



Remedying Unacceptable Employee Performance in the Federal Civil Service

June 18, 2019

In Brief

For decades, the Federal Government has been seeking useful means to address the issue of Federal employees whose performance at work is unacceptable.¹ This brief uses data from our 2016 Merit Principles Survey (MPS) to discuss causes of unacceptable performance and the effectiveness of various methods to improve such performance.² The overall findings are that poor performance has multiple causes, and that reducing its incidence is best accomplished by addressing not only performance management, but also recruitment and placement, supervisory competencies, and agency culture. Additionally:

- (1) **The most effective way to prevent unacceptable performance is to hire the right people in the first place.** The two factors that supervisors perceived as playing the greatest roles in employee performance deficiencies were the employee's disinterest in doing the necessary work to succeed and the employee not being suited for that particular job. These factors are often the result of poor selection choices. While it is important to address unacceptable performance by an employee, investing resources to prevent errors in selection is a more efficient approach to ensuring an effective workforce.
- (2) **No one method for addressing unacceptable performance is universally effective or ineffective.** The MPS provided supervisors a list of 14 common methods for remedying employee performance problems and asked supervisors of unacceptable performers how effective they found each method to be in addressing the problem. The most effective method was effective to "some extent" or a "great extent" 47 percent of the time, and the least effective method was seen as effective 28 percent of the time. This indicates that the best method to address an employee's unacceptable performance will depend on the situation.
- (3) **When unacceptable performance exists, supervisors often expend notable effort to address it.** Approximately three-quarters of supervisors of unacceptable performers reported attempting 10 or more different approaches for addressing the performance problem of their most recent poor performer. This likely represents a substantial investment of time and resources.
- (4) **Placement (demotion or reassignment) can be a viable alternative to removal if there is good reason to believe the employee will perform effectively in the new position.** Sixty-two percent of surveyed supervisors supported reassigning employees if they seem likely to succeed elsewhere. This may be particularly appropriate when the unsuccessful performance is caused by poor job fit and the employee demonstrates a willingness to work to succeed.

¹ That search continues, as evidenced by Executive Order 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*, which was issued in May 2018 with the goal of advancing "the ability of supervisors in agencies to promote civil servant accountability consistent with merit system principles while simultaneously recognizing employees' procedural rights and protections."

² 5 U.S.C. § 4301(3) states that "unacceptable performance" means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position." Our 2016 Merit Principles Survey adopted that definition for our questions about "poor performance."

Methodology

The 2016 MPS was divided into three versions (“paths”) to focus on different areas of study. The supervisory path asked 13,058 supervisors, managers, and executives questions about their experiences in those roles. An alternate path—“Path 2”—asked 14,473 employees at all levels of organizations questions about their experiences as employees.³ Combined, the questions from these two paths allow a view of performance management from the perspectives of those being managed and those doing the managing. This research brief was also informed by a review of 16 agency performance appraisal system designs and related performance management policies as well as conversations with 13 agencies about their performance management materials.

Causes of Unsuccessful Performance

In our 2016 MPS, we asked supervisors if they had employed a person who had failed at least one critical performance element. Sixty-three percent reported that they had, at some point in time, directly supervised one or more employees who met this definition. We then asked these officials to what extent each of nine factors played a role in the poor performance of their most recent poor performer.⁴ As shown in Table 1, multiple factors were seen as playing a role.

Table 1: Extent to which each factor was perceived as playing a role in the employee’s failure of a critical performance element.⁵

Great Extent	Some Extent	Little Extent	No Extent	Factor
48%	26%	11%	14%	Employee was not interested in doing the necessary work to succeed
35%	24%	15%	26%	Employee was not suited for that particular type of job
30%	29%	19%	23%	Employee was distracted by matters in his/her personal life
24%	20%	11%	46%	Employee engaged in misconduct (<i>e.g.</i> , AWOL, abusive treatment of customers or coworkers)
12%	17%	19%	52%	Employee did not understand how to do the work
4%	11%	22%	64%	Employee did not understand what was expected from him/her
2%	6%	14%	77%	Employee was given more work than he/she could handle
2%	3%	6%	88%	Employee was the target of an interpersonal work conflict
1%	4%	16%	79%	Employee lacked needed resources or tools

³ A more in-depth description of the 2016 MPS and its methodology is available on our website at <https://www.mspb.gov/foia/e-foiareadingroom.htm>.

⁴ This data reports the perceptions of supervisors, who may not be completely objective or unbiased about the causes of unsuccessful performance in a subordinate.

⁵ Figures in this table and following tables are rounded and some rows may not total 100%. Factors are listed in order of combined percentage of respondents indicating “great extent” or “some extent.”

Poor Hiring Practices

The two factors that supervisors perceived as playing the greatest role in performance deficiencies were: (1) the employee's disinterest in doing the necessary work to succeed; and (2) the employee not being suited for that particular job.

While both people and jobs evolve over time, these two causes of poor performance can often be a result of poor selection choices for the position. MPS 2016 responses from employees also illustrate why it is important to ensure that a job candidate is a good match for the position being filled. We asked employees if they agreed with the statement, "My job makes good use of my abilities." We also asked if they agreed with the statement, "At my job, I am inspired to do my best work." Of those who said the job made good use of their abilities, 84 percent agreed that they were inspired to do their best work. In contrast, of those who disagreed about the use of their abilities, only 24 percent agreed they were inspired to do their best work.⁶

If agencies are finding that they have employees who are not interested in doing the work to succeed, or do not fit well in their assigned jobs, this can be a sign that their recruitment and assessment processes need to be improved. The 2016 MPS supervisory questions included a list of 19 management tasks and a request that supervisory respondents rate the difficulty of each task. As discussed in our December 2016 publication, [Addressing Misconduct in the Federal Civil Service: Management Perspectives](#), respondents reported that their most difficult task was getting a pool of quality candidates. Creating recruitment plans to identify the best candidates for particular jobs was also considered a relatively difficult task, more so than establishing performance standards for subordinates that cover all critical elements of the jobs; establishing clear measurements for success in subordinates' performance elements; or addressing performance that does not improve.

One way to help ensure a better job fit can be to provide a realistic job preview to the employee. In some cases, this preview is a formal test, in which the employee performs a task that is common to the job and that performance is scored against pre-established benchmarks. There can also be less formal previews that can help shape the applicant pool. For example, the vacancy announcement for a customer service position can state: "This job is a good match for you if you enjoy answering questions and working with the public. This job is not a good match for you if prefer to perform tasks without interruption." Agencies should describe the job to applicants in a way that asks applicants to do their own, internal, assessment of how well their preferences and competencies are likely to match the position being filled. Applicants may not be eager to articulate their weaknesses to the assessor, but they can know themselves better than an agency may discover in just a few hours of testing. Agencies should encourage applicants to privately think about whether the job is a good fit and give them enough information about the job to effectively perform this silent self-assessment.⁷

⁶ Other questions about job fit yielded similar results. For example, of those employees who agreed that their work supported a purpose, cause, or mission that was important to them, 76 percent agreed they felt inspired to do their best work, while those who disagreed about the work supporting something important to them had only 18 percent agree that they felt inspired to do their best work.

⁷ MSPB has issued a number of reports and articles on how agencies can improve their recruitment and selection practices, available at www.mspb.gov/studies. For example, [Managing Federal Recruitment: Issues, Insights, and Illustrations](#) (2004) offers recommendations for improving recruitment programs. [Reforming Federal Hiring: Beyond Faster and Cheaper](#) (2006) contains a discussion of different assessment methods. [Job Simulations: Trying Out for a Federal Job](#) (2009) discusses what makes a good assessment tool and the relative merits of different assessment methods such as work samples, situational judgment tests, assessment centers, and job tryout procedures.

The competencies that agencies prioritize when looking at candidates and how they assess for those competencies may also contribute to the problem. As discussed in our 2011 report, [Making the Right Connections: Targeting the Best Competencies for Training](#), there are some competencies that do not respond well to training, and thus are particularly important to assess as part of the selection process. These include motivation competencies, such as employee willingness to perform work and resilience in the face of difficulty—both of which are difficult to create or increase on the job. Yet, these are highly pertinent to the factor that supervisors stated played the largest role in a poor performer’s poor performance: the willingness to do the work necessary to succeed. Thus, to truly address poor performance, agencies must identify and address weaknesses in the recruitment and assessment processes. Possible weaknesses include the competencies that are emphasized in recruitment strategy, the vacancy announcement, and assessment criteria and methods.

Once the most important competencies are identified, it matters how the agency assesses for those competencies. Even the best assessment tools cannot always predict who will succeed in the job.⁸ However, using good assessment procedures in succession can improve the ability of the assessments to predict job performance, adding to the quality and cost-effectiveness of the process.

Furthermore, the “assessment for hiring” process does not end when a selection is first made. Our 2005 report, [The Probationary Period: A Critical Assessment Opportunity](#), notes that agencies have the responsibility to use the probationary or trial period to assess new Federal hires and terminate the employment of those who are not proving themselves assets to the Government. This would include not only those who do not wish to do the work to succeed, but also those who are willing to work hard but are simply a poor job fit. An appointment is not finalized until the probationary or trial period is completed. Yet MSPB found that supervisors are sometimes reluctant to remove a probationer who is not performing well in the position, even though it is easier to remove a probationer than an employee with a final appointment. Accordingly, the report contained recommendations that could help agencies to improve their use of the probationary period.

While a poor job fit can be the result of a flawed recruitment process (a pool of unfit candidates) or a flawed assessment process (emphasizing the wrong competencies or picking the wrong candidate), no recruitment or assessment process is perfect. When performance issues arise, staff involved in addressing performance difficulties should communicate with staff involved in recruitment to identify possible weaknesses and improvements in the hiring process to increase the potential for a better selection the next time.

However, while recruitment and assessment processes are crucial, they are not the entire solution. Jobs and people can evolve over time, and a good fit can become an indifferent or poor fit. A later section discusses what agencies can do with employees who are not a good fit, including when it may be appropriate to reassign employees to positions that are a better fit.

Non-Performance Issues that Affect Performance

The third most common factor in unsuccessful performance was distraction by matters in the employee’s personal life, while the fourth was the employee engaging in misconduct that affected performance. Effectively addressing these issues requires the ability to understand the underlying

⁸ See, for example, the MSPB report [Reforming Federal Hiring: Beyond Faster and Cheaper](#) (2006).

causes, identify possible solutions, and create an environment where those solutions can be effective. Hiring the right supervisors and training them to deal with human situations matters.

Balancing Support and Accountability

Employees are human beings, not just cogs in a machine. They can have loved ones who may fall ill; they may fall ill themselves; they may encounter financial difficulties through no fault of their own; or they may be distracted by other personal concerns. It is hard for everyone when an employee is not performing adequately for such reasons and it may appear heartless for the supervisor to add pressure to the situation by criticizing the employee's job performance.

A supervisor must assess the situation, including how long the issue has gone on or will likely continue, before deciding what to do. Our data shows that supervisory support has a relationship to the quality of an employee's performance, with the most supportive supervisors tending to have the best performers.⁹ There are resources available to help employees with personal concerns and it is often appropriate for the supervisor to provide the employee with contact information for the Employee Assistance Program (EAP). However, supervisors must also be sensitive to the fact that there is a mission to accomplish, taxpayer monies are being spent, and it can be unfair to expect coworkers to pick up the slack.

It is important that agencies ensure that supervisors and other decision-makers set the right balance between being supportive and demanding. A supervisor who is too empathetic may fail to address serious problems that can hinder mission accomplishment. Someone too forceful may drive away a valuable employee with a short-term problem and cause other employees to seek a more supportive environment.¹⁰ There are also legal issues and responsibilities if the employee has a disability.¹¹ Understanding those issues and responsibilities may require some training of supervisors and managers.

Addressing Conduct Issues

The fourth factor that supervisors perceived as a cause of poor performance was misconduct. Agencies are able to remove employees for conduct that damages the efficiency of the service, including—but not limited to—the damage caused by the employee's failure to successfully perform in a critical element of the job. The ability of the supervisor to address such conduct issues depends upon both the supervisor's skills and support from the agency.

One example of such a conduct issue is being absent without leave (AWOL). We listed being AWOL in the survey item as an example of misconduct that could affect performance. If the employee is AWOL because of personal problems such as scheduling child care or difficulty

⁹ Employees who agreed that they feel comfortable talking to their supervisor about the things that matter to them at work and that their supervisor supports their need to balance work and family issues were more likely than others to report: (1) engaging in strong performance behaviors; and (2) that their performance had been rated at the highest level allowed in their appraisal system.

¹⁰ Responses to MPS questions about the respondent's intent to leave the organization, the agency, and the Government were compressed into a single factor for analysis, which was then divided into three categories of approximately equal size based on the overall response score: (1) inclined to leave; (2) neutral; and (3) inclined to stay. Of those who strongly agreed that the supervisor was supportive of work/family balance, only 20 percent were inclined to leave, while for those who strongly disagreed, 63 percent were inclined to leave.

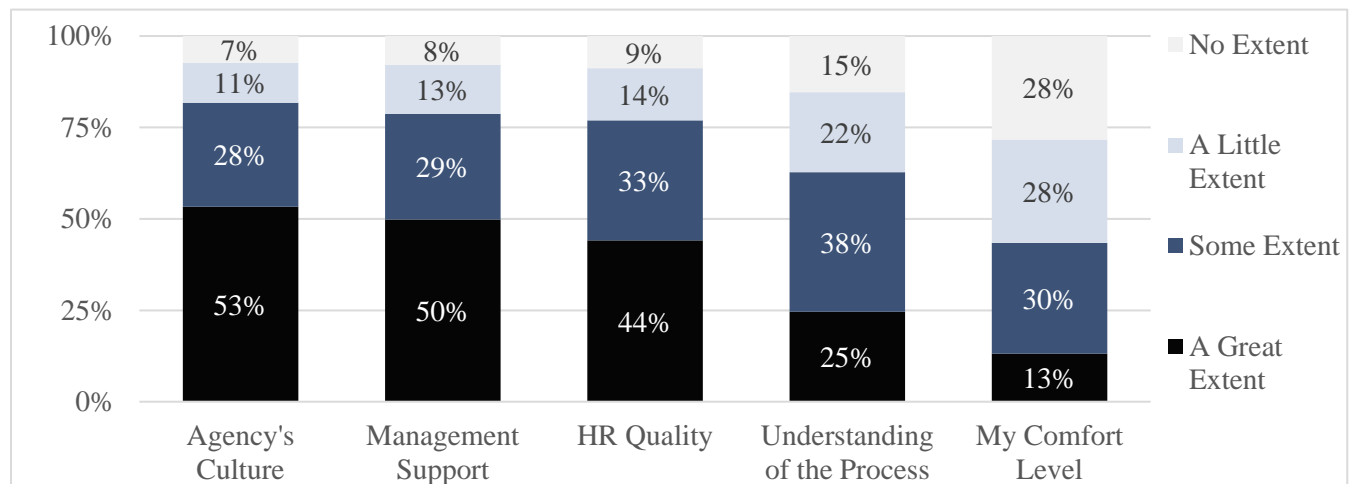
¹¹ EEOC's website (*see* U.S. Equal Employment Opportunity Commission, *Disability Discrimination*, at www.eeoc.gov/laws/types/disability.cfm) explains that "Disability discrimination [occurs when an employer] treats an employee less favorably because [the employee] has a history of a disability (such as cancer that is controlled or in remission) or because [the employee] is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if [the employee] does not have such an impairment)."

obtaining reliable transportation, then the ability of the supervisor to create an environment where the employee feels comfortable discussing those problems—and the supervisor being well educated about flexibilities and services he or she is permitted to offer—can be crucial to identifying potential solutions. If, however, the employee simply does not want to come to work, that is a different cause that would lead to a different approach to solutions. The supervisor needs the knowledge, skills, and abilities to elicit the necessary information on causes for the misconduct, consider potential solutions, and create a viable plan to address the situation.

In some cases, discipline—up to and including possible removal—may be the appropriate solution. The 2016 MPS asked supervisors, “If a subordinate employee engaged in serious misconduct, are you confident that you would be able to remove that employee?” While 41 percent said yes, 42 percent said no, and 16 percent were not sure. We then asked those who said they were not confident that they could remove such a person about a variety of possible obstacles to such actions.

As shown in Chart 1, below, 53 percent reported that their agency’s cultural norms related to conduct and accountability posed a challenge to a “great extent” with another 28 percent reporting it was a challenge to “some extent.”¹² A lack of support by managers and leaders was also seen as a great challenge, as was the quality of service by human resources. How well the person understood the process was less of a barrier, yet 63 percent of respondents who were not confident they could remove an employee for misconduct said their own lack of understanding was a challenge. Also, more than 40 percent of supervisors cited their discomfort with taking away a person’s job as a barrier.

Chart 1: Extent to which each factor was seen as a challenge to removing employees for misconduct.¹³



There are many resources available to help supervisors to address misconduct, including several MSPB publications.¹⁴ Supervisors with such issues should consult with their human resources advisors and agencies should ensure those advisors are skilled in management-employee

¹² The data in the chart reflects the views of those who stated they did not think they could effect a removal and does not include those who were not sure if they could effect a removal.

¹³ Figures in this chart and following charts are rounded and may not total 100%.

¹⁴ MSPB publications on this subject include study reports, monographs, and newsletter articles, all available at www.mspb.gov/studies. Examples include: *Adverse Actions: A Compilation of Articles*; *What is Due Process in Federal Civil Service Employment?*; *Addressing Misconduct in the Federal Civil Service: Management Perspectives*; and *Alternative Discipline: Creative Solutions for Agencies to Effectively Address Misconduct*.

relations. Given that misconduct was the fourth most-selected cause of unsuccessful performance, having supervisors who are both able and willing to address misconduct is an important part of the solution to having supervisors who can address unsuccessful performance.

Supervisors will have to decide how to handle each situation based on the facts before them. Thus, the selection and training of supervisors can be crucial. Our 2010 report, [*A Call to Action: Improving First-Level Supervision of Federal Employees*](#), extensively discusses issues related to the selection and training of supervisors. That report's recommendations include: (1) emphasizing supervisory competencies when advertising and filling such positions; (2) providing realistic job previews for candidates; (3) using the most predictive assessment tools when filling such positions; (4) providing a comprehensive training and development program for supervisors; and (5) evaluating supervisors on both work group outcomes and supervisory competencies.

The 2010 report also recommends that current supervisors consider whether being a supervisor is a good fit for them. For agencies, it is important to use the supervisory and managerial probationary periods to ensure a good job fit, as the competencies needed to be successful in such positions can be quite different than the skills used in technical positions. Just as fit matters in the performance of non-supervisory employees, it is important that supervisors be a good fit for their own duties if they are to perform them successfully.

Employee Lack of Understanding

On the list of potential causes for poor performance (Table 1), the fifth factor (not understanding the work) had only 30 percent agreement to some or a great extent, and the sixth factor (not understanding expectations) had approximately 15 percent agreement. Yet, these factors are truly about what supervisors do to manage performance (i.e., providing guidance and establishing expectations) as opposed to other supervisory responsibilities (e.g., selection and managing conduct). Agencies may be able to reduce some poor performance by addressing these knowledge-based needs through better performance management practices. While many of the major causes for unsuccessful performance need to be addressed through recruitment, assessment, and supervisory management issues, employee performance management should not be ignored as one part of the solution.

Improving Unsuccessful Performance

The 2016 MPS asked supervisors who reported that they had supervised a person who failed a critical element which methods they had attempted to assist the employee to improve and to what extent the attempt was successful. As shown in Table 2, most supervisors tried multiple methods. Although no method was consistently very successful, every listed method was successful to some extent or more for at least a quarter of the supervisors who attempted it.

The decision to attempt a particular method—or group of methods—may be influenced by agency policies, collective bargaining agreements, advice from subject matter experts, legal concerns, human resources advisors, past experience, employee requests for a specific form of help, or other influences. Overall, 75 percent of supervisors reported attempting 10 or more different methods for their most recent poor performer. However, none of the listed approaches was considered effective to some extent or better by a majority of supervisors. Items ranged from 28 to 47 percent of those respondents who tried a method reporting that it was effective to some or a great extent.

The most effective method to help a poor performer to become fully successful appeared to be monitoring the employee’s work more closely (47 percent of respondents agreeing to at least some extent). However, there was a general cluster of activities that were within a few percentage points of each other, such as: meeting more frequently to provide feedback and coaching (45 percent); providing additional written or oral communications about expectations (43 and 42 percent, respectively); and discussing possible negative consequences for continued poor performance (42 percent).

Table 2: Perceived effectiveness of methods to improve a subordinate’s unsuccessful performance.¹⁵

Effectiveness of the Method				Percentage of Respondents Attempting the Method	
Great Extent	Some Extent	Little Extent	No Extent		
21%	26%	25%	28%	Monitored the employee’s work more closely	98%
19%	25%	28%	28%	Met more frequently to provide feedback and coaching	96%
18%	25%	27%	30%	In writing, provided additional communication about expectations	94%
17%	25%	27%	31%	Orally provided additional communication about expectations	99%
19%	24%	26%	32%	Discussed with employee possible negative consequences if performance remained inadequate	95%
19%	21%	24%	36%	Put employee under a formal performance improvement plan	55%
14%	26%	30%	31%	Asked employee what you could do to help employee improve	98%
14%	24%	26%	36%	Paired with a better performer to serve as a mentor	65%
13%	24%	28%	34%	Put employee under an informal performance improvement plan	72%
11%	26%	31%	31%	Discussed with employee possible reasons for poor performance	98%
10%	23%	29%	38%	Changed employee’s work assignment to other, less needed work	53%
10%	23%	28%	40%	Changed employee’s work assignment to other, equally or more needed work	48%
12%	20%	27%	41%	Gave low performance appraisal rating	82%
8%	20%	29%	43%	Reduced the work quality or quantity requirements	48%

¹⁵ Methods are listed in order of combined percentage of respondents indicating “great extent” or “some extent.”

Monitoring Work More Closely

Monitoring work more closely was seen as the most effective approach to addressing unsuccessful performance. It can require more time from supervisors, many of whom have a lot of different tasks to perform, often including some non-supervisory duties. This investment of time appears to be more productive than many other choices when seeking to improve the performance of an employee who is failing in a critical performance element. Even so, fewer than half of supervisors who attempted closer monitoring considered it effective to “some extent” or a “great extent.” When deciding which efforts to make in order to assist employees to improve, supervisors should consider the nature of the work and the employee in question as well as the investment of time and resources that a particular approach will require.

Providing Feedback and Coaching

It is not surprising that feedback and coaching would be among the more successful approaches to helping poor performers given how useful feedback is for enhancing the performance of most employees.¹⁶ They may have a preventative as well as ameliorating effect.

To evaluate the effects of feedback, we asked 2016 MPS respondents (including non-supervisors) if the respondent’s supervisor provided timely feedback and if the supervisor provided constructive feedback.¹⁷ As shown in Table 3, employees who received weaker feedback were more likely to report that they had coworkers who: (1) were performing below expectations; and (2) performing so poorly that the respondent believed the coworkers should be removed.

Table 3: Perceptions of feedback and the presence of weak and poor performers in the work unit.

In your opinion, how many employees in your immediate work unit, if any, are performing below what should be reasonably expected from them on the job?	None	One	More than One
Weaker Feedback	29%	16%	55%
Moderate Feedback	41%	19%	40%
Stronger Feedback	46%	19%	35%
In your opinion, how many employees in your immediate work unit, if any, are performing so poorly that the agency should remove them from service? (This may include employees you included in the question above.)	None	One	More than One
Weaker Feedback	56%	18%	25%
Moderate Feedback	70%	15%	15%
Stronger Feedback	72%	15%	13%

¹⁶ The research brief, *The Roles of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors* (2018), documented the strong relationship between timely and constructive feedback and reports of better performance behaviors and higher performance appraisal levels. *Performance Management Is More than an Appraisal* (2015) discussed how more frequent feedback was positively associated with an employee’s belief that feedback was helpful and that the supervisor understood the employee’s performance. However, frequency of feedback is not a substitute for timeliness or constructiveness of the feedback. Rather, it is timeliness and constructiveness that give feedback much of its value.

¹⁷ Because of how these two things interact, we combined responses to these two items into a single factor. Values assigned to that factor were then divided into three groups of approximately equal size (stronger feedback, moderate feedback, and weaker feedback). We examined the relationship between these three feedback groups and perceptions that there were weak or poor performers in the work unit.

In other words, not only did supervisors find that feedback was one of the more effective methods for improving the poor performance of unsuccessful performers, but employees who perceived their supervisors as providing such feedback were less likely to perceive that there were weak or poor performers in the work unit. We did not ask if the respondent's supervisor routinely provided timely and constructive feedback to other employees, as the respondent might not know what other employees are experiencing. However, it may be that supervisors providing timely and effective feedback as a routine matter for all employees could be helpful to prevent the development as well as the persistence of poor or weak performance in the workplace.

Communicating Expectations to the Employee

Slightly more than 40 percent of supervisors reported that providing additional guidance on expectations was effective to at least some extent. Written and oral communication were seen as nearly equal in effectiveness. As with other methods to assist a poor performer to improve, the success of a method will vary based on the employee and the situation. Presumably, this approach is most likely to succeed when there is reason to suspect the employee may not understand what is expected of him or her. However, as discussed in the section on removing poor performers, there are also legal and administrative reasons to provide and document this guidance.¹⁸

Additionally, communicating expectations can be a matter of fairness as well as simply a sound investment of time. It is only fair to ensure that an employee knows what is expected of him or her. Furthermore, if an employee is skilled and merely misdirecting those skills because of a misunderstanding about what management expects the employee to do, helping the employee to redirect his or her efforts is far better than allowing the efforts to remain misdirected. It also may not be in the interest of the Government to remove a skilled employee who could have performed well with clearer direction, only to start over again with another employee who may also labor unsuccessfully under unclear direction.

Discussing Possible Negative Consequences

Forty-two percent of supervisors stated that discussing "possible negative consequences" with the employee was effective to at least some extent. However, the MPS did not define this term. To the respondent, this could have meant warnings of a potential demotion or removal, a denial of a within-grade increase (WIGI), or less severe actions such as a lower than average appraisal rating or smaller than average performance award. It is also possible that for some supervisors this included warnings of a future performance improvement period (PIP) if performance did not improve. A PIP, while intended to help an employee, could be seen as a potential negative consequence because such a period can be a precursor to a demotion or removal action.

We explored possible reasons why a discussion of negative consequences might have been among the more successful steps supervisors took. Results from the 2016 MPS suggested two possible reasons. The first reason is that a warning may correct an employee's mistaken assumption that the organization overlooks or accepts poor performance. In the 2016 MPS, only 32 percent of employees agreed with the statement "In my work unit, steps are taken to deal with

¹⁸ By law, agencies are required to ensure that employees are aware in advance of the performance standards and critical elements of their position. In a chapter 43 action, failure to provide this information is a violation of a substantive right and can therefore prevent an agency from being able to act on the employee's failure to meet those standards. *Cross v. Department of the Air Force*, 25 M.S.P.R. 353, 357-58 (1984), *aff'd*, 785 F.2d 320 (Fed. Cir. 1985) (explaining, among other things, that an agency's failure to "communicate" to the appellant his standards violates this substantive right only if the appellant is not aware (and should not reasonably be aware) of his obligations). In a chapter 75 action, the extent to which the employee was on notice regarding expectations will be a factor in determining the appropriate penalty. *Madison v. Defense Logistics Agency*, 48 M.S.P.R. 234, 239 (1991).

a poor performer who cannot or will not improve.” This suggests that many employees believe that their organization will tolerate rather than confront poor performance—or, perhaps even worse, that their organization will not even notice it.

The second, related reason is that a warning may clarify or reinforce a previous message that was lacking in clarity or force. Merely communicating the *presence* of a problem (such as saying “I’m not happy about your performance”) does not necessarily communicate the *seriousness* of that problem. A warning—which goes further, saying “I’m not happy about your performance and I will not tolerate it”—makes the supervisor’s displeasure and determination clear, which might motivate the employee to improve.

Other Methods to Assist Employees to Improve

As shown in Table 2, there were several other methods that supervisors found effective to varying degrees when seeking to assist unsuccessful performers to become fully successful. These include: asking the employee how the supervisor can help; providing a mentor; and changing the work assignments or expectations for quality or quantity. While these approaches tended to be less successful, some supervisors found each of these successful to a great extent.

Therefore, a strategy of educating supervisors about options for addressing poor performance—and then granting supervisors reasonable discretion to choose among those options—seems best. This strategy may seem inconsistent with the clearly-defined procedural requirements for performance-based adverse actions and the principle of treating similarly-situated employees in a similar manner, which appear to counsel (or mandate) a uniform or standardized approach. This strategy may also require agencies to modify their policies or negotiate changes to collective bargaining agreements. However, we note that “similar treatment of similarly-situated employees” does not mean “identical treatment of all poor-performing employees, regardless of the nature or causes of the poor performance.” Also, it is not in the interest of the workforce or the agency to require supervisors to use the same approach to different performance problems if those problems are better addressed with an approach tailored to the specific performance deficiencies.

Removing Unsuccessful Performers from Their Positions

Section 2301 of title 5 states that supervisors and managers with inadequate performers should act to improve the performance of those employees whose performance can be improved and remove those employees who cannot or will not improve to an adequate level.¹⁹ The previous sections focused primarily on how agencies can improve employee performance, but agencies also have a responsibility to act when such efforts at improvement fail.

In the Federal Government, “removal” typically refers to ending the employment relationship. However, agencies should draw a distinction between removing the employee from the position and removing the employee from the Federal service. When job fit is the source of the problem, transfers and demotions can serve both the public interest and the employee’s interest better than termination.

¹⁹ 5 U.S.C. § 2301(b)(6) (“Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards”). This is one of the twelve merit system principles, which are guidance—set forth in statute—to ensure that the civil service is managed in a “competent, honest, and productive” manner. *See* Civil Service Reform Act of 1978 (P.L. 95-454), Statement of Purpose.

Reassigning Unsuccessful Performers

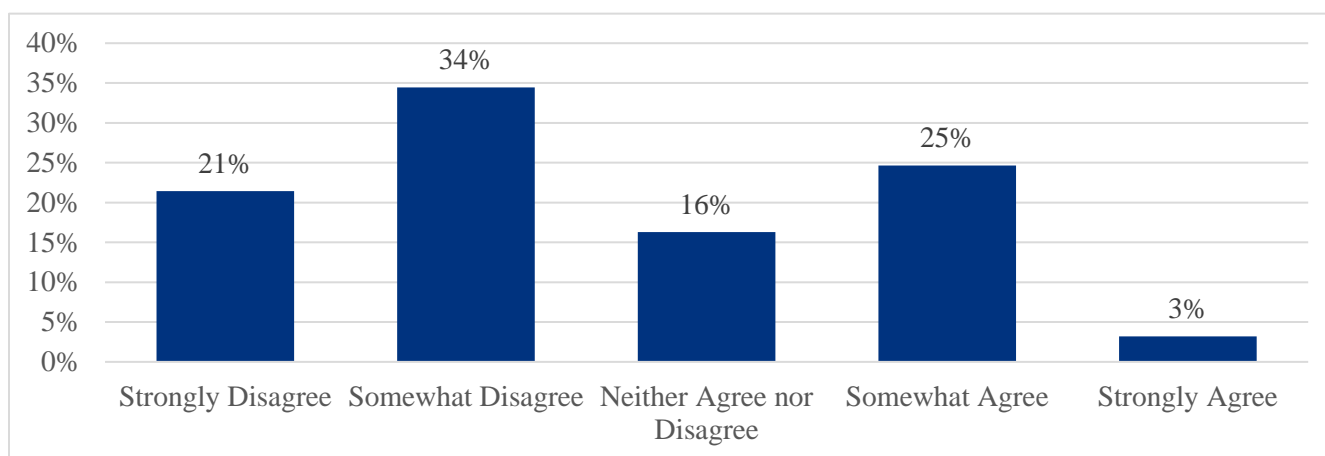
A reassignment is a personnel action in which an agency moves an employee from one position to another within the same agency without promotion or demotion.²⁰ As has been noted by the U.S. Office of Personnel Management (OPM), “[t]he reassignment regulations give an agency extensive flexibility in reassigning an employee to a different position” so long as the agency has a “legitimate organizational reason for the reassignment[.]”²¹

This authority does not require that the agency show that employee has failed any critical elements or even has an established performance weakness. No documentation or other evidence of performance deficiencies is required because this authority can be applied to the reassignment of even successful employees. The employee’s past performance is irrelevant to the authority.

Our 2016 MPS asked supervisors whether they agreed with the statement, “I think that agencies should reassign poor performers to other positions if they seem more likely to succeed elsewhere.” For both those who had supervised a poor performer, and those who had never supervised one, 62 percent of respondents agreed with this statement.

Such reassignments may not always be possible for poor performers. There may be no vacant position available for which the poor performer is qualified. There may be no position in which the employee seems likely to succeed. However, we asked supervisors if they agreed with the statement, “A person who fails in one aspect of the job tends to fail in most aspects of the job.” Only 28 percent of respondents agreed with this statement, while 56 percent disagreed (with the other 16 percent neither agreeing nor disagreeing). Thus, it appears that many poor performers can still be competent in needed skill areas.

Chart 2: Extent to which respondent agreed with the statement, “A person who fails in one aspect of the job tends to fail in most aspects of the job.”



The greatest challenge with such reassignments may be that positions in a single work unit might have duties that are too similar and a person who cannot perform in one position may be equally unable to perform in another in that same work unit. For example, a front-line personnel advisor who is deeply knowledgeable about personnel rules but lacks the tact needed to give good customer service may fail in that critical element. An agency might benefit from reassigning such

²⁰ OPM, *Guide to Processing Personnel Actions*, Ch. 14-4.

²¹ OPM, *Workforce Restructuring: Summary of Reassignment*, available at www.opm.gov/policy-data-oversight/workforce-restructuring/summary-of-reassignment/.

a person to perform policy duties instead if the person seems likely to perform such duties well. Yet, an office with front-line personnel advisors often would not need a policy person. In such a situation, it would be a different supervisor who would be able to offer a suitable job.

Agencies must decide to what extent they wish supervisors to focus solely on their own individual work units and to what extent the best interest of the agency as a whole should be the greater priority. Creating a mechanism for the reassignment of employees to another work unit if they are failing a critical element but are otherwise highly valuable could be in the overall best interest of the agency. Such a mechanism could also be useful for reassigning weak performers who are not failing in a critical element but are nevertheless not as successful as they could be elsewhere with a better fit.

The goal of such a program would not be to make one supervisor's problem into a different supervisor's problem, but rather to maximize the value of an employee who has strong potential to be a valuable asset. As a result, the success of any such reassignment program would likely depend heavily on the ability of the agency to trust in the assessment of the original supervisor who certifies that the employee is, in fact, competent in the necessary tasks with no conduct issues to detract from the value of the employee's proven abilities.

Agencies and their subcomponents are in the best position know whether it is likely that the agency may have jobs in different work units that are simultaneously similar and distinct enough to offer the potential for likely matches for the competencies of poor performing employees. Thus, we cannot recommend a competencies matching program be automatically implemented for any agency or bureau. But, agencies should consider the possibility of such a program given the views of the MPS supervisors that failure in one competency does not mean failure in all and that employees should be reassigned if they are likely to succeed elsewhere.

Such a program could also be used for demotions, and including demotions would greatly expand the potential to find a good match between vacancies and employee competencies. However, involuntary demotions operate under different rules and criteria than reassignments, as explained in the next section. In situations involving demotions, agencies would need to ensure their actions complied with these rules.

Performance-Based Demotions and Removals

The formal improvement plan was considered the sixth most effective solution for addressing unsuccessful performance, while the informal plan was in ninth place. However, if an agency chooses to use chapter 43 of title 5 to implement a demotion or removal, an improvement period may be necessary for legal and administrative reasons.

Chapters 43 and 75 of title 5 are two separate authorities that agencies can use to demote or remove employees for unacceptable performance. Under chapter 75, an agency must be able to prove by preponderant evidence that the personnel action advances the efficiency of the service. In 1978, Congress was concerned that agencies were not taking necessary action to demote or remove poor performers and established chapter 43 as an alternative option.²²

²² On May 25, 2018, the President issued Executive Order 13839. This executive order states that “[t]he removal procedures set forth in chapter 75 of title 5, United States Code (chapter 75 procedures), should be used in appropriate cases to address instances of unacceptable performance.” However, it does not explicitly prohibit the use of chapter 43 procedures. Chapter 43 remains in statute and in effect, with executive orders and OPM regulations providing additional guidance as permitted by law. Accordingly, we discuss the provisions of chapter 43 and considerations for its use in this research brief.

Chapter 43 permits agencies to demote or remove employees if the agency can show, by substantial evidence, that the employee failed a critical performance element after being given an opportunity to improve. While preponderant evidence (chapter 75) means something is more likely to be true than not, substantial evidence only requires that a reasonable person could reach such a conclusion, even if other reasonable people might disagree. MSPB's 2009 report, [*Addressing Poor Performers and the Law*](#), discusses the rules for chapter 75 and 43 performance-based actions in depth.

As we explained in our 2009 report, although chapter 43 requires a lower standard of proof, agencies use chapter 43 *less* often than chapter 75 to implement performance-based actions. This remains true. In the period FY 2010 to FY 2017, of those removals taken purely for performance-based reasons, 44 percent were taken under chapter 43, while 56 percent occurred under the chapter 75 authority.

One reason why agencies may choose not to use chapter 43 more is the formal performance improvement period and the performance improvement plan that often accompanies it. Chapter 43 of title 5 does not expressly state that an agency must offer a formal performance improvement period or plan before it proposes to demote or remove an employee for unacceptable performance. Rather, chapter 43 of the statute instructs OPM to create regulations to ensure that reassignments, demotions, and removals for unacceptable performance occur “only after an opportunity to demonstrate acceptable performance.” Chapter 43 also states that OPM will create regulations to ensure that performance appraisal systems include provisions for “assisting employees in improving unacceptable performance[.]”

OPM's regulation, 5 C.F.R. § 432.104, states that when an employee's performance is unacceptable, the agency will inform the employee that he or she is failing in a critical element and provide: (1) appropriate assistance; (2) an opportunity to improve; and (3) a warning that demotion or removal may occur if performance does not improve.

This regulation does not state that an agency must create a formal (or even informal) performance improvement plan. The Board has held that the communications required by OPM's regulation may occur in a formal performance improvement plan, in counseling sessions, in written instructions, or in any manner calculated to apprise the employee of the requirements against which he is to be measured.²³ However, not only do many agencies have policies requiring formal improvement plans to ensure that the OPM requirement is met, but some agencies have chosen to add additional obligations beyond the OPM requirement, such as a minimum duration for the improvement plan's period or even mandating that officials offer an informal performance improvement opportunity prior to the official improvement period.

These policies are not inherently bad. However, more surveyed supervisors agreed than disagreed that they wait longer than they should to begin a PIP. When asked if other supervisors waited longer than they should to put an employee on a PIP, 72 percent agreed while only 10 percent disagreed. It does appear that chapter 43 has worked less well than Congress envisioned. However, the possible limitations of chapter 43 should not prevent agencies from acting to demote or remove employees for unacceptable performance, as they may proceed under chapter 75 instead. The Board has held, and the Federal Circuit has agreed, that when an agency

²³ *Baker v. Defense Logistics Agency*, 25 M.S.P.R. 614, 617 (1985), *aff'd*, 782 F.2d 1579, 1583 (Fed. Cir. 1986).

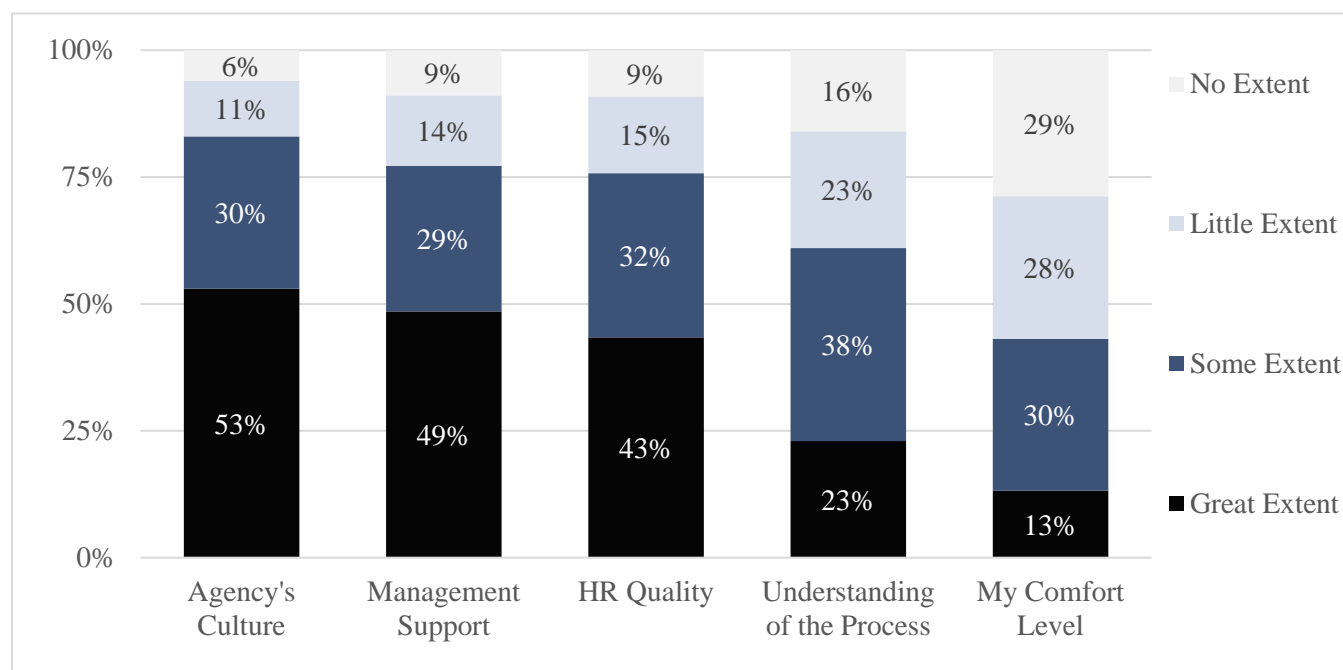
opts to use chapter 75 procedures, the agency is not required to provide the opportunity to improve that is a part of chapter 43 procedures.

Perceived Barriers to Performance-Based Removals

Earlier, we explained that only 41 percent of supervisors reported they were confident they could remove an employee for serious misconduct, while 42 percent said they were not confident and 16 percent were not sure. We asked a similar question about removing an employee for poor performance: “If a subordinate employee was deficient in a critical performance element after completion of a PIP, are you confident that you would be able to remove that employee?” Only 26 percent said yes, while 51 percent said no and 23 percent were not sure.²⁴

We then asked those who did not think they could remove such an employee the extent to which they believed certain things would pose a challenge.²⁵ As shown in Chart 3, agency culture and the support provided to supervisors are considered major contributors to the challenge of removing poor performers.

Chart 3: Extent to which each factor was seen as a challenge to removing employees for poor performance following a performance improvement period.



The general pattern of which items were obstacles, and to what extent, was very similar to the challenges expressed for removing an employee for misconduct, as illustrated in Chart 1. For both conduct and performance issues, approximately half of the supervisors who did not think they could act agreed to a great extent that agency culture and management support would pose a challenge.

²⁴ This does not automatically mean that the unsuccessful performer remains in the work unit. The MPS asked supervisors of unsuccessful performers what happened to their most recent unsuccessful performers. Only 21 percent reported that the employee remained unsuccessful and in the organization. (Another 21 percent reported the employee remained but performance was fully acceptable or better). For those who supervised such a person 4 or more years ago, less than 1 in 10 reported the employee remained and was unsuccessful.

²⁵ The data in the chart reflects the views of those who stated they did not think they could effect a removal and does not include those who were not sure if they could effect a removal.

One cultural issue that may need attention is management priorities, in particular an emphasis on short-term production over long-term productivity. More than a quarter of supervisors from the 2016 MPS agreed with the statement, “As long as my office succeeds overall, my supervisor does not care about the performance of individual employees.” We also asked supervisors if they agreed with the statement, “If a supervisor in my organization failed to address poor performance by a subordinate, there would be negative consequences for that supervisor.” Only 35 percent agreed that there would be negative consequences for that supervisor.

Additionally, the 2016 MPS asked supervisors if they agreed with the statement: “I am confident that I would be allowed to hire a new employee to replace someone removed for poor performance.” Only 47 percent agreed, while 42 percent disagreed and 12 percent were not sure.²⁶ While it is understandable that budget concerns can cause an agency to decide not to fill vacant positions, an inability to hire behind a removed employee may serve to discourage some supervisors from removing an unsuccessful performer.

Among those supervisors who said that they thought they could *remove* a person for poor performance, 61 percent reported agreement that they were confident that they could *replace* a person removed for poor performance. In contrast, of those who were not confident that they could implement such a removal, only 39 percent agreed that they would be allowed to hire a replacement.²⁷ The question supervisors are supposed to ask themselves when deciding whether to remove an employee is: “Is this person failing in a critical performance element?”²⁸ However, if the supervisor does not think he or she will be permitted to replace the employee, the question may become: “Is this person failing in a manner that causes so much damage that I am better off with no employee at all?” These are two very different questions, which can lead to very different answers.

If agency managers do not take seriously the performance of individual employees, do not require supervisors to manage employee performance, and hinder the ability of supervisors to get the mission accomplished if the supervisors do remove unsuccessful performers, it is not surprising if removing unsuccessful performers occurs less often than some stakeholders may desire.

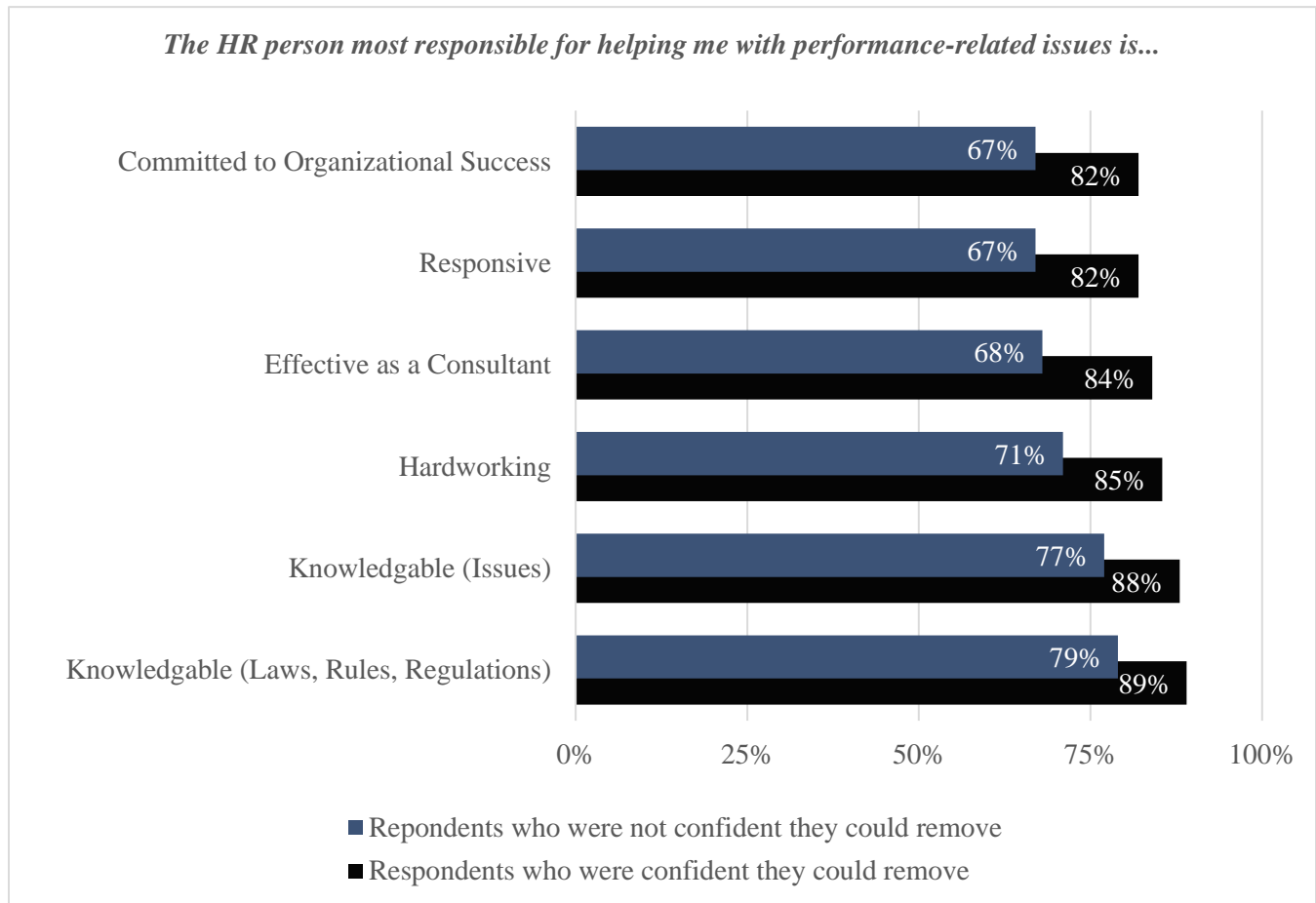
The data in Chart 3 also indicate that a lack of timely, expert human resources (HR) advice and support may deter or undermine supervisory efforts to address poor performers. Conversely, it appears to be easier to remove a poor performer when supervisors feel that they will receive quality services from human resources. We asked supervisors if, in the preceding 2 years, they had sought help from an HR person regarding a subordinate’s performance. For those who had sought such assistance, we asked if they agreed with a series of statements about the HR person most responsible for giving them assistance on performance-related matters. As shown in Chart 4, some traits and competencies for the HR person had a stronger relationship than others to the likelihood that the respondent would feel able to take a performance-related removal action, but all appeared to matter.

²⁶ Total does not equal 100 percent due to rounding.

²⁷ For respondents who were not sure if they would be able to remove such an employee, 49 percent agreed they were confident they would be allowed to hire a replacement.

²⁸ If the action will take place under chapter 75 procedures, an acceptable version of the question could be: “Is this person performing so badly that removing the person would promote the efficiency of the service?”

Chart 4: Relationship between agreement on HR service quality and perceived ability to remove poor performers.



Overall, the data show that an agency may be better able to remove poor performers if the agency has a culture that takes poor performance seriously, supports supervisors who seek to remove poor performers, has quality HR staff, and ensures that supervisors feel that they understand the process to remove poor performers. Selecting supervisors who can feel comfortable taking such actions may also help such actions to occur.

Making the attempt to help an employee to improve and then taking action to remove those who do not improve can take time. However, there are indications that supervisors sometimes permit a poor performer to linger. We asked MPS supervisors who reported having a poor performer about the current status of their most recent poor performer. Among supervisors who had a poor performer in the preceding 4 to 6 years, 70 percent reported that the employee was no longer with the organization (e.g., resigned, removed, retired, or transferred) and 19 percent reported that the employee remained and was performing at the fully successful level or better. However, 11 percent said that the employee “remained in the organization and performance is currently less than fully acceptable.” That approximately one in ten poor performers remained employed while not performing acceptably can be seen as a sign that poor performance is being addressed in many cases. It also shows, though, that agencies could be more timely and decisive when confronted with poor performance, both to help those employees who can improve and to remove those employees who cannot or will not improve.

Conclusion

Addressing the problem posed by an employee's poor performance in the Federal Government requires attention on multiple fronts. Because poor performance can be the result of different causes, and because no one method for addressing unsuccessful performance is universally effective, it is important to look beyond a single solution.

Our data show that the most common causes of unsuccessful performance are linked to hiring practices. Agencies may be able to reduce incidences of poor and weak performance by ensuring that they: (1) hire employees with the right competencies (particularly those that are less trainable such as willingness to perform work and resilience in the face of difficulty); and (2) robustly use the probationary period as a try-out opportunity before the appointment is finalized. However, these measures alone cannot prevent all poor performance.

When an attempt to aid an employee to improve is not adequately successful, agencies should consider reassignment or demotion as an alternative to removal if the employee has valuable skills and good prospects of success in a new position. In some situations, removal from service may be necessary. However, the ability of supervisors to take such personnel actions greatly depends upon the agency having a supportive culture and providing those supervisors with adequate training and resources.