁵ In an April 2023 email to Mr. Mayo, the principal deputy assistant secretary for HRA/OSP, VA’s chief human capital officer, Tracey Therit, stated,

Critical positions . . . [are] not the threshold. It is skill not position so what skill or skills do the individuals or the group as a whole possess which is a basis for using this authority. The justification should be specific especially for a group.

She provided the example of a data scientist who “possesses a critical skill such as experience with data science applications . . . that is in high demand.” In contrast, neither VHA nor VBA provided any details regarding the skills of their executives. VHA’s completed Form 10017-A referred only to the executives’ “advanced knowledge and skills set.” VBA’s six-page memorandum accompanying its form merely stated that these executives’ roles require “specialized experience and deep knowledge of the VBA enterprise” and referenced their “critical skills.”

VA’s recognition of these concerns was evident in its decision to cancel the CSI payments. Secretary McDonough told OIG investigators,

[W]hat I’ve said publicly, including to our workforce in a series of town halls, is . . . one can surely read the statute to say that [incentive payments to executives and central office] would be allowable . . . [However,] I have a hard time reading the statute and concluding that every senior executive in central office qualifies for a CSI. And I think that’s functionally where we ended up on the decision . . . to cancel them.

⁹⁵ 38 U.S.C. § 706(d)(1).

Similarly, VA’s deputy general counsel, Brent Pope, when asked by OIG investigators what OGC’s position was on whether it was appropriate to award CSIs to these groups of senior executives, he stated,

it was a disparate group of everybody at headquarters, that really we don’t think is permissible . . . because you can’t make the same market analysis for the executive assistant [as] the higher ups in VHA, and . . . we thought the same thing also applied to VBA. They shouldn’t have been lumped as one entire group . . . just [because of] the fact that [they are all] at headquarters.

In the September 2023 statement disclosing the payments and planned cancellation, VA said it had been “imprecise” and “overly broad” in the way that it exercised its authority to pay CSIs.

VHA and VBA Determined the Percentages of CSIs without Regard for Whether the Amounts Were Needed for Retention

CSIs are a tool to aid VA in retaining staff with high-demand or shortage skills.⁹⁶ VA policy states that the “value of the incentive will be proposed by the recommending official based upon the needs of the Administration.”⁹⁷ The OGC staff attorney who reviewed VHA’s proposed CSIs for the field senior executives in June 2023 stated in an email to Ms. Bonjorni and Dr. Lee (the lead senior executives of their respective offices of human capital services in VHA and VBA) that they should “continue to ensure the amounts being paid reflect what is needed for the retention.”⁹⁸ The OIG found that, with respect to VACO executives, VHA and VBA did not determine the amounts based on any assessment of what was needed. Instead, they determined the percentages to award (initially 20 and 25 percent of basic pay, which was at or near the maximum allowable under the statute) across the board to all eligible employees.

As discussed previously, during the initial days of developing a strategy for VACO executives in the spring of 2023, Dr. Elnahal approved the two-tiered approach: 25 percent for 15 employees deemed to “have taken on additional responsibilities leading the [under secretary’s] priorities” and 20 percent for the remaining 141. VHA did not list specific market factors or supply other market analysis (such as something similar to the white paper for the field executives) in support of the CSIs for VACO executives when the package was submitted for processing in late August 2023.

On September 6, VHA changed its approach to a flat 25 percent for every senior executive, which resulted in a more than \$1 million increase in the total amount recommended. This change

⁹⁶ 38 U.S.C. § 706(d)(1).

⁹⁷ VA Notice 23-03, para. 6.d.

⁹⁸ As discussed in finding 2, the staff attorney did not question VHA’s grouping together of medical center directors or VISN directors for purposes of awarding CSIs, as they were based on single positions and one or two occupational series.

was proposed to Dr. Elnahal by VHA Chief of Staff Suh and Deputy Under Secretary Lieberman based on their last-minute concerns about treating everyone within VHA the same and also matching what VBA was offering—without apparent consideration as to whether 25 percent was the amount needed to retain each executive in the group.⁹⁹ In fact, the OIG team did not find any evidence that market factors were considered with respect to the VHA senior executives in VACO until late September 2023 after the CFO had questioned the propriety of the awards.

VBA's support for CSIs at 25 percent of senior executives' basic pay was similarly flawed. The VBA chief of staff, Brandye Terrell, told OIG investigators that VBA selected 25 percent for its senior executives assigned to the central office to be consistent with earlier information that they had received from VHA about its plan to award 25 percent.

Neither VHA nor VBA adequately assessed whether the amounts were necessary to retain the 182 VACO senior executives who were initially awarded CSIs, despite the diversity of their skills, functions, and compensation. This analysis is particularly important within VHA where salaries of the VACO senior executive recipients varied widely, ranging from approximately \$156,000 to \$426,000 in August 2023 at the time the CSI awards were approved by Dr. Elnahal.¹⁰⁰ In contrast, with respect to VA's analysis of agencywide *nonexecutive* positions and CSI recommendations, data were gathered and considered, including turnover and vacancy rates, rate of growth, and other market factors, before developing a set of recommendations to share with the VISN directors as to which groups of employees should be recommended for *shortage-skill* CSIs (even though market factors were not required by VA policy to support awards based on pre-approved shortage lists). In addition, VHA had a sliding scale with respect to the percentage awarded that was based on vacancy and loss rates: above-average rates were tied to incentives of 20 percent of basic pay; average rates yielded 15 percent of pay; and below-average rates resulted in 10 percent of pay.

⁹⁹ A similar abrupt change in CSI percentages for the field senior executives (medical center directors and VISN directors) had occurred in March 2023. Dr. Elnahal had announced to field executives at a conference that the CSIs for all would be 25 percent instead of the two-tiered approach (20 percent for Title 5 medical center directors and 25 percent for Title 5 VISN directors) he had approved in a signed memorandum the previous day. His staff then quickly edited the approval memorandum the same day as the conference to mirror his remarks (25 percent for all). A few weeks later, on April 13, Dr. Elnahal expanded the group for the field executive CSIs to include Title 38 employees (such as physicians) without reference to any determination that the payments were necessary to retain those employees.

¹⁰⁰ VHA senior executives are employed under either Title 5 (which governs most federal employees) or Title 38 (authorities allowing VHA to hire quickly and competitively for healthcare positions), as well as Title 38 hybrid positions. Unlike Title 5 employees, Title 38 employees have several variable elements to their pay. These include base pay, which is set according to years of service with VA; market pay, which reflects the recruitment and retention needs for a VA physician's specialty or assignment; and performance pay, which rewards the achievement of performance goals. VA Handbook 5007/59, Part IX, *Pay for VHA Physicians, Dentists, and Podiatrists*, p. IX-1a. The upper limit for pay is higher for Title 38 employees because it is set at the compensation of the US President, not the Vice President as is the case for Title 5 employees. VA Handbook 5007/59, Part IX, *Pay for VHA Physicians, Dentists, and Podiatrists*, p. IX-1X-i; 5 C.F.R. § 530.201.

VHA and VBA's CSI packages for their VACO executives did not analyze similar metrics. Moreover, as discussed in the previous section, when VHA undertook an individual-level analysis *after* canceling the CSIs to determine whether to recoup all or some of them, it identified several employees whose salaries would be above private sector averages.

Finally, the supporting documentation did not include evidence that VBA or VHA had considered employees' total compensation before determining what amount of CSI, if any, was necessary, particularly when considering other incentives previously received. An OIG analysis of compensation data from fiscal years 2020 to 2023 revealed VA limited its use of non-CSI recruitment, relocation, and retention incentives for executives. A significant number of the VACO senior executives that received CSIs under the PACT Act authority, however, had already received some type of prior incentive award payment (which was allowed), doubling from 75 in fiscal year 2020 to 150 in fiscal year 2023, with the average amount ranging from \$25,000 to \$29,000.¹⁰¹ These performance awards were not accounted for in the total compensation considered when making the CSI determinations.

¹⁰¹ The OIG's investigative team analyzed data from VA's human resources system on CSI and other monetary compensation paid to VHA and VBA VACO senior executives for fiscal years 2020 through 2023.

VHA and VBA Failed to Identify Sufficient Market Factors to Justify CSIs for High-Demand Skills


For CSIs based on high-demand skills, which was the criteria used for the awards to VACO senior executives, VA policy requires the recommending official to “list market factors,” which “may include new employers creating competition for candidates, consistent use of above minimums to hire candidates, or other appropriate factors.”¹⁰² As early as February 2023, the VHA human resources group had documented factors that should be considered with respect to justifying CSIs based on high-demand skills, including in a PowerPoint slide shown in figure 5 that was widely circulated to senior VHA and VA leaders as well as to Dr. Lee as the primary VBA advisor on CSIs and others in VBA.¹⁰³

Critical Skills Incentive – Factors for High Demand Environment


Overview: Position(s) not on an occupation shortage list require narrative justification defining the high-demand skill/skill that is at a shortage and which describe the factors which are creating the high demand environment.


Examples of market factors that create a high demand environment for an occupation may include, but are not limited to:


- Higher private sector pay
 - 10%+ disparity compared to midpoint averages in the labor market
- Enticing private sector premium pay practices
 - extra shift bonus
 - availability bonus for staff not eligible for on-call pay
 - on-time bonus for clinical areas with hand-off challenges
- New employers in the labor market
- Low numbers of highly qualified applicants
- Moderate to high vacancy rates and turnover rates
- Difficulty filling positions with specific criteria
 - Required to report in person when similar positions are offered work from home opportunities
 - Unique specialty or skillset (ex. Specific procedure; Experience with a specific system)



*Determined factors must be applied equitably for all employees that meet the factors described


Choose VA




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Figure 5. Excerpt from PowerPoint Presentation dated February 16, 2023.

Source: VA email attachment.

Therefore, VHA and VBA senior leaders involved in discussions regarding the CSIs for central office executives were aware (or should have been aware) at least as of February 2023 that it was

¹⁰² VA Notice 23-03, para. 4.b. The VA chief human capital officer explained to OIG staff that “above minimums” refers to setting the rate of basic pay above step 1 of the pay grade.

¹⁰³ Chief of VHA Human Capital Management Bonjorni shared this presentation with Dr. Elnahal and Dr. Lieberman on February 16, 2023, as well as Dr. Lee. VHA Under Secretary Elnahal sent it to then VA Chief of Staff Bradsher and Deputy Secretary Kiyokawa. This same slide was used in a different presentation given to Dr. Elnahal in early April 2023 by VHA human resources staff that was reviewed and cleared in advance by Ms. Bonjorni.

necessary to determine and document the market factors that had created the high demand for an employee's skills in order to justify awarding a CSI on that basis.

VHA Did Not List Any Market Factors

VHA did not provide market data or list market factors in support of its recommendation to award CSIs to all senior executives assigned to VA's central office. As discussed above, the only justification was the short description included on the single Form 10017-A submitted to CSEMO in August 2023 for all 148 executives, which stated,

Due to the extreme factors that have taken place globally over the last 3 years, the job market has become much more competitive, resulting in a very high demand of skills possessed by our experienced executive leadership teams. Their advanced knowledge and skills set is critical in supporting the mission of the VA by navigating the complexities of the rapidly changing VA Healthcare environment and providing the best care for our nation's veteran population. These executives drive VHAs successful efforts in whole health, competitive hiring, suicide prevention, connecting veterans to care, and in accelerating VA's High Reliability Organization efforts.

This description did not address any of the factors on the guidance in figure 5 above to establish the high-demand environment, merely citing unspecified "extreme factors" as the cause of a high demand for their executives' skills. Moreover, this justification was nearly identical to the wording on the Form 10017-A that VHA submitted in April 2023 in support of the CSIs for VHA medical center directors and VISN directors.

A senior HRA/OSP executive who reviewed VHA's CSI submissions for senior executives at headquarters in August 2023 captured the stark difference in level of justification for VHA senior leaders' CSIs when compared to requirements for other types of much smaller incentives to lower-level VA personnel:

I can't even give a GS employee a special contribution award for \$250 without writing an entire page about how great they are and forms and process. And this, with a stroke of a pen and three sentences, they're saying these folks are critical because they're critical, giving all these people this huge amount of money.

Similarly, Deputy Counsel for Legal Operations Brent Pope commented that when he reviewed VHA's justification in September 2023 after the awards were questioned by the Secretary, "I honestly couldn't believe it. I said, 'Is that all that was there?'" He commented that it was "silly," that VHA senior executives "were all given 25 percent and the justification was . . . two sentences."

The OIG also found through its own analysis that there did not appear to be a valid retention concern supporting these incentives. Dr. Elnahal conceded to OIG investigators that the global

personnel loss rate for VHA is below 9 percent and was lower in fiscal year 2023 than in previous years. VHA data reviewed by the OIG showed that employees are unlikely to leave the agency for another job, with nearly 70 percent having worked at VA for more than 10 years.

VBA's Justification Was Flawed

VBA's narrative supplied on the Form 10017-A in support of CSIs for its central office executives stated:

VBACO Senior Executives are crucial leadership positions that have the responsibilities for directing strategy, policy, finance, and operations for the entire VBA enterprise. These roles are difficult to fill due to factors such as longstanding pay inequities relative to similar roles in the private sector. Moreover, one in five VBACO Senior Executives are currently eligible for full retirement. The knowledge and skills of VBACO Senior Executives are critical in supporting the mission of VA by providing oversight across the entire VBA enterprise and administering billions of dollars in benefits to the Nation's Veteran population.

Due to the scope, complexities, and economic impacts of VBACO Senior Executive positions, as well as the specialized knowledge and skills needed, critical skills incentives and critical position pay requests are required to reflect a salary that is more competitive with similar private sector positions.

VBA also included a six-page memorandum signed by Under Secretary Jacobs that focused on private sector CEO salary information. The OIG determined that the analysis was put together initially in May 2023 at Dr. Lee's direction in an attempt to mirror VHA's white paper for its field executives.¹⁰⁴ The memorandum contains a table that includes salaries for CEOs in "private industry," "finance and insurance," and "management of companies and enterprises" and compares those figures to VBA central office senior executives' average salaries.

There are several weaknesses in VBA's analysis. First, VBA focused its justification on pay disparity with private sector chief executives to support its CSIs based on an assumption that VBA's "Senior Executives' responsibilities are on par with those of chief executives in the private sector." The memorandum, however, does not explain why CEO salaries are the proper benchmark for all 34 senior executives in VBA whose jobs and skills "are so variable," as acknowledged by Mr. Jacobs. He did not recall questioning the CEO comparison at the time or

¹⁰⁴ Emails show that on May 5, 2023, Dr. Lee forwarded a copy of VHA's white paper for VISN director and medical center director CSIs to his staff and requested that they "do some research and provide me with something like this" for regional office and district directors before the end of the next business day. The following week he requested the same for VBA central office senior executives. By May 16, 2023, Dr. Lee's staff provided him with the analysis he requested in the form of two memos containing substantially similar comparisons to private sector CEO pay, one covering regional office and district directors and the other covering central office senior executives.

why that was the benchmark, as Dr. Lee and his team had put together the analysis.¹⁰⁵ His view now, however, as he indicated in his interview with OIG investigators, is that they should have done a more precise analysis.¹⁰⁶

[R]ather than doing this high-level review of . . . the certain positions relative to CEOs, we should have had a more precise comparison of education service director versus . . . a tailored equivalent of their roles, and then . . . what was specifically relevant to the eligibility requirements under the CSI.

In addition, the memorandum highlights that the “work these Senior Executives perform is unique to the VBA culture, requiring specialized experience and deep knowledge of the VBA enterprise.” That suggests, however, that their skills are so specific to VBA that they may not translate to equivalent senior executive roles in a private company. Mr. Jacobs acknowledged that VBA recruits many of its executives from within the organization.

Second, the supporting memorandum states that “VBACO’s ability to recruit and retain high-quality leaders is critical . . .” It does not, however, provide any data that suggest VBA is encountering significant turnover. Mr. Jacobs told OIG investigators that VBA’s “retention numbers are better than the six-year average” even though workloads had been increasing. Data examined by OIG investigators further suggest that VBA was not experiencing significant issues with retention of senior executives at VACO. To the contrary, fiscal year 2023 data reflect only a 2.4 percent turnover rate among senior executives at VBA. The OIG team also analyzed years of service. These data showed that nearly 40 percent of VBA’s senior executives at VACO have worked at VA for more than 20 years, and greater than 60 percent have been there for more than 15 years. Regardless of whether there are disparities between VA and private sector salaries, it does not appear that VBA experienced significant attrition in its executive ranks. In addition, while VBA cited in its memorandum that 1 in 5 of the VACO senior executives is eligible for retirement, the memorandum does not account for the fact that employees may have had an incentive to stay in order to maximize their retirement benefits. It also does not explain how a possible retirement eligibility of 20 percent of their VACO executives justified a CSI to retain the 80 percent not close to retirement.

Third, VBA claimed that these “roles are difficult to fill” due to pay differentials. VBA provided little data in support of its contention that it has a hard time recruiting for VACO positions.

¹⁰⁵ The memorandum justifying the incentives for VBA field executives also states, “Directors’ responsibilities are on par with those of chief executives in the private sector,” and includes a table with the same CEO salary data along with “general and operations managers” compensation information. Mr. Jacobs did not know why these were the appropriate comparators for regional office and district directors and said he would have to ask Dr. Lee and his team.

¹⁰⁶ Then Acting Deputy Secretary Kiyokawa reflected that, in his view, “it’s always a hard comparison between government executive positions and the private sector . . . especially when it comes to the headquarters, because . . . the government tends to have more headquarters functions that are not necessarily business driven.”

VBA's memorandum states that "over half of the current SES vacancies . . . are for VBACO Senior Executives, with an average time to fill in FY2023 being 254 days." OIG analysis determined that the memorandum was referring in summary fashion to five VBA senior executive vacancies in the central office that existed as of March 31, 2023. One of these positions was vacated in January 2023. The prior incumbent had been in this position since it was created in or about October 2021, and retired from VA in January 2023 after more than 30 years of service. Records reflect that VA advertised the vacancy from February 10 through 24, and the new executive began 142 days later on July 16, 2023. This does not suggest that the position was difficult to fill. The remaining four positions were newly created and therefore had no pertinent history of vacancy that could be analyzed to determine whether VBA had difficulty recruiting or retaining staff to these positions. Thus, VBA's description of these positions as "difficult to fill" lacked data sufficient to support the assertion. Moreover, the memorandum did not explain the relevance, if any, of newly authorized vacancies to the need to use CSIs for retaining VBA's existing executives. The OIG observed that one of the four newly created positions was for a limited-term appointee, which is expressly excluded from receiving a CSI under VA policy and therefore could not have made use of this authority no matter how difficult the position was to fill.¹⁰⁷

Finally, the OIG found that VBA did not decide to issue CSIs to its SES personnel in response to an identified recruitment or retention need, but rather as an effort to keep parity with what VHA was planning. VBA senior leaders began discussing whether to provide CSIs to SES personnel following an under secretary meeting on April 11 during which Dr. Elnahal mentioned VHA's plans. According to VBA Principal Deputy Under Secretary Frueh, one of his first thoughts when hearing that VHA was providing CSIs to executives was, as reflected in an email he sent to himself on April 12, "if VHA does this and we do not, we will have a hard time recruiting." He expressed concerns about the approach in another email on April 18 to an NCA senior leader, stating, "I don't like the optics of paying execs, because it will add up to a number the public/congress will question." However, he believed that if VBA did not follow VHA's lead, "this would potentially be an incentive for people to go to another part of the organization," meaning that VBA executives might seek jobs in VHA if VBA was not offering the incentive.

Similarly, VBA Under Secretary Jacobs, who told OIG investigators that the idea to provide CSIs to senior executives originated with VHA, observed that he believed they needed to be mindful of the fact that when "applying certain pay authority, certain [human resources] actions, in VBA, [and] VHA is doing the same . . . it has a ripple effect on one another." With respect to his specific thinking about extending CSIs to central office executives, he stated "that there's kind of this field versus central office dynamic that we're trying to manage through." He stated that his CSI decision-making was influenced by a desire to avoid "further exacerbate[ing] the

¹⁰⁷ VA Secretary, "Incentives for Critical Skills," memorandum, December 20, 2022.

tension that exists between the central office leadership and folks in the field, and where there was a lot of concern and stress about returning to the office, and feeling like there was a different standard and I wanted to make sure that we were trying to apply a similar standard, similar approach to our folks in the central office to folks in the field.”¹⁰⁸ In other words, VBA’s leaders were *anticipating* that retention issues might arise if VBA did not follow VHA’s lead and also if they did not offer consistent CSIs to both field and central office senior executives.

Finding 1 Conclusion

The administrations’ approaches were insufficient to ensure that the CSIs awarded were consistent with the statutory and VA policy requirements that the Secretary (or his designee) determine recipients have met all mandated criteria. Both administrations’ justifications were faulty because they grouped together executives whose job functions were too dissimilar for the justifications to be applicable to all, contrary to VA’s own guidance to “narrowly” define a group. Although VA policy required that CSIs be awarded based on a determination that the recipient “possesses a high-demand skill or skill that is at a shortage,” VHA and VBA appear to have started with a desired outcome—incentive awards of 20 or 25 percent of basic pay for *all* executives in their central offices. The percentages were set without regard for what amount was needed to retain the VACO senior executives. VBA subsequently prepared a memorandum to support the desired outcome, but the data used were found by the OIG to be flawed and insufficient for that purpose. In contrast, VHA provided only a short narrative with no identified market factors (or supplemental support) to justify its decision to award CSIs to its central office executives.

Recommendations 1–4

1. The Secretary of Veterans Affairs directs the assistant secretary for Human Resources and Administration/Operations, Security, and Preparedness should update Policy Notice 23-03 and Form 10017-A to address the deficiencies noted in this report, including the overly broad definitions of groups, failure to provide adequate support for high-demand skill CSIs, and lack of needs analyses for recruitment and retention.
2. The Secretary of Veterans Affairs designates a responsible official to review the critical skill incentives that have been paid to any member of the Senior Executive Service (SES), SES-equivalent, or other Senior Leader (including Veterans Health Administration’s medical center directors and Veterans Integrated Service Network directors and the Veterans Benefits Administration’s regional office and district directors) for the deficiencies identified in this report and to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed.

¹⁰⁸ Mr. Jacobs explained that, at that time, they were working through decisions regarding how many days VA employees had to report to the office and whether to impose a greater requirement at VACO than in the field.

3. The Secretary of Veterans Affairs designates a responsible official to review any critical skill incentive payments based on a high-demand skills justification made to all nonexecutive groups of employees, if any, to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed.
4. In consultation with the Office of General Counsel's Ethics Specialty Team, the Secretary of Veterans Affairs or his designee takes appropriate action to determine whether individuals involved in the decision-making process for awarding CSIs had any actual or apparent conflicts of interest and develop a process to ensure all decision-makers are free from conflicts when awarding future incentives.

Finding 2: VA's Internal Controls Were Ineffective in Preventing Improper Awards of CSIs to Central Office Senior Executives

Every federal employee has a responsibility for “safeguarding federal assets and the efficient delivery of services to the public.”¹⁰⁹ This stewardship duty is a component of VA's enterprise risk management responsibilities, and it is “shared throughout the agency from the highest levels of executive leadership to the service delivery staff executing federal programs.” Federal agency leaders and managers are expected to fulfill this obligation in part by creating governance systems that adhere to enterprise risk management principles and by implementing effective internal controls. The Office of Management and Budget enterprise risk management guidance for federal agency leaders emphasizes “the need for information about major risks to flow both up and down the organization and across its organizational structures to improve the quality of decision-making.”

In September 2023, VA canceled 182 CSIs to VACO senior executives, most of which had already been paid, based on a determination that they had been improperly awarded. Before the approval of the CSIs in August and September 2023, there had been various opportunities in the preceding months for review and discussion among the Secretary, then acting deputy secretary, then chief of staff, the under secretary for health, and the under secretary for benefits, as well as multiple layers of review from senior officials outside VHA and VBA. While some concerns were raised, others were missed, and the administrations had not been prevented from proceeding with their plans.

As discussed below, there were several contributing factors that included

- insufficient transparency from VHA regarding the scope of personnel covered and financial effects of its CSI plans,

¹⁰⁹ Office of Management and Budget Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.

- excessive deference by HRA/OSP leaders responsible for ensuring compliance when providing concurrences on the CSI packages and an apparent reluctance to question whether the awards were proper even when their subordinate staff raised concerns,
- missed opportunities by OGC to detect legal issues with the CSIs before they were paid, and
- failure to leverage VA’s governance processes to ensure proper risk management of the new CSI authority by subjecting CSI proposals to a more robust VA-wide review.

VHA’s Responses to the Secretary’s Requests for Information about the Scope and Effect of CSI Plans Did Not Include VACO Executives

Although Secretary McDonough delegated his authority to the under secretaries to approve the CSIs, Dr. Elnahal and Mr. Jacobs understood that they needed to make him aware of the CSIs in order to proceed.¹¹⁰ In addition, as CSIs were discussed at various weekly under secretaries meetings, the Secretary began to request specific information about the administrations’ plans in late May 2023. When asked why he sought more information, the Secretary told OIG investigators that he was trying to slow down the implementation to seek assurances that it was being done properly. His additional requests for information led to a pause in the implementation of VHA and VBA plans to pay CSIs to senior executives—both field and central office—from late May until mid-July. As discussed below, however, the OIG found that VHA (and, in particular, Dr. Elnahal) did not provide any information about the CSIs for VACO senior executives in response to questions about CSI costs and scope from the Secretary. Secretary McDonough did not know about the CSIs for VACO executives at VHA until September 13 when he was alerted by CFO Rychalski.

As noted above, a small group in VHA started discussing CSIs for VACO senior executives in March 2023 immediately after Dr. Elnahal announced the CSIs for field executives at a conference. On April 3, 2023, VHA submitted its CSI package for field executives to CSEMO (a component of HRA/OSP). While this was under review by HRA/OSP, the topic of CSIs was first raised at an under secretaries meeting on April 11, including the possibility of awarding CSIs to VACO senior executives. By that time, VHA’s workforce management staff had prepared spreadsheets listing all potential VACO recipients, their salaries, the amount of the CSI, total cost to VHA, and total individual compensation.

On May 3, in response to “concerns” raised about the potential magnitude of the awards proposed by Dr. Elnahal, VHA’s human resources team pulled together a “justification paper”

¹¹⁰ VA Secretary, “Incentives for Critical Skills,” memorandum, December 20, 2022.

(white paper) to support the CSIs for the medical center and VISN directors. Dr. Elnahal emailed the white paper to Secretary McDonough and other VA senior leaders on May 4. It does not mention VACO executives. The white paper stated that the field executives' compensation was "far below their counterparts in the private sector" and detailed projected CSI costs (\$7.85 million in total).

A few weeks later, following another discussion of CSIs at a weekly under secretaries meeting on May 23, Mr. Jacobs provided the Secretary and other senior leaders two memos—one outlining VBA's plans to award CSIs to regional office and district directors and a second discussing VACO executives. Mr. Jacobs stated in his cover email attaching the memos, "I am not yet personally convinced about the [central office] element, but I wanted to share what the VBA team has prepared"

On May 24, Secretary McDonough emailed Dr. Elnahal and Mr. Jacobs, stating, "I have lost the thread on where the CSI effort stands. I will work with [my executive assistant] to get us a meeting." He requested details regarding the increase in compensation for impacted personnel, the number of people affected, and the total cost to each administration.

In response to Secretary McDonough's questions, Dr. Elnahal provided an "updated white paper" on May 26 that was revised to include a column showing the total costs attributable to the planned use of the PACT Act pay authorities (including CSIs) for VHA's medical center and VISN directors. Once again, the paper only discussed proposed CSIs for the *field* senior executives. A few days later, after a meeting with then Acting Deputy Secretary Kiyokawa, Dr. Elnahal provided another revised white paper that included four specific examples of how the CSIs would affect the total compensation of two medical center directors and two VISN directors. None of VHA's three white paper drafts circulated in May mentioned the plan to pay CSIs to senior executives at VA's central office (and the OIG did not identify any other response from VHA disclosing the plan), despite VHA having details and cost estimates on VACO senior executive CSIs prepared in early April.¹¹¹

In early July 2023, as senior VA leaders were working on the fiscal year 2025 budget request, the Secretary expressed a concern about the cost of CSIs. An attendee at the weekly under secretaries meeting on July 3 reported to Dr. Elnahal (who was absent that day) that the Secretary noted that "the cost/scope will likely be higher than Congress initially expected and [the Secretary] wants to ensure there are notifications and clear explanations that describe why the decision was made to proceed in the manner that is ultimately chosen." On July 6, the VHA chief of staff, Dr. Ryung Suh, noted in a Microsoft Teams message to Ms. Bonjorni that the "CSI

¹¹¹ As noted above in figure 3 and the text that follows, as early as April 4, 2023, VHA's human resources leaders had begun to calculate the cost of the CSI plan for VACO senior executives. By late April, they were meeting with Dr. Elnahal to review the details of the proposal and had prepared spreadsheets listing all potential recipients, their salaries, the amount of the CSI, and total compensation, along with overall costs.

hold-up seems to be entirely about the sticker shock.” Dr. Elnahal also acknowledged in his interview with OIG investigators that he knew the Secretary had concerns around that time about cost, both in terms of the “total cost as a . . . steward of taxpayer money, and what each individual executive might see in terms of higher compensation.” Beginning July 6, then VA Chief of Staff Tanya Bradsher engaged in an effort to collect information for the Secretary regarding agencywide CSI spending, and two days later then Acting Deputy Secretary Kiyokawa emailed Dr. Elnahal, Mr. Jacobs, and the under secretary for memorial affairs to let them know that he had set up a meeting to discuss CSIs, among other topics.

On July 27, in the context of discussing with Ms. Bonjorni, Dr. Lieberman, and Dr. Suh possible incentives available for certain senior executives who were being asked to relocate to the Washington, DC, area, Dr. Elnahal stated in an email, “One thing to note: I need to have a discussion first with SECVA, ADPSEC [Kiyokawa], and COS [Chief of Staff Bradsher] on proposed CSIs for central office leaders before we execute on that. I intend to do so next week, but do not anticipate any issues.” He told OIG investigators that he did not bring it up at the under secretaries meeting as he had intended and did not recall why. Then, on August 23, Dr. Elnahal was out of the office, and he asked his staff to confirm that the Secretary was aware and that they had been cleared to proceed before moving forward with submitting the CSI package to CSEMO. Dr. Elnahal then mistakenly believed (due to a series of miscommunications) that the Secretary was aware of the CSIs for VACO, and he allowed them to proceed.¹¹² On August 26, 2023, VHA submitted the CSI proposal package to CSEMO (within HRA) for review, which contained the blanket 10017-A form for VACO executives with an attached spreadsheet of recommended recipients and amounts.¹¹³

The Secretary was not aware of the awards at that time and did not learn that nearly all VACO executives in VHA had received incentives until September 13, 2023, when he was alerted by VA’s CFO Jon Rychalski. Mr. Rychalski told OIG investigators that in early September he

¹¹² On August 23, Dr. Elnahal asked Deputy Under Secretary for Health Lieberman, who attended an under secretaries meeting in his absence, if they were “clear to move forward with this,” as he saw CSIs were on the agenda. Dr. Lieberman initially responded “yes,” but on August 25 replied, “I am sorry. I messed up with this, but fortunately nothing has happened as I know [staff] is still sitting on these still.” He explained that Dr. Suh asked at the meeting “if it was ok to get the CSIs started . . . but [t]here was no ask about VACO leader CSIs. I can try to ask about that tomorrow.” Dr. Lieberman updated Dr. Elnahal later that day, noting that he spoke to Acting Deputy Secretary Kiyokawa and Chief of Staff Bradsher because the Secretary was out of the office. He said, “Tanya [Chief of Staff Bradsher] asked me to double check with VBA to ensure they were doing this for senior leaders. She said the Sec would be fine with it as long as there was relative parity[.] Mike Frueh confirmed that they are doing 25% . . . I went back to Tanya and she said we can now proceed.” Dr. Elnahal responded, “Yes, let’s proceed.” Chief of Staff Bradsher explained to OIG investigators that, while she remembered the conversation, she never recalled Dr. Lieberman mentioning a percentage or that this related to VACO senior executives—she thought this related to the VHA field executives only since that was the only package that was provided to the Secretary.

¹¹³ The forms for the field executives’ CSIs had been approved by HRA/OSP on May 1 and Dr. Elnahal on May 5, as shown in figure 3. With respect to the VACO executives’ packages, a two-tiered CSI approach was initially submitted August 26 by VHA, but it was changed on September 6 (before payment) to a flat 25 percent for each recipient.

became involved when some executives became upset about delays in their CSI payments. Updated statistics that he received on September 13 showed that about 367 SES received a CSI and a number were still pending. He did not think that number could be right because it was a significant amount of money, and so he discussed this with then Chief of Staff Bradsher before briefing Secretary McDonough later that morning. Then Acting Deputy Secretary Kiyokawa and then Chief of Staff Bradsher also told the OIG investigators that they first learned about the CSIs for VHA central office senior executives at that time, a revelation that Mr. Kiyokawa described to OIG investigators as “the biggest surprise.”

Regardless of whether Dr. Elnahal had the mistaken impression that the Secretary was aware of the CSIs for VACO executives before deciding in late August to allow his team to move forward with them, Dr. Elnahal (and others in VHA) did not provide any details regarding costs or impacts of the CSIs at any time to the Secretary, as they did for the CSIs for medical center and VISN directors, prior to September 13. Dr. Elnahal acknowledged to OIG investigators that he should have provided these details about the VACO senior executives’ CSIs to the Secretary *before* awarding the incentives. He stated that he did not do so because

I had no idea the sheer number of SESs at VHA Central Office. I had no idea that we had upwards of 150 of them . . . I think if I had known that, my management instinct would be to get the same level of justifications together and the costs [as for the field executives].

However, as referenced above, Dr. Elnahal had received via email a spreadsheet listing the names and titles of over 150 VACO senior executives in VHA being recommended for CSIs and the amounts for each in August 2023 before he gave his approval to his staff to submit the package to CSEMO.¹¹⁴ In fact, Dr. Elnahal replied to the email, noting that he did not see his principal deputy, Dr. Lieberman, on the spreadsheet and asked why. Although Dr. Elnahal’s response suggested that he reviewed the attached spreadsheet, Dr. Elnahal explained in a subsequent interview with OIG staff that he was on a plane at the time he received this message and believes he only looked at the first tab of the spreadsheet on his phone, which had a small list of personnel (those initially slated to receive the higher award amount). He said that he did not recall seeing the second or third tabs, which listed the remaining approximately 140 executives and provided total cost information.¹¹⁵

¹¹⁴ This list included several executives who were recommended for CSIs but declined them, and one who was deemed ineligible due to performance concerns, so the tally of employees on the spreadsheet is slightly higher than the 148 awarded for VHA senior executives at VACO.

¹¹⁵ The OIG team also identified an email dated December 29, 2022, from the CSEMO executive director to Dr. Elnahal that included a list of 291 VHA senior executives and their annual performance ratings for fiscal year 2022, but the list did not distinguish between VACO and field executives.

HRA/OSP Signed Off on VHA and VBA Senior Executive CSI Plans and Packages Despite Staff Concerns

Then Assistant Secretary Gina Grosso, her deputy, and several senior executives in VA’s HRA/OSP were involved in reviewing senior executive CSIs for VHA and VBA (both field and central office) between April and August 2023. As noted in figure 6, both CSEMO and OCHCO reported to Ms. Grosso.



Figure 6. Organizational chart as of April 1, 2023, through September 13, 2023.
 Source: *OIG Analysis of VA functional organizational chart and other sources.*

The process for HRA/OSP review and concurrence consisted of two parts: (1) a technical review by CSEMO, as the human resources servicing office for all senior executives; followed by (2) a final review and concurrence by the assistant secretary (Ms. Grosso) or principal deputy assistant secretary (Mr. Mayo).¹¹⁶ Although “technical review” is not defined in the delegation memorandum or CSI policies, witnesses told OIG staff that it generally consists of reviewing the form to ensure the information provided is correct, that the proper justification is included, and that the employee is eligible to receive the incentive. Once the review was completed by CSEMO and HRA/OSP leaders had concurred (by signing the forms), the forms were routed to

¹¹⁶ The December 2022 delegation of authority required CSEMO to conduct technical reviews of CSIs recommended for senior executives. VA Secretary, “Incentives for Critical Skills,” memorandum for the deputy secretary, chief of staff, under secretaries, and other key officials, September 27, 2023. Mr. Mayo or Assistant Secretary Grosso (and not CSEMO’s executive director) signed CSI forms as the human resources servicing office under a delegation of authority from the Secretary for executive personnel actions. VA Secretary, “Delegation of Authority to Approve Personnel Actions,” memorandum for the deputy secretary, chief of staff, under secretaries, and other key officials, July 28, 2021. VA Secretary, “Delegation of Authority to Approve Personnel Actions,” memorandum for the deputy secretary, chief of staff, under secretaries, and other key officials, July 26, 2023. There is some confusion as to whether HRA/OSP leaders should have provided concurrences or whether only CSEMO was supposed to review per the policy notice, and the OIG has recommended that VA clarify those roles.

the approving official for review and signature.¹¹⁷ While OCHCO did not have a role in reviewing the CSIs for senior executives, Ms. Therit and her staff were involved in developing the policies and procedures relating to CSIs. The Secretary told OIG investigators that he believed the role of HRA/OSP with respect to the rollout of CSIs was to “make sure decisions . . . are executed consistent with the policy, executed consistent with the statute, [and] executed consistent with [the Office of Personnel Management’s] understandings.”

As discussed in the sections that follow, testimony and other evidence show that HRA/OSP leaders provided concurrences (Ms. Grosso for the VHA central office and Mr. Mayo for VHA field executives as well as VBA field and central office executives).¹¹⁸ They signed the CSI forms as “reviewers” for the senior executives without requiring any supplemental information from the administrations. They concurred despite concerns that they or their staff had regarding the sufficiency of the justifications, the amounts, and the approach to pay all senior executives across the board. HRA/OSP leaders expressed to OIG investigators that they felt pressure to approve the awards either due to mistaken representations made to them about the Secretary’s prior approval or because they were reluctant to question the judgment of the under secretaries.

April and May 2023: HRA/OSP Reviewed and Concurred on VHA Packages for Field Executives’ Incentives

On April 3, 2023, VHA submitted its recommendation package for field executives’ CSIs to CSEMO for review. The package included a Form 10017-A for each group of executives (one for medical center directors and another for VISN directors) and a two-page memorandum from VHA’s assistant under secretary for health for operations. The cited basis for the field executives’ CSIs was the need for high-demand skills. VHA used nearly the same narrative justification on Form 10017-A for the field executives as it did later for the VACO senior executives. A human resource specialist in CSEMO completed a review of the package, and the analysis did not reveal any concerns with the proposed incentives. It was then forwarded to Mr. Mayo for his signature.

Mr. Mayo recalled that he brought to Ms. Grosso’s attention a concern that VHA was stacking certain pay authorities and incentives together, such as a prior retention incentive and a CSI, and that Ms. Grosso then had raised this with then VA Chief of Staff Bradsher. Ms. Bradsher asked for examples, and Mr. Mayo assisted Ms. Grosso in drafting an email in response, which she sent to Ms. Bradsher on May 1.

¹¹⁷ OCHCO Bulletin, March 21, 2023, para 3.b.

¹¹⁸ Assistant Secretary Grosso retired from VA in December 2023, and the former VA deputy chief of staff, Cassandra Law, was appointed as her successor in January 2024.

Ms. Grosso’s email highlighted that, with VHA’s proposed stacking of incentives, the salaries of some of the medical center directors and VISN directors could exceed federal pay ceilings.¹¹⁹ She framed her concerns—including aggregate pay costs, stacking incentives, concurrent employment service commitments, and whether the justification from VHA was sufficiently detailed—as risks if VA were subsequently audited. She stated,

There is no question or concern that all these individuals possess critical skills and that competition for these skills is significant. That said, I would be surprised if we don’t get audited in some way on how we implement these authorities. ***While all the proposed actions are legal,*** I offer a few things that I think you should be aware of. (emphasis in original)

Ms. Grosso and her principal deputy Mr. Mayo had the ability to stop or delay the incentives by declining to sign the CSI forms until these concerns were sufficiently addressed. The documentation reflects that on the same day (May 1), Mr. Mayo signed the forms for the field executives based on the materials initially submitted by VHA. These materials did not include VHA’s white paper for senior executives that was subsequently prepared and circulated by Dr. Elnahal on May 4.

On May 23, 2023, in response to a discussion at an under secretaries meeting, Mr. Jacobs provided the Secretary with two memos describing the VBA proposals to pay CSIs to both senior executives in the field *and* at the central office. In response to the Secretary’s May 24 email with follow-up questions, Dr. Elnahal circulated a revised version of the VHA white paper on CSIs for field executives, but there was no mention of VACO executives in his email or the attached white paper. Shortly after this meeting, then Acting Deputy Secretary Kiyokawa asked Dr. Elnahal and Mr. Jacobs to “ensure your HR staff run these documents”—that is, the VHA white paper and VBA memos—by HRA/OSP and OGC “to make sure we are compliant with the statute.”

June 2023: HRA/OSP Reviewed VBA and VHA CSI Proposals

On June 1, Dr. Lee sent Ms. Grosso (and OGC, as discussed below) VBA’s two memoranda that described the basis for the 25 percent CSIs for their regional office and district directors and VACO senior executives. Ms. Grosso concurred with VBA’s proposals on June 6 without question or comment. CSEMO did not review the proposals at that time.

Ms. Bonjorni then provided the supporting documents for the VHA field executive CSIs (the white paper, memorandum, and signed 10017-A forms) to OGC. She informed OGC staff that CSEMO had cleared them and that Mr. Mayo had already signed the forms. There was no

¹¹⁹ The upper limit for pay for Title 38 employees is set at the compensation of the President, and for Title 5 employees, it is the compensation of the Vice President. VA Handbook 5007/59, Part IX, *Pay for VHA Physicians, Dentists, and Podiatrists*, p. IX-15; 5 C.F.R. § 530.201.

reference or information in these materials about providing CSIs to VACO executives in VHA.¹²⁰

July to September 2023: HRA/OSP Leaders Concurred with VBA and VHA Central Office Awards

VBA's Central Office CSI Awards

VBA's CSI packages were submitted to CSEMO for review on June 30, 2023. After reviewing VBA's CSI award form and white paper in July 2023, the CSEMO executive director, Carrie Johnson-Clark, told Mr. Mayo that the Secretary should be briefed because it appeared almost every SES official in VBA stood to receive a CSI. She further noted that she was "not confident in the justification provided." Ms. Johnson-Clark told OIG staff that she thought VBA's private sector benchmarking was inapplicable because federal government work is "totally different," offering that VBA should have used other federal agencies as comparators. Further, she was concerned that VBA used the same justification for all executives.

Mr. Mayo responded the next day that he signed the documents, writing, "I understand that the Secretary has been briefed by [Mr. Jacobs]. I briefed Ms. Grosso of details." He told investigators that he had relied on CSEMO as the technical reviewer and even discussed Ms. Johnson-Clark's concerns with Ms. Grosso, but he ultimately concurred despite those concerns because "we were being pushed from VBA that that's what they wanted to do, and that the Secretary had approved it. I was not in those meetings." He said he heard of the Secretary's approval from Ms. Grosso, who in turn said she heard of the Secretary's approval from Dr. Lee, the executive director of VBA's Office of Human Capital Services. Ms. Johnson-Clark corroborated this account, telling investigators that Mr. Mayo told her that VBA staff had discussed the proposal with the Secretary.

VHA Central Office CSI Awards

Similar concerns were raised during HRA/OSP's August 2023 review of the VHA CSI award form for VACO senior executives, which recommended 25 percent for a small subset of senior executives with 20 percent for the remainder. A CSEMO advisor to Ms. Johnson-Clark reviewed the package and called VHA's justification "weak," noting that VHA had provided no supporting materials other than the brief narrative on Form 10017-A. She communicated this to Ms. Grosso's chief of staff, Laura Eskenazi, who printed the spreadsheet VHA had attached to the form so that she could show Ms. Grosso the list of proposed recipients. Ms. Eskenazi testified that, while she typically concurs on executive pay packages when Mr. Mayo is on leave

¹²⁰ As discussed previously, VHA had been working on a VACO senior executive CSI proposal since March 2023. VHA did not submit the CSI packages for its VACO senior executives to HRA/OSP until August 2023.

(as he was at that time), she brought this request to Ms. Grosso because she was not comfortable signing the CSI package herself:

It didn't sit right with me. It didn't feel right and I said I was not going to sign that. And . . . I talked to Ms. Grosso. She listened to me and she said that, well, the Secretary and Dr. Elnahal really want this and she said that she would sign it, so she asked me to just have it set up for her to sign.

Ms. Eskenazi told investigators that she raised her concerns with Mr. Mayo as well, who also indicated that the under secretaries for health and benefits had discussed the matter with the Secretary and that the Secretary “wants this.”

Subsequent Increase in Amount of VHA Central Office Senior Executives' CSIs

In early September 2023, after the VHA central office package had been signed by Ms. Grosso, Ms. Johnson-Clark emailed Ms. Grosso seeking her concurrence on an increase in VHA's central office executive CSIs to 25 percent for all. The request included an email showing Dr. Elnahal's approval for the increase, a spreadsheet detailing the new award amounts for each executive, and an updated Form 10017-A. No additional justification or data were provided to support the increase. Nonetheless, Ms. Grosso concurred with this change ten minutes later without question or comment.

HRA/OSP Expressed Deference to Leaders and Noted Feeling Pressure to Approve the CSIs

In her interview with OIG staff, Ms. Grosso said that there was a lot of pressure to get these awards done quickly so, for her, it was a matter of getting them moved forward; she was “just a signature along the way.” She said that she did not know all the thinking within VHA and VBA concerning why every executive at VA's central office deserved a CSI but that she had respect for the under secretaries and therefore had no reason not to trust them when they sought these awards. Ms. Grosso also told OIG staff that, in hindsight, the CSI policy should not have allowed all SES officials to be part of one group and that, in future, there would be a need for a more structured approval process and to get cost and scope information up front.

VA leaders expected HRA/OSP to be more than a perfunctory signature along the way. Ms. Bradsher told investigators that she understood Ms. Grosso's role was to be “the overseer of the policy” for and to help implement CSIs. Similarly, Secretary McDonough and Mr. Kiyokawa told investigators they wanted HRA/OSP to ensure the new CSI authority was applied in compliance with the statute and policy and applied consistently across VA. Secretary McDonough told investigators that following the decision to recoup VACO senior executives' CSIs, Ms. Grosso told him she felt partly responsible for the issues around CSIs.

Other senior leaders in HRA/OSP told OIG investigators that pressure from requestors to concur with the awards hampered the office’s checking function. Mr. Mayo said there was an urgency around CSI awards stemming from efforts to retain the workforce and to use funds before the end of the fiscal year. Aside from there being a general perception that the Secretary and under secretaries supported these awards, OIG investigators also were told that pre-approvals from administration leaders on the VHA central office awards created further pressure. Specifically, the Form 10017-A had already been signed as *approved* by Under Secretary Elnahal when it was transmitted to HRA/OSP.¹²¹ This means that the concurrence process did not occur in the proper order. If they had followed the required procedure, the CSI form would have been signed by the recommending official (Dr. Lieberman), reviewed by CSEMO and, if Ms. Grosso or Mr. Mayo concurred, routed to the approving official (Dr. Elnahal) for review and signature.¹²²

Another senior executive reflected on this pressure and told OIG investigators, “There is always immense pressure from [human resources leaders in VBA and VHA],” which they referred to as “the vortex of pressure.” The senior executive stated further,

There has been such a bending towards appeasing the desires of the administrations . . . that it has cast a shadow on what I see as a necessary check and balance of a headquarters function. And when people who try to ask questions or raise concerns are just treated like they’re slowing it down, getting in the way, being a pain, not being customer friendly. At a certain point it becomes difficult, I think, to carry out that check and balance when the greater environment is oh, no, VBA needs this. Dr. Elnahal needs this. You know, the Secretary wants this.

Although this was not a focus of the OIG’s inquiry, the investigative team noted prior communications reflected there was tension between HRA/OSP and the human resources leaders in VA, VHA, and VBA on matters beyond those related to CSIs.¹²³

¹²¹ The CSEMO executive director, Ms. Johnson-Clark, told the OIG that this created additional pressure to concur. Likewise, Ms. Grosso told investigators that when she reviewed the VHA award form, it had already been signed by the deputy under secretary (Dr. Lieberman) and under secretary for health (Dr. Elnahal) and generally she did not question them.

¹²² OCHCO Bulletin, March 21, 2023, para 3.

¹²³ For example, in July 2022, shortly before the PACT Act was passed, Ms. Bonjorni was discussing Mr. Mayo’s objection to approving a third retention incentive for a VHA physician and stated in an email that “the big opportunity for us now is to define the policy (before CSEMO tries) for how we will implement PACT pay flexibilities for our executives. VBA and NCA agree that we should try to come up with a plan and tell CSEMO how it should work. This includes . . . using the Critical Skills Incentive, which does not have the restrictions that [recruitment, retention, and relocation incentives] do (as long as we can keep them from adding nonsense to policy).”

OGC Missed Opportunities to Identify Legal Issues Regarding CSIs until After They Were Paid

When questions about the propriety of CSIs for central office executives arose in mid-September 2023 (after most had been paid), Acting General Counsel Hipolit, Deputy General Counsel for Legal Operations Pope, and Senior Counsel to the General Counsel Michael Waldman reviewed the justifications VHA and VBA had provided for them, along with the PACT Act language on CSIs. Mr. Pope explained that, after this review, “OGC . . . recommended to the Secretary . . . [to] cancel them all.” Mr. Hipolit told the OIG this recommendation was due to concerns that they were not “legally justified” under the prevailing VA policies and statute.

In June 2023, a staff attorney in OGC’s Personnel Law Group had reviewed VHA’s documentation supporting the CSIs for medical center directors and VISN directors (the field executives’ package). Another staff attorney reviewed VBA’s proposals for both its senior executives in the field and at the central office. While they each signaled that they had certain “auditability” concerns, they ultimately concluded that the plans were legally sufficient. Senior attorneys had minimal involvement, and the staff attorneys’ review consisted of emailed comments with no required formal concurrence.

The OIG found that while OGC’s post-payment review in September had the benefit of hindsight and more complete information—such as the form supporting VHA’s CSIs for its central office senior executives—some of the issues the senior attorneys raised post-payment could have been flagged during OGC’s June review. Finally, the OIG found that the lack of any requirement for a review by more senior OGC attorneys with broader VA-wide perspectives of the CSI plans or packages before approval created a risk for the agency that VA’s implementation could conflict with the statute and VA’s policy.

Acting Deputy Secretary Kiyokawa Asked OGC to Review VHA and VBA Senior Executive CSI Plans

In early June 2023, Mr. Kiyokawa emailed Dr. Elnahal and Mr. Jacobs and requested that they provide their CSI proposals to HRA/OSP and OGC “*to make sure we are compliant with the statute.*” (emphasis added) Mr. Kiyokawa also followed up with an email to Mr. Hipolit asking him to “please ensure your OGC staff is helping VHA and VBA to form their CSI plans. I have asked both [under secretaries] to run their plans by OGC and HRA.” Mr. Hipolit told the OIG team that he did not understand this communication to be a directive, but simply a request that OGC be available “to the extent VHA and VBA need assistance [with their CSI plans].”

Mr. Hipolit forwarded Mr. Kiyokawa’s request to the chief counsel of the Personnel Law Group, stating, “FYI . . . I’m sure you are on top of this.” The chief counsel then emailed Ms. Bonjorni,

Dr. Lee, and Ms. Therit and offered “to advise and assist.” Ms. Bonjorni replied that she was “told last night we need to send the CSI info to you (*new requirement*).” (emphasis added)¹²⁴

By this point, the VHA field executives package had already been reviewed by CSEMO and HRA/OSP and approved by Dr. Elnahal. There is no legal review requirement in the CSI policy, and VHA had not requested one.¹²⁵ If Mr. Kiyokawa had not made the request, it is likely that OGC would not have assessed the plan.

OGC Staff Attorneys’ Review Found Plans Were Legally Sufficient

Two of OGC’s Personnel Law Group staff reviewed the CSI proposals in June 2023 pursuant to a standard of “legal sufficiency.” OGC leaders explained that this standard means that “the document [being reviewed] tells us what it’s intending to do” and that OGC attorneys are “looking to determine whether the [document] meets the requirements of the law” and is “consistent with the legal authorities.”

The VHA package was sent to OGC on June 2 and the VBA plans were forwarded on June 6, after the HRA/OSP review. A supervisory attorney in the Personnel Law Group who assigned these to the staff attorneys for review told the OIG investigative team that the CSI plan review request “means [they] need to scrub it to ensure that it’s consistent with the law, consistent with the policy,” and identify any “downstream impact” with laws other than the PACT Act.

VHA Plan for Field Executives Only

The materials VHA sent to OGC for review on June 2, 2023, consisted solely of the VHA field executives’ packages that had previously gone through HRA/OSP for concurrence. They authorized a flat 25 percent of basic pay for the CSI to all medical center directors and VISN directors. The documents included the two 10017-A forms, one for the medical center directors and another for the VISN directors (signed by Dr. Lieberman, Mr. Mayo, and Dr. Elnahal), the two page memorandum from the assistant under secretary for health for operations, a list of CSI recipients, and the CSEMO form documenting its technical review. The package also included VHA’s white paper justification for CSI awards to field executives. VHA did not include any information regarding the plan to also issue CSIs to its central office executives.¹²⁶ The narrative justification included on the two forms was identical, and, as noted previously, it was nearly the same as the one that VHA would later include on Form 10017-A for the VACO senior executives:

¹²⁴ Ms. Therit also noted in response that she was not aware that an OGC review was required.

¹²⁵ VA Notice 23-03; OCHCO Bulletin, March 21, 2023, para. 3.

¹²⁶ When interviewed by the OIG, the staff attorney reported not having seen the package for senior executives at VA’s central office and that OGC did not receive it. The OIG has not identified any evidence that it was submitted to OGC for review.

Due to the extreme factors that have taken place globally over the last 3 years, the job market has become much more competitive, resulting in a high demand of skills possessed by [sic] our experienced executive leadership teams. Their knowledge and skills are critical in supporting the mission of the VA by navigating the complexities of the rapidly changing VA Healthcare environment and providing the best care for our nation's veteran population.

On June 11, the staff attorney assigned to review the VHA CSI plan emailed Ms. Bonjorni, Dr. Lee, and others in VHA, HRA/OSP, and OGC (including the staff attorney assigned to review the VBA plans). They wrote in this email that they “reviewed the VHA documents” and had “[n]o legal concerns subject to the attached edits/comments to the white paper and memo.” The staff attorney’s “edits/comments” were primarily minor and not relevant to the OIG’s findings.¹²⁷ The one significant staff attorney comment was in the cover email and related to the stacking of incentives, in which they noted that VHA needed to document that they considered all compensation and “to continue to ensure the amounts being paid reflect what is needed for the retention so VHA can be in a good position to report [if necessary, on the use of funds].”

VBA Plans for Both Central Office and Field Executives

On June 6, 2023, Ms. Grosso forwarded VBA’s central office and field executive CSI plans to the deputy chief counsel of the Personnel Law Group after completing her own review and flagging no issues. The VBA CSI submission included the two memos in support of its plans—one for central office and another for field executives.¹²⁸ The review of the VBA plan was assigned to a different staff attorney than the one who examined the VHA CSI package. The two staff attorneys discussed the VHA and VBA packages, however, and “compared and contrasted notes and issues that we had found.”

VBA’s plan sought to award CSIs of 25 percent of basic pay to VBA central office executives “who are in good standing and meet all eligibility requirements.” The “minimum criteria” for issuance of a CSI was a fully successful performance rating and the absence of substantiated findings in any OIG or VA Office of Accountability and Whistleblower Protection investigations. The proposal estimated a budget impact of up to \$1,554,750 for the CSIs, based on a total of 37 central office executive positions spanning four different job series, ranging from \$40,250 to \$43,500 per executive.

¹²⁷ These comments and edits included that the package did not contain copies of the written employee service agreements, that documentation should make clear that the 25 percent is tied to “current basic pay,” and that the paperwork should refer to high demand/shortage “skills” rather than “occupations.”

¹²⁸ VBA did not provide the CSI form (10017-A) or a list of all proposed CSI recipients, as its forms had not yet been through HRA/OSP for processing, but the memorandum noted that VBA would “prepare a blanket 10017-A Critical Skills Incentive form along with the service agreement.”

The memo, as discussed in finding 1, stated that “VBACO Senior Executives are crucial leadership positions that have the responsibilities for directing strategy, policy, finance, and operations for the entire VBA enterprise” and the “roles are difficult to fill due to factors such as longstanding pay inequities relative to similar roles in the private sector.” The memorandum further asserted that “VBACO Senior Executives’ responsibilities are on par with those of chief executives in the private sector” but their compensation was “far below that of their counterparts in the private sector.” The memorandum also cited concerns about the percentage of executives eligible for retirement and vacancy rates.¹²⁹

On June 13, the staff attorney who reviewed the VBA plans sent a short cover email to Dr. Lee, Ms. Therit, Ms. Johnson-Clark, and the other staff attorney who reviewed the VHA package. The staff attorney stated in the cover email that they found “no legal concerns subject to the edits/comments in the attached.” The staff attorney’s “edits/comments” in the VBA memos were nearly identical to those the other staff attorney had sent to VHA. In the email, they noted the same concern about VBA being able to show that various retention and other compensation components for each individual were considered “to ensure the amounts being paid reflect what is needed for the retention so VBA can be in a good position to report.”¹³⁰ The staff attorney told OIG investigators that “to report” was a reference to the fact that “we do as an agency have an obligation to report everything that we pay out to Congress.”

Several of OGC’s Post-payment Concerns Could Have Been Identified as Significant Issues in the Prior June Review

The September post-payment review by Acting General Counsel Hipolit, Deputy General Counsel for Legal Operations Pope, and Senior Counsel to the General Counsel Waldman identified four primary concerns with the CSI proposals.¹³¹ Several of these concerns could have been flagged during the June review with information available at that time related to VBA’s plan to pay CSIs to central office executives.

First, Mr. Pope explained in an interview with OIG investigators that it was OGC’s determination that “the fact that they gave [a CSI] to every single [SES] was not consistent with policy.” Second, Mr. Waldman explained that he concluded that central office executives were “too large a group with a variety of different skills,” a view that was shared by Mr. Pope and

¹²⁹ See finding 1 for the OIG’s discussion of flaws with these substantive aspects of VBA’s justification. According to an OGC attorney involved in analyzing the CSI plans, during a legal sufficiency review, OGC attorneys “don’t question the justification so much as look [] whether the legal points have been hit.” The attorney went on to explain that OGC “doesn’t make the fiscal decisions” or verify whether the CSIs were justified and supported by having a high-demand skill and supporting market factors.

¹³⁰ As noted above, this recommendation appears in identical form in the OGC review of the VHA CSI package, which was completed before the VBA CSI package review.

¹³¹ The information identifying these four concerns was gleaned from email exchanges and confirmed through interviews with the OIG team.

Mr. Hipolit.¹³² Third, they questioned whether all VACO executive CSIs should have been authorized at the 25 percent of basic pay level. Fourth, the justifications VHA and VBA provided were too brief and general to support payment of CSIs to central office executives on the basis of a high-demand skill.

When the assigned staff attorney reviewed VBA's plan for central office executives in June, the related memorandum stated that VBA was, "authorizing a 25% CSI for Title 5 VBACO Senior Executives who are in good standing and meet all eligibility requirements."¹³³ It should have been apparent that they were intending to award the CSIs broadly, as all or nearly all executives would meet the minimal eligibility requirements that VBA detailed in its memo.¹³⁴ At the very least, the proposed inclusion of all senior executives at VACO should have prompted questions about the breadth of the group. Indeed, Mr. Kiyokawa observed when reviewing VBA's same memorandum in July 2023 that "very few employees would *not* meet [the] criteria." (emphasis added)

With respect to OGC's second concern that VACO executives were too diverse in their positions and duties to comprise a "group of employees," the memorandum VBA shared with the Personnel Law Group indicated that the group included nine different business lines, eight staff offices, and six distinct occupational series.¹³⁵ The Personnel Law Group, therefore, had the information it needed to raise the same concern OGC identified in September that VBA planned to authorize CSIs to all eligible executives as a group, even though the executives had diverse work from many different offices and spanned several occupational series. The staff attorney also did not question VBA's plan to use a single justification for all members of that group.¹³⁶

In addition, while the September OGC review highlighted concerns about applying the same market factors to all of the executives despite differences in skills and positions, the staff attorney did not question VBA's assertion in the plan that its central office senior executives, as a group, "are on par with those of chief executives in the private sector."

¹³² Mr. Hipolit told the OIG that with respect to VHA, "a medical center director does similar things no matter where they are . . . but the [central office], there's so many different things that they do, and you know, might require different specialties. So, I would think they would want to do . . . more of an individualized assessment." With respect to VBA central office executives, Mr. Pope noted that they were issued to over 30 senior executives "who had all different skills, and all different job categories, and presumably different market analysis with regards to each specific and individual position. There was no sort of individual analysis done as far as we know."

¹³³ The memorandum also projected a budgetary impact of up to \$1,554,750 for contemplated CSI payments to 37 eligible VBA central office executives.

¹³⁴ The criteria stated in the memorandum were that the executive had a fully successful performance rating for the most recent evaluation cycle and the absence of any negative findings from an OIG or VA Office of Accountability and Whistleblower Protection investigation.

¹³⁵ VA Notice 23-03, para. 3.

¹³⁶ The deputy chief counsel of the Personnel Law Group told the OIG of likely deferring to "VA leadership" on "who would be considered a proper group," suggesting that the two staff attorneys did not consider this issue in their June 2023 review.

VA Policy Did Not Require an OGC Review of CSI Plans

VA policy did not require OGC to review the two administrations' CSI implementation plans.¹³⁷ Instead, formal review and concurrence is required only with respect to directives, handbooks, notices, delegations, and a few other discrete categories of documents.¹³⁸ Consistent with VA policy, OGC provided a formal review and concurrence with respect to both the Secretary's December 2022 delegation of authority regarding CSIs and the CSI policy notice that was issued in February 2023 under VA Handbook 0999.¹³⁹ Prior to then Acting Deputy Secretary Kiyokawa's request in June 2023 for an OGC review, VHA and VBA had not sought out OGC's examination of their CSI plans for senior executives.

While Acting General Counsel Hipolit participated in the weekly under secretaries meeting and recalled that CSIs were discussed at various points, he did not have a formal role in reviewing the specifics of the plan. He did not recall receiving, and the OIG did not identify any response or comments from him on, the administrations' CSI plans. He explained that he viewed the under secretaries meeting as a place "for the Unders to discuss matters of importance to them with the Secretary" and described his role as passive—that is, one of answering legal questions that arose during the meeting and providing a legal perspective.

Mr. Hipolit recognized in his interview with the OIG team, however, that VA could benefit from OGC having a more active role in situations like this:

Since this is . . . a new authority, it might be more important for something like this to . . . run through OGC just to make sure . . . since it's in the early implementation stages to just make sure it's being done right.

Although the OIG recognizes that the concurrence process does not necessarily lead to the identification of all legal concerns and issues, a formal review and sign off from a more senior attorney with a broader legal perspective on organizational risk could have benefited VA and the administrations.

VA Did Not Leverage Its Governance Processes to Ensure Proper Risk Management of the New CSI Authority

In the wake of the PACT Act's broad grant of authority to VA to issue CSIs, certain VA policy decisions substantially increased the risk of improper or overzealous application. The two most significant were (1) the Secretary's delegation of his authority to the under secretaries to approve CSIs for senior executives and (2) HRA/OSP leaders expressly permitting CSIs to be awarded to

¹³⁷ The OIG did not identify any such policy in its review, and this conclusion is supported by testimony from OGC leaders and staff, who explained that OGC was not required to review the implementation of the CSI policy.

¹³⁸ VA Handbook 0999, *Enterprise Directives Management (EDM) Procedures*, August 1, 2019, paras. 2, 3.a.

¹³⁹ VA policy defines a concurrence as "an organization's official acceptance of the content presented in a document and recommendation that the document be approved for signature as written." VA Handbook 0999, para. 5.a.

groups of employees in the CSI policy notice.¹⁴⁰ Secretary McDonough appeared to acknowledge these risks when he engaged the under secretaries in discussions regarding CSI implementation. As he told OIG investigators,

I had . . . a concern throughout the course of the year since the enactment of the PACT Act that I wanted to make sure that we moved with care on all of [the workforce] authorities because I think that it's important that we maintain them over time . . . what I don't want to do is use them once and then lose them because of the controversy we generated with them.

In his interview with OIG investigators, Secretary McDonough stated that having assessed the circumstances with the benefit of hindsight, he now believes that VA's decisions relating to CSI payments and other pay, staffing, hiring, and retention matters should have been brought before the VA Operations Board and the VA Executive Board.¹⁴¹

The VA Operations Board is chaired by VA's deputy secretary and it addresses operational issues such as organizational changes, risk management, and tracking high-visibility issues. Its members include all principal deputies and their equivalents from VA administrations and staff offices.¹⁴² The VA Executive Board is chaired by the Secretary and serves as VA's top decision-making body, responsible for establishing strategic direction for the department and making key decisions regarding VA-wide strategy and policy. Its members include VA's deputy secretary, chief of staff, under secretaries, assistant secretaries, and other key officials.

Secretary McDonough elaborated that the benefit of involving these formal boards would be that “everybody with an equity sees all the decisions [and] even somebody without an equity but somebody who has to help execute sees the decision.”¹⁴³ When asked by OIG investigators about the fact that nearly all of the members of the VA Executive Board had individually participated in the decision-making process for CSIs, Secretary McDonough noted that he was concerned in

¹⁴⁰ VA Secretary, “Incentives for Critical Skills,” memorandum, December 20, 2022. The Secretary has since rescinded this delegation. VA Secretary, “Incentives for Critical Skills,” memorandum, September 27, 2023. VA expressly permitted group awards in its February 2023 policy notice. VA Notice 23-03, *PACT Act, Critical Skill Incentive Implementation*, February 17, 2023. OGC (the chief counsel of the Personnel Law Group) concurred on the policy.

¹⁴¹ Mr. Kiyokawa also told the OIG that CSIs should have been brought before the governance bodies.

¹⁴² VA Directive 214, *Enterprise Governance Structure and Process*, May 14, 2019.

¹⁴³ Secretary McDonough's view was shared by then Acting Deputy Secretary Guy Kiyokawa, who told investigators that in retrospect he believed that VA's implementation of CSIs would have benefited from being run through VA's formal governance structures. Mr. Kiyokawa also serves as the assistant secretary for enterprise integration. Among the duties of VA's Office of Enterprise Integration is responsibility for governance and enterprise risk management. Mr. Kiyokawa told investigators that VA's decision-making around the implementation did not involve the integration office and that had he not stepped into the role of acting deputy secretary on March 21, 2023, he “would not have even known about [CSIs].” Mr. Kiyokawa told investigators that the Office of Enterprise Integration should be involved in addressing significant topics such as CSI implementation “that involve more than one admin or staff office.”

particular that the OGC deputy general counsel and VA's CFO had not been involved. The Secretary further told OIG investigators that "the extent to which counsel and CFO both characterized to me that they were surprised [by the CSI payments to VACO SES employees] I think suggests that there [was] a problem" with the lack of predecisional involvement by these members of VA's formal governance bodies.

Led by Jon Rychalski, VA's CFO, the Office of Management is responsible for VA's financial management and it "promotes public confidence in the Department through stewardship and oversight of business activities that are consistent with national policy, law, and regulations."¹⁴⁴ In his interview with OIG investigators, Mr. Rychalski stated that he was not involved in decisions regarding the awarding of CSIs to VA employees. He told investigators that CSI payments to SES employees first came to his attention in August 2023 and that this initially did not strike him as unusual since there are SES employees serving as VHA clinicians in other roles that could reasonably be eligible for CSI payments. However, a few weeks later he learned that some issues had arisen with CSI payments not being made to SES employees who were expecting them. He told investigators that while reviewing that matter, he learned that payments had been made to approximately 367 senior executive employees, which triggered him to conclude, "there's no way this is right because that's a lot of money." This prompted him to speak with the deputy secretary and, in turn, the Secretary, which led to the series of meetings with senior VA leaders resulting in the decision to cancel the awards.

OIG investigators' analyses identified discrete instances of involvement by the Office of Management in the planning and implementation of VA's strategy for paying CSIs. For example, email documentation reflects that HRA/OSP leaders and VHA's chief of human capital management, Jessica Bonjorni, engaged the Office of Management in early 2023 regarding technical challenges with processing the new incentives through VA's payroll systems. This limited interaction on CSIs before they were paid supports Mr. Rychalski's testimony that he had no substantive involvement in the decisions being made about VACO senior executive recipients and was unaware of the scope and extent of the CSI payments before September 2023. The OIG also did not identify that a specific role had been defined for the CFO or the Office of Management by the VA policy guidance establishing procedures around CSI review and approval for VACO senior executives.¹⁴⁵

¹⁴⁴ "Management" (web page), VA Administrations and Offices, accessed December 5, 2023, <https://department.va.gov/administrations-and-offices/management>.

¹⁴⁵ CSI policy does require that the approving official verify that funding is available before approving a CSI. OCHCO Bulletin, March 21, 2023, para. 3.c. However, VBA and VHA each have chief financial officers (administration CFOs) who are accountable to each respective under secretary and have no reporting relationship to VA's CFO. The administration CFOs were each tasked with verifying the availability of funding for the CSIs, which was something they could accomplish within their respective organizations without any need to confer with Mr. Rychalski or to seek Office of Management approval.

Though there is no certainty that involving VA's CFO in the predecisional process would have prevented improper CSI payments, it was Mr. Rychalski who raised concerns in September 2023 after learning of the payments. The alarm he raised set in motion the events that caused Secretary McDonough to assemble senior leaders across VA to fully examine the payments. Through several days of discussion, Secretary McDonough, Mr. Rychalski, and other senior leaders came to understand for the first time that *all* of VHA and VBA's central office SES employees had been approved to receive the maximum possible lump sum bonus (25 percent of basic pay), a fact that Mr. Rychalski said left him "speechless" and convinced that VA lacked internal controls to sufficiently provide assurance that its CSI awards could be made in compliance with the intent of the legislation. Secretary McDonough expressed a similar reaction to OIG investigators, noting that, notwithstanding the breadth of the statutory authority that he has "a hard time reading the statute and concluding that every senior executive in central office qualifies for a CSI."

Secretary McDonough told OIG investigators that in spring 2023 (when he was learning of the CSI plans VHA and VBA were contemplating), he became concerned about whether the administrations were thinking through the broader implications of the CSI decisions and whether they were considering the potential for creating unintended consequences. He told OIG investigators that he took action by slowing the process down to ask questions. The Secretary's testimony is supported by documentation showing that in May 2023 he was asking Dr. Elnahal and Mr. Jacobs to provide information about their administration's costs and data on the number of individuals affected by the CSI decisions.

Office of Management and Budget risk management guidance emphasizes that the reputation risk of fraud and abuse "can damage the perception of an agency, impact employee morale, and create distrust by the public, further hindering their efforts to provide services to the public."¹⁴⁶ The proposed use of the newly created statutory authority to award all CSIs to senior executives at VACO should have triggered a risk analysis by VA's governing bodies tasked with such assessments. Missteps in carrying out that new authority and failing to comply with congressional intent related to the PACT Act clearly had the potential to damage the confidence placed in VA by veterans, employees, taxpayers, and members of Congress.

¹⁴⁶ Office of Management and Budget Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.

Finding 2 Conclusion

The OIG found that VHA did not disclose to the Secretary and other central office executives the extent of its plan to pay CSIs to VACO senior executives before their processing and payment, despite many opportunities and requests to address concerns about the approach and budgetary impact.

In addition, there were several weaknesses in internal controls that contributed to VA's failure to prevent the improper CSIs from being awarded that include the following:

- HRA/OSP's assistant secretary and her deputy appeared unwilling to challenge senior leaders or question whether CSI plans were appropriate even when staff raised concerns about their propriety.
- Policies did not require OGC to review the CSI plans or packages and the acting deputy secretary's request for a review did not trigger a rigorous vetting (or engagement by more senior-level OGC attorneys), despite legal and reputational risks.
- VA did not leverage an available governance process in order to ensure that all stakeholders were provided an opportunity to discuss together their concerns and risks.

The intent of the CSIs was to help VA recruit and retain personnel with skills that were in high demand or at a shortage in anticipation of a surge in workload from the PACT Act implementation. There was not a clear process of checks and balances to ensure the new authority to award the CSIs was properly implemented. Deference to the perceived wishes of the Secretary and the administration leaders and their human resources officials appeared to supersede the regard needed to ensure the required criteria for awarding CSIs were being met. The recommendations that follow are meant to help VA preempt such missteps going forward.

Recommendations 5–8

5. The Secretary of Veterans Affairs directs the assistant secretary for Human Resources and Administration/Operations, Security, and Preparedness to revise policies regarding critical skills incentives to ensure that recommending and approving officials are accountable for their determinations that each CSI recipient meets all established criteria, and that the roles and responsibilities of a technical reviewer and human resources reviewer are clearly established.
6. The Secretary of Veterans Affairs delegates to a responsible official the development of a formal concurrence process to provide reasonable assurance that a senior attorney within the Office of General Counsel (with sufficient experience and expertise to consider all relevant facts and perspectives) is accountable for providing legal advice before and during the

implementation of any new authority that carries the potential for significant reputational or financial harm to VA.

7. The Secretary of Veterans Affairs delegates to a responsible official a review of existing governance board policies to determine whether additional guidance is needed to define their role in reviewing proposals for implementing new pay authorities affecting senior executive compensation.
8. The Secretary of Veterans Affairs takes whatever administrative actions, if any, he deems appropriate related to personnel involved in the process for granting critical skill incentives for VA central office executives based on the findings in this report.

Conclusion

In March and May 2022, VA expressed concerns to Congress about quickly increasing staffing levels to handle the workload anticipated from the influx of millions more veterans made eligible for VA health care, benefits, and other services should the PACT Act become law.¹⁴⁷ In response, Congress added several workforce provisions requested by VA to the bill, including critical skill incentives, which allowed VA to pay incentives of up to 25 percent of basic pay per year to recruit and retain employees who possessed skills in high demand or at a shortage if such skills were “directly related” to their duties and responsibilities and employment of the individual served a “critical mission-related need.”¹⁴⁸ Per VA’s CSI policy, shortage skills had to be on a pre-approved shortage list, and high-demand skills were based on market factors.

After the PACT Act became law, VA developed policies, procedures, and a strategy for implementing CSIs as quickly as possible, as the authority would expire in five years. VHA’s leaders developed an approach to use CSIs to address concerns regarding pay disparity between VA and private sector positions for medical center directors and VISN directors (their field executives), announcing the awards in March 2023. Next, VHA began working on a way to pay CSIs to their senior executives in the central office as well. They shared their approach with VBA, whose leaders then put together their own proposals to do the same.

The justification offered for each of these proposals was an assertion that senior executives at VHA and VBA possessed high-demand skills, but without appropriate detail or support. The Secretary and then acting deputy secretary were not provided information about VHA’s intent and strategy to pay CSIs to all VACO senior executives when they asked about the CSI plans and related costs, impacts, and justifications. The Secretary slowed the process for several months by seeking answers, but the CSIs were eventually awarded as the administrations planned.

When news of the over \$20 million in payments to field and central office executives reached the Secretary in mid-September, he was surprised by both the total dollar amount and the number of executives receiving them (over 300). After gathering more information and discussing options, the Secretary decided to cancel and recoup the approximately \$9.9 million in awards paid to 174 VACO senior executives.

The OIG’s investigation found that the CSIs paid to VACO senior executives at VHA and VBA were inconsistent with the statute authorizing CSIs and VA’s policies and procedures. OIG staff constructed a timeline of events and actions that led to the improper award of these CSIs and

¹⁴⁷ Denis McDonough, statement before the SVAC; Gina Grosso, statement before the SVAC.

¹⁴⁸ PACT Act § 909(d), 38 U.S.C. § 706(d).

their subsequent cancellation. The OIG has determined that several failures contributed to these results. Among them were the following determinations highlighted throughout the report:

- VHA and VBA leaders did not ensure that CSI requests complied with law and VA policy;
- VHA leaders were not fully transparent with the Secretary and others regarding CSI plans for VACO senior executives, and VBA's plans did not clearly indicate that they intended to pay *all* SES;
- HRA/OSP leaders concurred with plans and award packages despite concerns they or their staff had about the plans out of excessive deference to VA's under secretaries and other senior leaders and perceived pressure to sign off on them;
- OGC missed opportunities to identify and escalate potential risks and noncompliance with VA policy or congressional intent based on available information prior to payment; and
- VA leaders did not require CSI proposals to undergo a robust risk-based review by leveraging existing governance groups and their processes.

VA took prompt steps to correct course by canceling the payments and ordering employees to repay the amounts. This recoupment effort has had adverse consequences for VA, which are still unfolding. According to several OIG interviews, VA's recovery of the CSIs imposed a financial hardship on some employees, lowered morale, and even contributed to decisions to retire—having the opposite effect of the retention incentives.

In addition to cancellation and recoupment, the Secretary rescinded his delegation of authority that had allowed the under secretaries to approve their own senior executives' awards. The OIG has recommended that VA implement additional policy and process changes to enhance controls and reduce the risk to VA that similar failures will occur in the future.

It is important to state in closing that in no way is the OIG suggesting that VACO senior executives are not tremendously valued and important to the success of VA. However, the blanket award of CSIs to all VHA and VBA central office executives at the highest allowable percentage without sufficient justification was inconsistent with both the PACT Act and VA policy.

Recommendations

1. The Secretary of Veterans Affairs directs the assistant secretary for Human Resources and Administration/Operations, Security, and Preparedness should update Policy Notice 23-03 and Form 10017-A to address the deficiencies noted in this report, including the overly broad definitions of groups, failure to provide adequate support for high-demand skill CSIs, and lack of needs analyses for recruitment and retention.
2. The Secretary of Veterans Affairs designates a responsible official to review the critical skill incentives that have been paid to any member of the Senior Executive Service (SES), SES-equivalent, or other Senior Leader (including Veterans Health Administration's medical center directors and Veterans Integrated Service Network directors and the Veterans Benefits Administration's regional office and district directors) for the deficiencies identified in this report and to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed.
3. The Secretary of Veterans Affairs designates a responsible official to review any critical skill incentive payments based on a high-demand skills justification made to all nonexecutive groups of employees, if any, to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed.
4. In consultation with the Office of General Counsel's Ethics Specialty Team, the Secretary of Veterans Affairs or his designee takes appropriate action to determine whether individuals involved in the decision-making process for awarding CSIs had any actual or apparent conflicts of interest and develop a process to ensure all decision-makers are free from conflicts when awarding future incentives.
5. The Secretary of Veterans Affairs directs the assistant secretary for Human Resources and Administration/Operations, Security, and Preparedness to revise policies regarding critical skills incentives to ensure that recommending and approving officials are accountable for their determinations that each CSI recipient meets all established criteria, and that the roles and responsibilities of a technical reviewer and human resources reviewer are clearly established.
6. The Secretary of Veterans Affairs delegates to a responsible official the development of a formal concurrence process to provide reasonable assurance that a senior attorney within the Office of General Counsel (with sufficient experience and expertise to consider all relevant facts and perspectives) is accountable for providing legal advice before and during the implementation of any new authority that carries the potential for significant reputational or financial harm to VA.
7. The Secretary of Veterans Affairs delegates to a responsible official a review of existing governance board policies to determine whether additional guidance is needed to define their

role in reviewing proposals for implementing new pay authorities affecting senior executive compensation.

8. The Secretary of Veterans Affairs takes whatever administrative actions, if any, he deems appropriate related to personnel involved in the process for granting critical skill incentives for VA central office executives based on the findings in this report.

VA Comments and OIG Response

VA reviewed the draft report and concurred with the OIG’s two findings and eight recommendations. The Secretary’s response stated that “VA intends to learn from OIG’s findings to execute on these important authorities to better effect for Veterans, and consistent with Congressional intent, VA policy, and best management practices.” Moreover, VA “appreciates and acknowledges [the OIG’s] findings that better documentation and stronger governance should have been applied to the implementation of these important new incentive authorities.” VA’s full response is published as appendix B.

The OIG confirms that VA has provided acceptable action plans and completion timelines in response to the recommendations. With respect to the responses to recommendations 1, 2, and 3, the OIG generally does not “coordinate” with VA on policy, management, or other determinations and outcomes. However, consistent with its role as an independent oversight entity, the OIG will monitor these and all other recommendations until sufficient documentation has been received to close them as implemented.

VA also included an attachment with several pages of comments (as originally formatted), most of which were presented in two tables that list specific OIG statements and suggested VA revisions. VA did not provide additional evidence in support of its proposed revisions. The OIG has considered each of these requested changes and responds to the substantive points below.

VA’s short narrative comments (as well as corresponding edits in the tables that followed) focused on three main points. Two of these pertain to facts VA felt should be stated more clearly related to the VHA approval process—specifically, (1) that VHA did not provide VACO CSI information to the acting deputy secretary in May because the package was not yet finalized and made available to Dr. Elnahal, and (2) at the time the August concurrence was being sought on the package, Dr. Elnahal requested his staff “obtain the approval” in his absence from the Secretary’s office, but this was not done due to a consequence of “timing, miscommunication, and inadvertence.”¹⁴⁹

The OIG notes that these both relate to the fact that the under secretary for health did not provide information about the CSIs for VACO senior executives in VHA to the Secretary before the awards were processed and paid. The draft report reviewed by VA accurately reflects the sequencing of events, and the OIG does not agree that further clarification is warranted based on the information provided. VA’s emphasis on the lack of finalization is misplaced. The evidence shows that as early as April 2023, VHA conveyed its intention to provide VACO senior executives with CSIs to Secretary McDonough and the other under secretaries. It was this communication that prompted additional questions from the Secretary concerning the scope and

¹⁴⁹ VA’s general comments refer to his staff obtaining “approval,” but the proposed edits state Dr. Elnahal requested the Secretary’s office “be made aware” of the VACO CSIs. The OIG language is consistent with the latter.

costs of what was being proposed. Indeed, in the May 24, 2023, email thread cited in VA’s own response to this report, Ms. Bonjorni’s comment that “We do have the costs prepared already on the initial plan for VHACO execs” can fairly be read as responsive to Secretary McDonough’s question in the same email thread, seeking “the cost of this to each Administration.” By failing to disclose the extent of its plan to pay VACO senior executives, VHA failed to disclose more than half the anticipated cost. In contrast, VBA’s proposal included the costs of both central office and field executives. VBA’s proposal clearly had not been finalized as reflected in an email Under Secretary for Benefits Jacobs shared with the Secretary, Dr. Elnahal, and others about the proposed plans, “I am not yet personally convinced about the [central office] element, but I wanted to share what the VBA team has prepared”

VA’s proposed edits to this report also were not issues raised in Dr. Elnahal’s sworn testimony in his interviews with OIG investigators. On the three occasions that the OIG interviewed Dr. Elnahal (the last one at his request), he did not mention—in response to questions about why he did not provide information about the VACO CSIs at any time in May, June, or July—either of the reasons that VA has now suggested in its response: the prioritization of the field executives’ CSIs or that the plan had not been finalized. Instead, he claimed that he did not provide this information because he was unaware at the time of how substantial the costs were and of how many executives VHA employed at the central office.

The operative fact remains that VHA pursued these incentives for VACO executives but did not include their projected costs after being asked for them or state that it was engaged in the two-step implementation for field and VACO leaders described in VA’s response. VA also proposed a related edit to avoid characterizing this as a lack of transparency. The OIG disagrees and declines to adopt VA’s edit. And although the OIG already included details regarding Dr. Elnahal’s acknowledgement that he needed to make the Secretary aware of VACO CSIs, the OIG did make an edit to the executive summary to highlight that information (see page ix).

VA’s third main point—contained in the comments numbered 13, 14, 17, 21, and 22 in the tables below—seeks to distinguish the CSIs as a means to “close skill-gaps” rather than for recruitment or retention. Although the OIG appreciates the importance of identifying the shortage or high-demand *skill* that the individual CSI recipient possesses, it is still performed in connection with recruiting or retaining these individuals. There is ample support, including that the authorizing provision for CSIs in the PACT Act was codified under the subheading, “Additional authority relating to recruitment and retention of personnel.”¹⁵⁰

Below are the detailed comments that VA provided in table format, along with the OIG’s responses. Page numbers that have changed in the final report formatting from the draft are marked accordingly in brackets. In addition, the OIG has assigned numbers below to each of the

¹⁵⁰ 38 U.S.C. § 706(d)(1).

comments appearing in VA’s response tables for ease of reference. The original tables in VA’s response are contained in appendix B.

OIG Response to Table 1 from VA Comments

Comment No.	Page	VA Comments: Current <u>Suggested</u> Language ¹⁵¹	VA OIG Response
1	iv	“In response, Dr. Elnahal did not disclose to the Secretary the plan for VHA central office executives, <u>which had yet to be finalized</u> , but rather provided information solely on the CSIs for field executives.”	See narrative above this table. No change.
2	v	“The effect of these requests was to slow down (or pause) the administrations’ efforts to execute their CSI plans for senior executives.” <u>In August, VHA sought to move forward with its CSIs for senior executives in VACO. VHA disclosed its specific plans and awards for VACO senior executives to HRA for approval. Dr. Elnahal also requested that the Secretary’s office be made aware of the VACO CSIs, but this did not occur due to miscommunication among senior VHA leaders.”</u>	The paragraph ending with the quoted sentence relates to May thru mid-July 2023 (not August). And although the report details that Dr. Elnahal requested that his staff inform the Secretary of the proposed CSIs on August 23 (see, e.g., page 34 and accompanying footnote 112), an edit was made to the executive summary to address the proposed edits (see page ix).
3	viii	“But when the Secretary requested that Dr. Elnahal provide information about the administrations’ plans in May, the undersecretary <u>Under Secretary</u> only provided a ‘justification paper’ (white paper) regarding the proposed CSIs to field senior executives. Significantly, . . . <u>because the field CSIs had been prioritized and the justification paper for the VACO CSIs had not been finalized. Significantly. . .</u> ”	The OIG follows the <i>Chicago Manual of Style</i> and not the US Government Printing Office style manual. Accordingly, the OIG does not capitalize titles (with the exception of VA Secretary and when it directly precedes the name). The second proposed edit has been addressed in the narrative above this table.
4	ix	“and he had not opened each spreadsheet tab to see the full list.” <u>In August, VHA disclosed its specific plans and awards for VACO senior executives to HRA as part of the concurrence process. While out of the office, Dr. Elnahal also requested that senior VHA leaders obtain the</u>	This edit has been addressed in response to comment 2 to highlight it in the summary.

¹⁵¹ The tracked changes reflect VA’s proposed edits to the OIG’s text.

Comment No.	Page	VA Comments: Current <u>Suggested</u> Language ¹⁵¹	VA OIG Response
		<u>Secretary’s office approval before going forward with the VACO CSIs. However, this did not occur due to miscommunication among senior VHA leaders.”</u>	
5	10 [11]	<u>Suggest adding the following: “August 23: Dr. Elnahal, while out of office, asks his staff to confirm that the Secretary was aware and had cleared moving forward with the CSI package for VACO executives. On August 25, Dr. Elnahal believes that this approval has occurred due to miscommunication among senior VA leaders.”</u>	This timeline figure focuses on high-level events. This information is contained elsewhere in the executive summary and body of the report.
6	10 [11]	“August 26: VHA seeks HRA concurrence on the previously undisclosed request to pay CSIs to VACO executives at 20 and 25 percent, which Dr. Elnahal already approved. HRA concurs on August 28.”	This edit has not been made because the evidence supports that there was no disclosure to the Secretary of the plan to pay all VACO executives CSIs prior to payment. However, in consideration of the comment, we have reworded the entry for clarity.
7	32 [33]	“despite VHA having details and cost estimates on VACO senior executive CSIs prepared in early April.” <u>“as the justification and CSI package for VACO executives had not yet been finalized.”</u>	The language VA is seeking to delete is well supported in the report. The OIG declines to insert the suggested language for the reasons discussed above the table.
8	32 [33, fn. 111]	Footnote 113: “... along with overall costs.” <u>“... along with overall costs. However, because the planned priority for VHA was the field senior executive CSIs, the supporting package for VACO senior executive CSIs was not finalized until August.”</u>	The OIG declines to insert the suggested language for the reasons discussed above the table.
9	53 [54]	“VHA leaders were <u>did</u> not fully transparent with <u>provide information to</u> the Secretary and others regarding CSI plans for VACO senior executives, and VBA’s plans did not clearly indicate that they intended to pay all SES.”	The sentence as drafted is accurate, so no change was made. The OIG stands by its characterization.

OIG Response to Table 2 from VA Comments

Comment No.	Page	VA Comments: Current Language <u>Suggested Language</u>	VA OIG Response
10	iv	“...VHA’s chief human capital management officer <u>executive</u> , Jessica Bonjorni,...”	The OIG has made this revision and other changes to titles proposed by VA (even if inconsistent with other documentation).
11	iv and 50 [iv-v and 51]	“...by Human Resources <u>and</u> Administration/Operations, Security, and Preparedness...?” <u>...”</u>	The OIG has added the “and” in the two places where it was missing but is not removing the comma per the Functional Organization Manual and other sources.
12	v	“In addition, two senior executives retired from VBA as a direct result, and another VBA official who retired in December told investigators that although he had already planned to retire soon, the recruitment made his decision easier.” ¹ <u>¹The two senior executives who retired from VBA have told us that the CSIs did not play a role in their retirement decision. We believe that VBA witnesses may have speculated that the CSIs decision caused the two retirements during their OIG interviews, but this speculation was incorrect.</u>	Despite any statements that may have been made to VA, the OIG has evidence to support the information in this report (direct interviews with two of the three retirees and multiple supporting sources, as well as credible sworn testimony regarding the third retiree from witnesses in a position to have personal knowledge). Accordingly, no change will be made to the text.
13	v	“As stated above, CSIs were authorized to help VA recruit <u>close skill-gaps in shortage</u> and retain employees <u>high demand occupations</u> in anticipation of new demands related to the PACT Act.” ² <u>² VA recommends replacing language regarding “recruitment and retention” with “skills-based”. CSIs are intended to close the gap in occupations where there is a shortage of or high demand for mission-related skills. This authority is separate and distinct from a recruitment or retention incentives and should not be used interchangeably as the criteria in regulation and policy differs.</u>	This comment is addressed in the narrative above the table.
14	vi	“The amounts awarded were determined without considering what was needed for <u>retention.</u> ” <u>to close the skills gap.</u> ”	This comment is addressed in the narrative above this table.

Comment No.	Page	VA Comments: Current Language <u>Suggested Language</u>	VA OIG Response
15	vii and 27 [28]	<p>“In fact, Mr. Jacobs told OIG investigators that VBA’s ‘retention numbers are better than the six-year average’ despite increasing workloads, which undercuts the proposed need for such a broad award of CSIs for retention.”</p> <p>We recommend deleting in both instances. References to VBA’s retention numbers being “better than the six-year average” were regarding the entire VBA workforce and not exclusive to VBA VACO executives. As such, it is largely irrelevant to (and doesn’t undercut) the need for VBA VACO CSIs.</p>	The OIG disagrees with VA’s comment that this information is irrelevant and notes that VA has not disputed the accuracy of the information provided by VBA Under Secretary Jacobs in the course of this investigation.
16	x	<p>“...collectively – discussions that also would have included the Office of Management and OGC’s deputy eounsel.” <u>Deputy General Counsel...</u></p>	The OIG has revised the title and made style-conforming edits.
17	1	<p>“Congress authorized VA to issue these incentives to improve recruiting and retention<u>assist VA in closing mission-critical skills gaps</u> for positions that require individuals to possess skills in high demand or at a shortage.”</p>	This comment is addressed in the narrative above the table.
18	4	<p>Footnote: “VA Notice 23-03, para. 4.a. The policy does not define what is meant by an <u>“references that VA Form 10017-A contains the approved” list shortage occupation lists.</u>”</p>	This proposed edit is not consistent with the text of the policy, which states, “The shortage skill must be listed on an approved shortage list prior to the effective date of the authorization.” The policy does not define “approved.” It then indicates that recommending officials have to <i>identify</i> on Form 10017-A which list they are using. The form does not specify the approved shortage lists as VA suggests.
19	5	<p>“The chief<u>Executive Director</u> of VBA’s Office of Human Capital Services, Dr. Aaron Lee...<u>...</u>”</p>	The OIG has made the title revision and made style-conforming edits.
20	11 [12]	<p>“In addition, according to witnesses the OIG team interviewed, two individuals retired from VBA because of the CSI</p>	See above response to comment 12.

Comment No.	Page	VA Comments: Current Language <u>Suggested Language</u>	VA OIG Response
		<p>recoupment. A third a VBA official told investigators . . .”²</p> <p>³ <u>As noted in footnote 2 [see comment 13] above, the two individuals who retired have stated that the CSI decision did not play any role in their retirement decision.</u></p>	
21	12 [13]	<p>“CSIs were authorized to help VA recruit and retain employees<u>close mission-critical skills gaps</u> in anticipation of new demands related to the PACT Act.”</p>	This comment is addressed in the narrative above the table.
22	13	<p>“Consistent with this purpose, as VA sought to implement the CSI authority for <i>nonexecutives</i>, human resources staff gathered and analyzed data to identify<u>close skill-gaps in</u> shortage skills and market factors<u>high demand occupations</u> suggesting that an incentive was needed.”</p>	This comment is addressed in the narrative above the table.
23	18 [19]	<p>“...“VHA’s chief human capital management officer<u>executive</u>, Ms. Bonjorni,...”</p>	The OIG has made this revision.
24	21 [22]	<p>“...“(the chiefs<u>senior executives</u> of their respective offices of human capital services in VHA and VBA) ...”</p>	The proposed edit was made with a further revision noting these were the “lead” senior executives.
25	27 [28]	<p>“That suggests, however, that their skills are<u>in some cases might be</u> so specific to VBA that they would not translate to equivalent senior executive roles in a private company.”⁴</p> <p>⁴ <u>Although the knowledge and experience of VBACO executives may be unique, their skills in many cases may translate directly into those of a CEO. For example, Education Service oversees the administration of \$10.8 billion in education benefits, Loan Guarantee oversees \$144.6 billion on home loans, and Insurance Service is the nation’s 13th largest life insurance company, with \$1.275 trillion in coverage. The scope, scale, and complexity of operating many of VBA’s operations is often equivalent</u></p>	In response to VA's comments an edit has been made from “would not translate” to “may not translate.” No evidence was provided to demonstrate that any of the VBA SES were being considered for a CEO position in a private company or that any had recently left to become a CEO. In addition, VA did not provide data sufficient for the OIG to independently validate the remainder of VA's contentions, and therefore cannot incorporate the additional suggestion into the body of the report.

Comment No.	Page	VA Comments: Current Language <u>Suggested Language</u>	VA OIG Response
		<u>to what CEOs do or, in some cases, bigger and more challenging.</u>	
26	38 [39]	“Secretary’s approval from VBA’s chief human capital officer, ” <u>Executive Director, Office of Human Capital Services...</u> ”	The OIG made the proposed edit to the title and has made style-conforming edits.
27	48 [48-49]	“. . . in the decision-making process for CSIs, Secretary McDonough noted that he was concerned in particular that the deputy counsel <u>OGC Deputy General Counsel</u> and VA’s CFO had not been involved.”	The OIG made the proposed edit to the title and has made style-conforming edits.

Appendix A: Scope and Methodology

Scope

The OIG Office of Audits and Evaluations (OAE) initiated a review of CSIs for VACO executives on September 28, 2023, and transitioned the project to the Office of Special Reviews (OSR) on October 11, 2023, to open an administrative investigation.¹⁵² OAE's earlier work was integrated into the investigation, and the audit team continued to work alongside OSR staff through the completion of its investigation. The scope of the investigation included an analysis of the statutory authorization for CSIs, as well as VA's policies, procedures, and internal controls governing their implementation. The OIG also examined whether VA established appropriate criteria for the payment of CSIs and whether they were met. The investigation also scrutinized the rationale for the CSI payments and the series of decisions by individuals accountable for implementing the incentives. The team received information regarding the impact of the VA Secretary's decision to seek recoupment from the affected employees, but a detailed review of the recoupment process was outside the scope of this investigation as it was ongoing at the time the investigative work was completed for this report.

Methodology

To accomplish the objectives of this review, the team interviewed 46 individuals, some more than once, in multiple offices across VA, VHA, VBA, and NCA. The team also researched relevant federal law and VA policies and guidance. The OIG obtained a substantial volume of electronically stored information, including emails and Microsoft Teams chats and collected other VA documents and data relating to CSIs. These included a CSI dashboard created by OCHCO and documentation from the Veterans Affairs Integrated Enterprise Workflow Solution (VIEWS) system regarding the development and implementation of CSI-related VA policies.

The team conducted extensive document analyses, including searches of nearly 1 million emails, and more than 12,000 Microsoft Teams conversations and meeting transcripts. The team also reviewed records obtained from VA officials including CSI forms and submissions, Office of General Counsel materials, and other materials.

Among those interviewed were VA Secretary Denis McDonough, Deputy Secretary Tanya Bradsher (chief of staff at the time of the awards), Assistant Secretary for the Office of Enterprise Integration Guy Kiyokawa (acting deputy secretary at the time of the awards), Under Secretary for Health Shereef Elnahal, Under Secretary for Benefits Joshua Jacobs, Deputy Under Secretary for Health Steven Lieberman, Principal Deputy Under Secretary for Benefits Michael Frueh, then Assistant Secretary for Human Resources and Administration/Operations, Security,

¹⁵² The Office of Special Reviews conducts administrative investigations and other reviews involving allegations of misconduct or gross mismanagement that implicate senior VA officials or significantly affect VA programs and offices.

and Preparedness Gina Grosso, and Principal Deputy Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness Jeffrey Mayo. The OIG team also interviewed many current senior employees at VA involved in the planning, implementation, or cancellation of CSI payments.

Scope Limitation

The OIG did not conduct a detailed review of the award of CSIs to *field executives* at VHA and VBA. In addition, the OIG did not review *nonexecutive* CSIs except to identify general approach and magnitude. And as previously stated, the ongoing recoupment process was outside the scope of this investigation.

During this investigation, the OIG identified two discrete instances of potential senior leader misconduct relating to the improper electronic transmission of sensitive personal information outside of the VA network. One senior VHA official sent the list of CSI recipients and amounts to his university-issued email account. Similarly, a senior VBA official sent an email to her personal Hotmail account, with an attached draft of CSI justifications for multiple VBA executives. Because these matters do not relate to the issuance or cancellation of CSIs and were otherwise outside the scope of this investigation, the OIG does not address them in this report. Instead, because both circumstances appear to be inconsistent with VA policies respecting the protection of sensitive personal information, the OIG referred these matters to the VA Office of Accountability and Whistleblower Protection, which has the authority to receive and investigate allegations of senior VA leader misconduct.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Investigations*.

Appendix B: VA Management Comments

Department of Veterans Affairs Memorandum

Date: April 26, 2024

From: Secretary (00)

Subj: Office of Inspector General Draft Report - VA Improperly Awarded \$10.8 Million in Incentives to Central Office Senior Executives (VIEWS 11686758)

To: Deputy Assistant Inspector General for Special Reviews (56)

1. Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report: VA Improperly Awarded \$10.8 Million in Incentives to Central Office Senior Executives. The Department of Veterans Affairs (VA) concurs with the recommendations, and the attachment provides comments on the draft report as well as action plans and completion timelines for each recommendation. VA intends to learn from OIG's findings to execute on these important authorities to better effect for Veterans, and consistent with Congressional intent, VA policy, and best management practices.

2. Questions regarding the contents of this memorandum may be directed to Michael Waldman, Special Counsel, at [redacted].

(Original signed by:)

Denis McDonough

Attachment

Attachment

**Comments of Department of Veterans Affairs
on the OIG Draft Report Addressing
Incentives to Central Office Senior Executives**

The Department of Veterans Affairs (VA) appreciates and acknowledges the OIG draft reports' findings that better documentation and stronger governance should have been applied to the implementation of these important new incentive authorities. Along with concurring in the OIG's findings, this attachment includes VA's general and technical comments to provide additional clarity to the OIG's report and VA's response to the recommendations in the OIG draft report.

FINDINGS:

Response: VA concurs in the findings of the OIG's report.

RECOMMENDATIONS:

Recommendation 1: The Secretary of Veterans Affairs directs the Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness (ASHRA/OSP) should update Policy Notice 23-03 and Form 10017-A to address the deficiencies noted in this report, including the overly broad definitions of groups, failure to provide adequate support for high-demand skill CSIs, and lack of needs analyses for recruitment and retention.

Response: Concur. The Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness (ASHRA/OSP) will revise and update the Policy Notice and Form to address the deficiencies noted in this report. VA began developing revised policy following this issue regarding CSIs being identified in September 2023. The content of this OIG report allows a complete perspective, and we look forward to coordinating the policy updates with OIG. Of note, implementation of the updated policy may require collective bargaining; if this is the case, the OIG will be informed of what, if any, impact the negotiations may have on our target completion date.

Target Completion Date: September 30, 2024.

Recommendation 2: The Secretary of Veterans Affairs designates a responsible official to review the critical skill incentives that have been paid to any member of the Senior Executive Services (SES), SES-equivalent, or other Senior Leader (including Veterans Health Administration's medical center directors and Veterans Integrated Service Network directors and the Veterans Benefits Administration's regional office and district directors) for the deficiencies identified in this report and to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed.

Response: Concur. The Secretary will designate a responsible official who will work with the appropriate subject matter experts to review the critical skill incentives that have been paid to any member of the SES, SES-equivalent, or other Senior Leader for the deficiencies identified in this report and to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed. VA began conducting internal reviews following this issue regarding CSIs being identified in September 2023. The content of this OIG report allows a complete perspective, and we look forward to coordinating the outcomes of these reviews with OIG.

Target Completion Date: September 30, 2024

Recommendation 3: The Secretary of Veterans Affairs designates a responsible official to review any critical skill incentive payments based on a high-demand skills justification made to all nonexecutive groups of employees, if any to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed.

Response: Concur. The Secretary will designate a responsible official who will work with the appropriate subject matter experts to review any critical skill incentive payments based on a high-demand skills justification made to nonexecutive groups of employees, if any to ensure compliance with all applicable statutory criteria and VA policy, and take any corrective action needed. VA began conducting internal reviews following this issue regarding CSIs being identified in September 2023. The content of this OIG report allows a complete perspective, and we look forward to coordinating the outcomes of these reviews with OIG.

Target Completion Date: September 30, 2024

Recommendation 4: In consultation with the Office of General Counsel (OGC) Ethics Specialty Team (EST), the Secretary of Veterans Affairs or his designee takes appropriate action to determine whether individuals involved in the decision-making process for awarding CSIs had any actual or apparent conflicts of interest and develop a process to ensure all decision-makers are free from conflicts when awarding future incentives.

Response: Concur. The Office of Accountability and Whistleblower Protection (OAWP), in consultation with the OGC Ethics Specialty Team, will determine whether any senior leaders involved in the decision-making process for awarding CSIs had any actual or apparent conflicts of interest and if so, whether recommendations for disciplinary or non-disciplinary action are appropriate. VA will also review its updated policies and processes to ensure all decision-makers are free from conflict when awarding future CSIs.

Target Completion Date: September 30, 2024

Recommendation 5: The Secretary of Veterans Affairs directs the Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness to revise policy regarding critical skills incentives to ensure that recommending and approving officials are accountable for their determinations that each CSI recipient meets all

established criteria, and that the roles and responsibilities of technical review and human resources reviewer are clearly established.

Response: Concur. The ASHRA/OSP will revise and update policy regarding critical skills incentives to ensure that recommending and approving officials are accountable for their determinations that each CSI recipient meets all established criteria, and that the roles and responsibilities of technical review and human resources reviewer are clearly established.

Target Completion Date: September 30, 2024. (As noted above, however, certain changes may require collective bargaining before implementation so additional time for completion may be necessary.)

Recommendation 6: The Secretary of Veterans Affairs delegates to a responsible official the development of a formal concurrence process to provide reasonable assurance that a senior attorney within the Office of General Counsel (with sufficient experience and expertise to consider all relevant facts and perspectives) is accountable for providing legal advice before and during the implementation of any new authority that carries the potential for significant reputational or financial harm to VA.

Response: Concur. The Office of Enterprise Integration, in coordination with the Office of General Counsel, will review and revise VA enterprise processes to clarify OGCs role in providing legal advice before or during the implementation of any new authority that carries the potential for significant reputational or financial harm to VA. The General Counsel will review internal processes to ensure that a senior attorney with sufficient expertise and expertise reviews is assigned to these reviews.

Target Completion Date: September 30, 2024

Recommendation 7: The Secretary of Veterans Affairs delegates to a responsible official a review of existing governance board policies to determine whether additional guidance is needed to define their role in reviewing proposals for implementing new pay authorities affecting senior executive compensation.

Response: Concur. The Assistant Secretary for the Office of Enterprise Integration will review and revise existing governance policies to strengthen VA's process for reviewing proposals for implementing new pay authorities affecting senior executive compensation.

Target Completion Date: September 30, 2024

Recommendation 8: The Secretary of Veterans Affairs takes whatever administrative actions, if any, he deems appropriate related to personnel involved in the process for granting critical skill incentives for VA central office executives based on the findings in this report.

Response: Concur. OAWP will initiate an investigation based on this OIG report and determine if any recommendations for disciplinary or non-disciplinary action are appropriate. After

receiving the OAWP's report and recommendations, the Secretary or his designee will take appropriate administrative actions if any.

Target Completion Date: October 31, 2024

GENERAL AND TECHNICAL COMMENTS

Comments Related to the VHA Approval Process

To provide full context and improve the report, we believe the OIG draft report would benefit by more clearly reflecting two key facts. First, VHA did not provide VACO CSI information to the Acting Deputy Secretary in May because VHA was following an intended plan to award field executive CSIs first, followed by consideration of VACO executive CSIs later. Consistent with that two-step process, at the time the documents relating to VHA field executive CSIs were submitted to the Acting Deputy Secretary in May 2023, the VACO CSI package was not yet finalized and had not yet been made available to Dr. Elnahal.¹

Second, VHA leaders in August 2023 sought to have the finalized VACO CSI package put through the concurrence process, including review and scrutiny by specialists from HRA/OSP, and approved by the Secretary. As identified in the OIG draft report, Dr. Elnahal contemporaneously noted his desire "to have a discussion first with SECVA, ADEPSEC [Kiyokawa] and [Chief of Staff Bradsher] on proposed CSI for central office leaders before we execute on that." And while out of the office, Dr. Elnahal requested his staff obtain the approval of the Secretary's office before moving forward. Although the VHA VACO documentation package never was received by the Secretary's office, this was a consequence of timing, miscommunication, and inadvertence.

¹ The contemporaneous VHA emails show the preliminary, unfinished nature of the supporting documents for the VHA VACO CSIs. *See, e.g.*, April 13, 2023 email from Jessica Bonjorni ("We have a proposal also for VHACO executives based on USH's guidance that we are preparing for his evaluation, and [we] will coordinate with others when we have a decision."); May 24, 2023 email from Jessica Bonjorni ("Attached message sent on 5/4 with an explanatory white paper addresses the questions previously asked on CSIs for MCDs including the justification, salary averages, and total costs. *We have not submitted the VHACO plan*, and per discussion with Lisa Kearney earlier today it is possible we may want to shift it slightly to address the NCR return to office plans. We do have the costs prepared already on the initial plan for VHACO execs.").

We propose the following suggested edits to provide this context:

Page	Current Language	Suggested Language
iv	“In response, Dr. Elnahal did not disclose to the Secretary the plan for VHA central office executives, but rather provided information solely on the CSIs for <i>field</i> executives.”	“In response, Dr. Elnahal did not disclose to the Secretary the plan for VHA central office executives, which had yet to be finalized, but rather provided information solely on the CSIs for field executives.”
v	“The effect of these requests was to slow down (or pause) the administrations’ efforts to execute their CSI plans for senior executives.”	<p>“The effect of these requests was to slow down (or pause) the administrations’ efforts to execute their CSI plans for senior executives.</p> <p>In August, VHA sought to move forward with its CSIs for senior executives in VACO. VHA disclosed its specific plans and awards for VACO senior executives to HRA for approval. Dr. Elnahal also requested that the Secretary’s office be made aware of the VACO CSIs, but this did not occur due to miscommunication among senior VHA leaders.”</p>
viii	“But when the Secretary requested that Dr. Elnahal provide information about the administrations’ plans in May, the undersecretary only provided a ‘justification paper’ (white paper) regarding the proposed CSIs to field senior executives. Significantly, . . .”	“But when the Secretary requested that Dr. Elnahal provide information about the administrations’ plans in May, the Under Secretary only provided a ‘justification paper’ (white paper) regarding the proposed CSIs to field senior executives because the field CSIs had been prioritized and the justification paper for the VACO CSIs had not been finalized. Significantly . . .”
ix	“and he had not opened each spreadsheet tab to see the full list.”	“and he had not opened each spreadsheet tab to see the full list. In August, VHA disclosed its specific plans and awards for VACO senior executives to HRA as part of the

		<p>concurrence process. While out of the office, Dr. Elnahal also requested that senior VHA leaders obtain the Secretary’s office approval before going forward with the VACO CSIs. However, this did not occur due to miscommunication among senior VHA leaders.”</p>
10		<p>Suggest adding the following: “August 23: Dr. Elnahal, while out of office, asks his staff to confirm that the Secretary was aware and had cleared moving forward with the CSI package for VACO executives. On August 25, Dr. Elnahal believes that this approval has occurred due to miscommunication among senior VA leaders.”</p>
10	<p>“August 26: VHA seeks HRA concurrence on the previously undisclosed request to pay CSIs to VACO executives at 20 and 25 percent, which Dr. Elnahal already approved. HRA concurs on August 28.”</p>	<p>“August 26: VHA seeks HRA concurrence on the request to pay CSIs to VACO executives at 20 and 25 percent, which Dr. Elnahal already approved. HRA concurs on August 28.”</p>
32	<p>“despite VHA having details and cost estimates on VACO senior executive CSIs prepared in early April.”</p>	<p>“as the justification and CSI package for VACO executives had not yet been finalized.”</p>
32	<p>Footnote 113: “. . . along with overall costs.”</p>	<p>“. . . along with overall costs. However, because the planned priority for VHA was the field senior executive CSIs, the supporting package for VACO senior executive CSIs was not finalized until August.”</p>
53	<p>“VHA leaders were not fully transparent with the Secretary and others regarding CSI plans for VACO senior executives, and VBA’s plans did not clearly indicate that they intended to pay all SES.”</p>	<p>"VHA leaders did not provide information to the Secretary and others regarding CSI plans for VACO senior executives, and VBA’s plans did not clearly indicate that they intended to pay all SES.”</p>

Additional Comments:

We also propose the following suggested edits:

Page	Current Language	Suggested Language
iv	“...VHA’s chief human capital management officer, Jessica Bonjorni,...”	“...VHA’s chief human capital management executive, Jessica Bonjorni,...”
iv and 50	“...by Human Resources Administration/Operations, Security, and Preparedness...”	“...by Human Resources and Administration/Operations, Security and Preparedness...”
v	“In addition, two senior executives retired from VBA as a direct result, and another VBA official who retired in December told investigators that although he had already planned to retire soon, the recoupment made his decision easier.”	“In addition, a VBA official who retired in December told investigators that although he had already planned to retire soon, the recoupment made his decision easier.” ²
v	“As stated above, CSIs were authorized to help VA recruit and retain employees in anticipation of new demands related to the PACT Act.”	“As stated above, CSIs were authorized to close skill-gaps in shortage and high demand occupations in anticipation of new demands related to the PACT Act.” ³
vi	“The amounts awarded were determined without considering what was needed for retention.”	“The amounts awarded were determined without considering what was needed to close the skills gap.”
vii and 27	“In fact, Mr. Jacobs told OIG investigators that VBA’s ‘retention numbers are better than the six-year average’ despite increasing workloads, which undercuts the proposed	We recommend deleting in both instances. References to VBA’s retention numbers being “better than the six-year average” were regarding the <i>entire VBA workforce</i> and not exclusive to VBA VACO executives.

² The two senior executives who retired from VBA have told us that the CSIs did not play a role in their retirement decision. We believe that VBA witnesses may have speculated that the CSIs decision caused the two retirements during their OIG interviews, but this speculation was incorrect.

³ VA recommends replacing language regarding “recruitment and retention” with “skills-based”. CSIs are intended to close the gap in occupations where there is a shortage of or high demand for mission-related skills. This authority is separate and distinct from a recruitment or retention incentives and should not be used interchangeably as the criteria in regulation and policy differs.

	need for such a broad award of CSIs for retention.”	As such, it is largely irrelevant to (and doesn’t undercut) the need for VBA VACO CSIs.
x	“...collectively – discussions that also would have included the Office of Management and OGC’s deputy counsel.”	“...collectively – discussions that also would have included the Office of Management and OGC’s Deputy General Counsel. . .”
1	“Congress authorized VA to issue these incentives to improve recruiting and retention for positions that require individuals to possess skills in high demand or at a shortage.”	“Congress authorized VA to issue these incentives to assist VA in closing mission-critical skills gaps for positions that require individuals to possess skills in high demand or at a shortage.”
4	Footnote: “VA Notice 23-03, para. 4.a. The policy does not define what is meant by an “approved” list.”	“VA Notice 23-03, para. 4.a. The policy references that VA Form 10017-A contains the approved shortage occupation lists.”
5	“The chief of VBA’s Office of Human Capital Services, Dr. Aaron Lee...”	“The Executive Director of VBA’s Office of Human Capital Services, Dr. Aaron Lee,...”
11	“In addition, according to witnesses the OIG team interviewed, two individuals retired from VBA because of the CSI recoupment. A third VBA official told investigators . . .”	“In addition, a VBA official told investigators . . .” ⁴
12	“CSIs were authorized to help VA recruit and retain employees in anticipation of new demands related to the PACT Act.”	“CSIs were authorized to help VA close mission-critical skills gaps in anticipation of new demands related to the PACT Act.”
13	“Consistent with this purpose, as VA sought to implement the CSI authority for <i>nonexecutives</i> , human resources staff gathered and analyzed data to identify shortage skills and market factors suggesting that an incentive was needed.”	“Consistent with this purpose, as VA sought to implement the CSI authority for nonexecutives, human resources staff gathered and analyzed data to close skill-gaps in shortage and high demand occupations

⁴ As noted in footnote 2 above, the two individuals who retired have stated that the CSI decision did not play any role in their retirement decision.

		suggesting that an incentive was needed.”
18	“...VHA’s chief human capital management officer, Ms. Bonjorni,...”	“VHA’s chief human capital management executive, Ms. Bonjorni,...”
21	“...(the chiefs of their respective offices of human capital services in VHA and VBA) ...”	“...(the senior executives of their respective offices of human capital services in VHA and VBA) ...”
27	“That suggests, however, that their skills are so specific to VBA that they would not translate to equivalent senior executive roles in a private company.”	“That suggests, however, that their skills in some cases might be so specific to VBA that they would not translate to equivalent senior executive roles in a private company.” ⁵
38	“Secretary’s approval from VBA’s chief human capital officer,...”	“Secretary’s approval from VBA’s Executive Director, Office of Human Capital Services...”
48	“... in the decision-making process for CSIs, Secretary McDonough noted that he was concerned in particular that the deputy counsel and VA’s CFO had not been involved.”	“... in the decision-making process for CSIs, Secretary McDonough noted that he was concerned in particular that the OGC Deputy General Counsel and VA’s CFO had not been involved.”

⁵ Although the knowledge and experience of VBACO executives may be unique, their skills in many cases may translate directly into those of a CEO. For example, Education Service oversees the administration of \$10.8 billion in education benefits, Loan Guarantee oversees \$144.6 billion on home loans, and Insurance Service is the nation’s 13th largest life insurance company, with \$1.275 trillion in coverage. The scope, scale, and complexity of operating many of VBA’s operations is often equivalent to what CEOs do or, in some cases, bigger and more challenging.

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