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Report to the Chairman, Subcommittee on Oversight and Investigations Committee on Veterans' Affairs House of Representatives

April 2000

WHISTLEBLOWER PROTECTION

VA Did Little Until Recently to Inform Employees About Their Rights

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General Government Division

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The Honorable Terry Everett
Chairman, Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
House of Representatives

Dear Mr. Chairman:

This report responds to your request for information on the awareness and level of confidence that employees at the Department of Veterans Affairs (VA), particularly medical employees, have regarding whistleblower protection. Whistleblowing generally refers to federal employees who report on misconduct, or "blow the whistle," in their agency. Fear of reprisal might deter employees from reporting misconduct.[1]

As we reported in 1992, there is a consensus among experts on organizational culture that an organization's beliefs and values affect the behavior of its members.[2] Therefore, if employees believe that an organization's culture may not protect them from reprisal or may support reprisal, they may hesitate to come forward to report misconduct.

For this report, our objectives were to (1) review actions VA has taken since October 29, 1994—the enactment of the 1994 Whistleblower Protection Act amendments—to inform its employees about their rights to protection against reprisal when reporting misconduct; (2) evaluate the extent to which VA employees are aware of their rights to such protection; and (3) evaluate the extent to which VA employees are willing to report misconduct in VA operations, should they become aware of it. As agreed, we also provided information on the number and disposition of whistleblower reprisal complaints filed by VA employees with agencies responsible for providing whistleblower protection.

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[1]Statutory protections for federal whistleblowers reporting misconduct were provided by the Civil Service Reform Act of 1978 (P. L. 95-454) and the Whistleblower Protection Act of 1989 (P. L. 101-12), and amendments to the Whistleblower Protection Act in 1994 (P. L. 103-424) expanded these protections.

[2]Organizational culture has been defined as the underlying assumptions, beliefs, values, attitudes, and expectations shared by an organization's members. See our report Organizational Culture: Techniques Companies Use to Perpetuate or Change Beliefs and Values (GAO/NSIAD-92-105, Feb. 27, 1992).

Results in Brief

The 1994 amendments to the Whistleblower Protection Act require federal agencies to inform employees about their protection rights and to consult with the Office of Special Counsel (OSC) in developing an educational approach. From the enactment of the 1994 Whistleblower Protection Act amendments until March 1999, VA headquarters did little to inform its employees about their rights to protection against reprisal when reporting misconduct. In March 1999, the Secretary of VA sent a memorandum to all employees stating that whistleblower reprisal would not be tolerated, describing how employees could seek relief within VA if they believed they had been reprised against, and listing agencies in addition to VA they could contact concerning reprisal. In addition, since March 1999, other high-ranking VA officials have sent similar messages.

Also in March 1999, at the request of the Secretary, VA convened, on a one-time basis, a review team of VA officials on whistleblowing at VA. The review team was charged with identifying ways to inform VA employees about their rights and supervisors about their responsibilities concerning whistleblowing. Some of the review team's recommendations have been implemented, such as distributing the memorandums from high-ranking VA officials. As of January 2000, VA had not indicated a time frame of planned implementation for other recommendations, such as incorporating whistleblower information in local supervisory training and new employee orientation. In addition, VA had not indicated whether it plans to measure the effectiveness of these methods of informing employees of their rights. Since March 1999, VA has consulted with OSC in developing an educational approach on whistleblower protection, as required by the Whistleblower Protection Act.

Despite VA's actions, our survey results indicate that the majority of VA employees had limited, or no, knowledge about their rights to whistleblower protection. For example, about 57 percent of VA employees had not received, or did not know whether they had received, any information from VA about their right to protection from reprisal when reporting misconduct in VA. About 43 percent of VA employees reported that they were not aware or only somewhat aware that laws exist to protect them if they "blow the whistle" on misconduct. These survey results are one measure of the effectiveness of VA's efforts to inform its employees about whistleblower protection.

On their willingness to report misconduct, 83 percent of VA employees supported from a great to very great extent the idea that VA employees should report misconduct, but a smaller number, about 50 percent, would be either generally or very willing to report it if they became aware of

misconduct. Our survey results concerning the willingness of VA employees to report misconduct indicate, however, that a fear of reprisal in the existing organizational culture could deter VA employees from coming forth with allegations of misconduct. For example, only about 21 percent of VA employees reported that protection against reprisal is generally or very adequate.

VA employees, like other federal employees, may file whistleblower reprisal complaints with OSC, the Merit Systems Protection Board (MSPB), and the Department of Labor's Occupational Safety and Health Administration (OSHA).[3] Over a 5-year period ending in fiscal year 1998, we found that complaints filed by VA employees accounted for about 13 percent of those filed governmentwide by federal employees at OSC and MSPB. At the same time, VA's workforce accounted for about 13 percent of the federal civilian workforce. Over the same period, VA employees received corrective or favorable actions for about 12 percent of complaints filed, compared to about 16 percent governmentwide for federal employees who filed at OSC and MSPB.

VA did not know the extent or outcomes of all VA whistleblower reprisal complaints filed within VA or with other agencies. In addition, VA officials from the offices of Human Resources and the VA Inspector General (IG) said that they also did not know what actions, if any, VA took against VA managers when reprisal was found to have occurred. Data on complaints and outcomes could be used to determine what actions, if any, VA could take to better ensure that its policy of no tolerance for reprisal is followed.

Given VA's record for implementing the educational requirement of the Whistleblower Protection Act, we are recommending that VA develop a long-term plan to periodically inform employees of their whistleblower rights and measure the effectiveness of such a program. Also, because VA did not have data on all VA whistleblower reprisal complaints that would be useful for enforcing its policy against reprisals, we are recommending that VA install a system for tracking whistleblower complaints and their outcomes.

Background

Federal employees may be protected under several whistleblower laws. These laws were enacted to strengthen and improve the protection of employees' rights, prevent reprisal against employees who have blown the whistle, and help eliminate misconduct in government.

[3]We did not include OSHA data on whistleblower reprisal complaints filed by VA employees in this report. See the Scope and Methodology section for details.

The Whistleblower Protection Act of 1989 is the primary law that protects federal employees from whistleblower reprisal, which is 1 of 12 prohibited personnel practices.[4] Whistleblower reprisal is generally defined as employers' taking or threatening to take personnel action against employees for reporting a violation of law, rule, or regulation; or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Under the act, agencies are responsible for the prevention of reprisal to their employees.

Amendments to the Whistleblower Protection Act

In 1994, partly in response to a recommendation in our 1992 report,[5] the Whistleblower Protection Act was amended to, among other things, require federal agencies to educate employees about whistleblower protection. On the basis of a governmentwide survey, we had reported that about 41 percent of federal employees stated that they were not aware or only somewhat aware of protection under the law from whistleblower reprisal, and about 61 percent stated that they had some, little, or no extent of information about where to report misconduct.[6] Also on the basis of that survey, we reported that about 83 percent of federal employees supported to a great or very great extent the idea that employees should report misconduct if they became aware of it, and about 57 percent of federal employees stated that they would be either generally or very willing to report it.

Before the act was amended, not all VA employees were covered, only those hired under title 5 of the U.S. Code.[7] VA medical employees who were hired under title 38 of the U.S. Code were excluded from going to either OSC or MSPB for whistleblower protection. The 1994 amendments to the act extended whistleblower coverage to include VA's title 38 medical

[4]A general description of the 12 prohibited personnel practices is as follows: unlawful discrimination, solicitation or consideration of improper background references, coercion of political activity, obstruction of the right to compete, influencing withdrawal of applicants from competition, unauthorized preferences, nepotism, reprisal for whistleblowing, reprisal for the exercise of an appeal right, discrimination based on off-duty conduct, violation of laws or regulations implementing or concerning merit system principles found at 5 U.S.C. sec. 2301, and violation of veterans' preference.

[5]Whistleblower Protection: Determining Whether Reprisal Occurred Remains Difficult (GAO/GGD-93-3, Oct. 27, 1992).

[6]Whistleblower Protection: Survey of Federal Employees on Misconduct and Protection From Reprisal (GAO/GGD-92-120FS, July 14, 1992).

[7]Most federal employees in the executive branch are in the competitive civil service, which is employed under a common set of personnel laws contained in title 5 of the U.S. Code.

employees.[8] In March 1999, about 82,000, or 35 percent, of VA employees were medical personnel hired under title 38.[9]

The 1994 amendments to the Whistleblower Protection Act also require federal agencies, including VA, to ensure, in consultation with OSC, that their employees are informed of the rights and remedies concerning whistleblower protection available to them under the act.

Federal Agencies Providing Whistleblower Protection Under the Act

Federal employees may seek whistleblower protection from OSC and MSPB under the Whistleblower Protection Act. OSC is an independent executive agency whose responsibilities include investigating whistleblower reprisal complaints and other prohibited personnel practices brought by federal employees and litigating cases arising out of such complaints. OSC reviews whistleblower reprisal complaints to determine whether there is reason to believe that prohibited personnel practices have occurred. OSC may seek resolution of a complaint with an agency. If the agency declines to take the corrective action, OSC or the employee may take the case to MSPB for resolution. If a personnel action against the employee is an adverse action of the type that is appealable to MSPB,[10] the employee has the option of going to OSC or filing a whistleblower reprisal complaint directly with MSPB. MSPB is an independent executive agency that is responsible for hearing and adjudicating appeals by federal employees and cases brought by OSC. MSPB has the authority to enforce its decisions and to order corrective and disciplinary actions. Final decisions of MSPB can be appealed to the U.S. Court of Appeals for the Federal Circuit.

Federal employees who believe that they have been reprised against for whistleblower activities related to the following laws may also file a complaint with the Secretary of Labor under employee protection provisions contained in these laws: the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Solid Waste Disposal Act; the Toxic Substances Control Act; and the Energy Reorganization Act. The Department of Labor's OSHA is to investigate

[8]Because VA needed to recruit physicians, dentists, and nurses in an expedited manner after World War II, a separate personnel system was created for these occupations under title 38 of the U.S. Code in 1946.

[9]Medical personnel hired under title 38 include the following occupations: physicians, dentists, expanded function dentist auxiliary, registered nurses, practical nurses, optometrists, pharmacists, physician assistants, respiratory therapists, and podiatrists.

[10]Such actions, which are referred to as otherwise appealable actions, include removal for unacceptable performance, reduction in grade, and suspension for more than 14 days.

whistleblower reprisal complaints filed under these laws.[11] If reprisal was deemed to have occurred, OSHA may order corrective action for the employee. Actions may be appealed to a Department of Labor administrative law judge, then to the Department of Labor Administrative Review Board, and finally to the U. S. Court of Appeals for the circuit in which the alleged reprisal occurred.

Under the Energy Reorganization Act, the Nuclear Regulatory Commission (NRC) also is to investigate complaints about whistleblower reprisal. However, NRC's authority is limited to taking an enforcement action against an agency. To obtain corrective action for any adverse personnel action taken against them, employees must file a written complaint with OSHA.

Congressional Concern About Whistleblower Reprisal at VA

The subject of whistleblower reprisal at VA has been a long-standing congressional concern. Congressional committees have held numerous hearings in the 1990s on VA having provided inadequate medical care to veterans and whistleblower reprisal. VA medical employees are the ones who have exposed such inadequate care. Whistleblowers at VA who expose misconduct at medical centers provide protection to veterans from indifferent service and poor medical care.

In November 1991, the Subcommittee on Human Resources and Intergovernmental Relations of the House Committee on Government Operations held a hearing on the quality of health care provided by VA medical centers. In addition to hearing reports on inadequate medical care, the Subcommittee heard reports on the deplorable treatment of VA medical employees who attempted to blow the whistle on poor quality health care. The Secretary of VA was asked to review VA's record of handling whistleblowers and provide guarantees that such retaliations will no longer be tolerated.

In October 1995, the Subcommittee on Hospitals and Health Care of the House Committee on Veterans' Affairs held a hearing on health care issues at the Harry S Truman VA Medical Center in Columbia, Missouri. The hearing focused on the investigation of VA's IG into unexplained patient deaths at VA medical centers and allegations of a cover-up of those deaths. VA medical employees testified at the hearing and allegedly were the subjects of whistleblower retaliation.

[11]Before February 3, 1997, federal employees who wanted to file whistleblower retaliation complaints under these laws were to do so with the Department of Labor's Wage and Hour Division.

In March 1999, the Subcommittee on Oversight and Investigations of the House Committee on Veterans' Affairs held a hearing to review whistleblowing and whistleblower retaliation at VA. Witnesses included VA medical employees who had been allegedly retaliated against for whistleblowing. Congressional staffs say that they continue to hear from VA employees who believe they have been reprised against for blowing the whistle on misconduct.

Scope and Methodology

To review actions VA has taken to inform its employees about their rights to protection against reprisal when reporting misconduct, we interviewed and gathered information from VA headquarters officials. We also interviewed OSC officials because of their consultation role under the 1994 amendments to the Whistleblower Protection Act.

To evaluate the extent to which VA employees are aware of their rights to such protection and are willing to report misconduct in VA operations should they become aware of it, beginning June 1, 1999, we sent a questionnaire to a randomly selected, statistically representative sample of VA employees. We selected enough title 38 medical employees in the sample to be representative of title 38 medical employees. Whenever there was a difference of at least 10 percentage points between the answer to a question by title 38 medical employees and the rest of VA employees, we provided the percentages. Similarly, we provided the percentages when there were differences of at least 10 percentage points between the answers of Veterans Health Administration (VHA) employees, depending on the population size of the town or city where the respondents' medical facility was located. Of the 1,197 VA employees in our sample, we received usable questionnaire responses from 784—a response rate of about 66 percent. The overall results are generalizable to all VA employees, excluding medical residents.

To provide information on the number and disposition of whistleblower reprisal complaints VA employees filed in fiscal years 1994 through 1998 with agencies responsible for providing whistleblower protection, we contacted OSC, MSPB, and OSHA. Because the number of VA complaints filed with OSHA or its predecessor agency, the Department of Labor's Wage and Hour Division, were few (8 for the 5-year period) and because whistleblower reprisal complaints filed with OSHA by employees of other federal agencies were not readily available, we did not include them in our VA or governmentwide totals.

More information about our objectives, scope, and methodology is contained in appendix I. We did our work in Washington, D.C., and Dallas,

Texas, between March 1999 and January 2000 in accordance with generally accepted government auditing standards. We asked officials from OSC, MSPB, and OSHA to review the information on whistleblower reprisal complaints filed with their agencies and made the clarifying changes they suggested, where appropriate. We requested comments on a draft of this report from the Secretary of VA. Written comments provided by VA are discussed near the end of this letter and are reproduced in appendix IV.

VA Did Little Until Recently to Inform Employees About Their Rights to Protection From Reprisal

From the implementation of the 1994 amendments to the Whistleblower Protection Act in October 1994 until March 1999, VA did little to inform its employees about their rights to protection against reprisal when reporting misconduct. During that time, according to VA officials, VA headquarters did not formally distribute any information to VA employees on their rights to whistleblower protection from reprisal. However, a VA official informed us that after the 1994 amendments were enacted, human resources officials in the field were verbally told to advise title 38 medical employees that they were covered under the act.

In March 1999, the Secretary of VA sent a memorandum to all employees stating that whistleblower reprisal would not be tolerated, describing how employees could seek relief within VA if they believe they have been reprised against, and listing agencies in addition to VA they could contact concerning reprisal. In addition, other high-ranking VA officials sent similar memorandums. Also in March 1999, VA convened a review team of VA officials on whistleblower reprisal on a one-time basis at the request of the Secretary. The review team was charged with identifying ways to inform VA employees about their rights and supervisors about their responsibilities concerning whistleblowing. Since March 1999, VA has consulted with OSC in developing an educational approach concerning whistleblower protection.

Recent Steps VA Has Taken to Inform Employees About Whistleblower Protections

On March 9, 1999, the Secretary of VA distributed a memorandum to all employees stating that whistleblower reprisal will not be tolerated at VA. In addition, the Secretary's memorandum discussed employees' rights to whistleblower protections and agencies in addition to VA that employees can contact to raise whistleblower reprisal concerns. On the same date, the Secretary sent a memorandum to senior managers explaining that they are responsible for safeguarding the rights of whistleblowers. At a March 11, 1999, congressional hearing on whistleblowing and reprisal in VA, the Special Counsel testified that it appeared that VA had not implemented a

key statutory educational responsibility to advise its employees about their rights under the Whistleblower Protection Act.[12]

Since March 1999, the Under Secretaries of Benefits, Health, and Memorial Affairs also distributed memorandums on whistleblower protections to the three branches of VA— VHA, the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). On April 9, 1999, the Under Secretary of Health sent a memorandum to network directors and all chief officers reemphasizing that "reprisal against whistleblowers within VHA is not and will not be tolerated." On April 27, 1999, the Under Secretary for Benefits also reemphasized that "reprisal against whistleblowers within VBA is not and will not be tolerated." Finally, on April 29, 1999, the Under Secretary of Memorial Affairs sent a memorandum to all NCA employees, headquarters and field facility staff, stating his commitment to "creating a culture . . . that allows all employees to openly share legitimate concerns without fear of negative consequences."

By sending these memorandums, top VA officials have taken a first step to changing VA's organizational culture concerning whistleblowing by committing themselves in writing to instilling a culture that does not tolerate whistleblower reprisal. We recognize that changing an organizational culture takes time. As we reported in 1992,[13] a consensus exists among experts in organizational culture that an organization's beliefs and values affect the behavior of its members. In that report, we stated that two key techniques are of prime importance to a successful culture change as follows:

1. Top management must be totally committed to the change in both words and action.

2. Organizations must provide training that promotes and develops skills related to their desired values and beliefs.

Also in March 1999, on a one-time basis at the request of the Secretary, VA convened a review team of VA officials on whistleblowing in VA. According to the review team's report, the team was convened to address the Secretary's interest in ensuring that the rights of VA employees who engage in whistleblowing activities are fully protected and to recommend

[12]The hearing was conducted by the Subcommittee on Oversight and Investigations, House Committee on Veterans' Affairs.

[13]GAO/NSIAD-92-105.

strategies to raise the level of awareness and training of VA senior executives and managers.

On June 2, 1999, the Secretary provided a summary of VA's actions since the March 11, 1999, hearing to the Subcommittee on Oversight and Investigations of the House Committee on Veterans' Affairs based on recommendations the review team made. The summary of actions focused on four areas in addressing the "whistleblowing issue": communication, training, information technology, and accountability. In the communication area, the summary of actions included distributing the high-level VA officials' memorandums we mentioned earlier and continuing the distribution of such memorandums annually; placing information on each VA organization's Intranet web site regarding the rights and protections of whistleblowers; publishing an article in the VA employee magazine on those rights and protections; including information on those rights and protections in the "VA Employee Handbook," which is currently under development; and requiring directors of VHA field facilities to include information on whistleblowing in local employee newsletters and E-mails. According to the training area of the summary of actions, information on whistleblowing will be included in local supervisory training, new employee orientation, and senior management conferences. According to the information technology area of the summary, VA "is in the process of establishing" a management information system to maintain data on the outcome of cases where an investigation will take place involving alleged reprisal by a VA official against a whistleblower. Finally, according to the accountability area of the summary, in evaluating the performance of VA senior executives and managers, VA will include such factors as ensuring that VA employees who engage in whistleblowing activities will not be subject to any level of reprisal.

Although information on whistleblower reprisal was available on VA's Intranet, as of July 1999, according to VA officials only about 25 percent of VA employees had direct access to a computer at their workstations from which to access the information. In addition, although the VA employee magazine in April 1999 contained an article on whistleblower protection from reprisal, a total of about 85,000 of these magazines were made available to VA's 235,000 employees. The "VA Employee Handbook" is still under development and a draft version does contain a section on whistleblower protections. Also, although senior VA officials told us that VHA field officials were instructed to include information on whistleblowing in local employee newsletters and E-mails, they had, as of January 2000, not verified that these instructions were met.

Concerning actions taken regarding training, information technology, and accountability, VA had not indicated a time frame of planned implementation for such actions, and it is unclear what steps VA will take to carry out its plans. In May 1999, according to senior VA officials, OSC officials briefed senior managers on their whistleblower responsibilities at a conference. However, senior VA officials said that VA did not know, as of January 2000, if the information on whistleblowing has been included in local supervisory training and new employee orientation. Regarding information technology, senior VA officials told us, as of January 2000, that they would not be establishing a management information system to maintain data on the outcome of whistleblowing investigations. However, in commenting on a draft of this report, VA said that it would establish a system for tracking complaints. Regarding accountability, evaluating VA senior executives and managers using the stated factors may be beneficial. However, it should be noted that these factors are consistent with established merit principles that executives and managers are currently required to adhere to.

An additional effort recommended by the VA review team, but not included in the June 1999 summary of actions, was the development of a training video for employees on whistleblower rights and protections. On September 16, 1999, a 2-hour video on whistleblower reprisal was broadcast throughout VA as part of the implementation of the Secretary's mandate to develop training and education initiatives regarding whistleblower rights and protections. According to VA officials, all of VA's approximately 20,000 supervisors and managers were strongly urged to attend the session, while other employees were encouraged to do so. We asked VA for documentation on who attended the broadcast. VA queried its offices, and VA officials said that as of February 14, 2000, they had sign-in sheet documentation for a total of 1,050 employees who attended the satellite broadcast. However, the sign-in sheets were dispersed throughout VA and thus not available for our review. VA officials also were unable to tell us the number of attendees who were supervisors and managers. In a memorandum dated January 13, 2000, the Assistant Secretary for Human Resources and Administration informed administration heads, assistant secretaries, other key officials, deputy assistant secretaries, and facility directors that copies of the video were available and encouraged them to show the video to as many employees as possible. The memorandum did not state that viewing the video was required.

In commenting on a draft of this report, VA identified two additional efforts it was taking to address whistleblowing. First, VA said it is deploying Rapid Response Investigative Teams to review allegations of

serious misconduct against senior managers, including those that involve whistleblower reprisal.[14] Second, VA reported that its General Counsel has established a formal protocol and liaison between VA's regional counsels and OSC to facilitate OSC's review of complaints.[15]

We provided OSC officials with a copy of VA's June 1999 summary of actions (completed and planned) as provided to the Subcommittee on Oversight and Investigations of the House Committee on Veterans Affairs and asked those officials to comment on VA's efforts. Based on a review of the summary of actions, an OSC outreach specialist stated that VA's outreach efforts were better than the efforts of most federal agencies. In comments, however, the outreach specialist stated that OSC was concerned about information on employees' appeal rights in the Secretary's March 9, 1999, memorandum to all employees. The specialist said the memorandum implied that some actions, referred to as otherwise appealable actions, must always go directly to MSPB. The specialist said that the memorandum should have stated that all whistleblower reprisal complaints, including otherwise appealable actions, may be appealed directly to OSC. The specialist did say that VA provided accurate information relating to appeal rights in subsequent information provided to employees.

VA Has Consulted With OSC in Developing an Educational Approach

VA has consulted with OSC in developing an educational approach concerning whistleblower protection. Under the 1994 amendments, agencies are required to consult with OSC in developing an educational approach for informing federal employees of their "rights and remedies" concerning whistleblower protection. OSC views itself as serving in an advisory capacity and provides guidance when requested by agencies.

According to OSC officials, interaction has taken place between VA and OSC, including a series of E-mails regarding outreach efforts on whistleblower protection, beginning March 16, 1999. In addition, a VA official told us that the Special Counsel presented a section of VA's 2-hour September broadcast on whistleblower reprisal. Both VA and OSC officials acknowledged participating in several discussions regarding ways to provide VA employees with information about whistleblower reprisal.

[14] The use of rapid response teams is a concept that VA has used since 1997. The teams generally consist of human resources specialists, attorneys, and other officials deemed appropriate for the investigation. A VA official said that, as of March 2000, he is not aware that these teams have been used to review allegations of whistleblower reprisal.

[15] The General Counsel established the protocol in June 1999 to coordinate VA's response to investigations and enforcement initiatives by OSC that deal with whistleblower reprisal and other prohibited personnel practices.

OSC officials told us they suggested to VA that they provide each employee with an OSC brochure entitled "The Role of the Office of Special Counsel," which provides information on the types of statutory protections OSC can provide. According to VA officials, purchasing copies of the brochure was not cost-effective considering the cost and the low number of employees that they believed would read it. VA informed us that it has chosen other methods to provide information contained in the OSC pamphlet to its employees. These include advising its Human Resources offices to make copies of the pamphlet and place them on display in their offices and provide copies to union officials. In addition, VA employees can access information on where to report misconduct from VA's Intranet web sites, which provides a link to OSC's Internet web site containing the text of the brochure. According to an official from the Government Printing Office, as of the beginning of January 2000, OSC and other agencies could order the brochure for about 50 cents per copy.

VA's Plans for Informing Employees of Their Rights

Although VA indicated in its summary additional actions it plans for informing employees of their rights and responsibilities concerning whistleblowing, VA did not, as of January 2000, indicate a time frame in which such actions would occur or how VA planned to measure the effectiveness of its actions. We asked VA officials whether they had long-term plans for informing employees about their whistleblower protection rights. The officials indicated that they had not developed a long-term plan for periodically informing employees about those rights.

Extent to Which VA Employees Reported Being Aware of Their Rights to Protection From Reprisal

Although VA distributed memorandums concerning whistleblower protection in March and April 1999 to various groups of employees, responses to our questionnaire, which we sent out between June and September 1999, indicate that about 57 percent of VA employees stated that they had not or did not know whether they had received any information from VA about their right to protection from reprisal when reporting misconduct in VA. Of those VA employees, about 30 percent stated that they had received information from some other source, including newspapers, magazines, TV, radio, union sources, or word of mouth. Overall, about 40 percent of VA employees indicated that they had not or did not know whether they had received any information from any source.

We also used our survey results to determine the extent to which VA employees were aware of laws to protect whistleblowers. When asked if they were aware that there are laws to protect VA employees who "blow the whistle" on misconduct, about 43 percent of VA employees stated that they either were not aware or only somewhat aware of these laws. In

addition, about 67 percent of VA employees stated that they were aware to some, little, or no extent of how these laws protect them. When asked to what extent, if at all, they had enough information about where to report misconduct, about 58 percent of VA employees stated to some, little, or no extent. For Title 38 medical employees at VHA, about 64 percent stated to some, little, or no extent that they had enough information about where to report misconduct compared with 54 percent for all other VA employees. Overall, our survey results can be used as a measure of the effectiveness of VA's efforts to inform its employees about whistleblower protection.

Extent to Which VA Employees Are Willing to Report Misconduct in VA Operations

At the March 11, 1999, hearing on whistleblowing and reprisal, VA's IG testified that he was aware that some VA employees were reluctant to raise allegations of wrongdoing or cooperate with the IG's office because they fear reprisal. He said that fear of reprisal is a natural reaction and will always exist to some degree. According to the IG, fear of reprisal has the potential to deter complainants from coming forward with allegations of wrongdoing and is an issue that needs to be continually addressed within VA. Further, he testified that VA managers made statements to employees that have been perceived as threats, citing statements by management indicating "that the IG will not always be around to protect them after the investigation is concluded."

According to the results of our survey, an estimated 19 percent of VA employees considered misconduct to be a problem to a great or very great extent in VA. We used our questionnaire to determine the extent to which VA employees were willing to report misconduct in VA operations, should those employees become aware of it. A large portion of VA employees supported the idea that they should report misconduct. An estimated 83 percent of employees stated that to a great or very great extent, they supported the idea that VA employees should report misconduct. However, a smaller portion of VA employees—about 50 percent—said they would be either generally or very willing to report misconduct if they became aware of it. Of the estimated 19 percent of VA employees who considered misconduct to be a problem to a great or very great extent in VA, only about 39 percent said they would be either generally or very willing to report misconduct if they became aware of it.

VA employees' responses to questions about their willingness to report misconduct, should they become aware of it, indicate that a fear of reprisal in the existing organizational culture could deter them from coming forward with allegations of misconduct. For example, only about 21 percent of VA employees reported that protection against reprisal for VA employees is generally or very adequate. In addition, about 28 percent of

VA employees reported that VA supports the federal policy of ensuring that employees who report misconduct are protected from reprisal to a moderate, great, or very great extent; 40 percent of VA employees stated that they did not know or had no basis to judge whether VA supports the federal policy. On a direct, personal basis, about 23 percent of VA employees stated that if they became aware of misconduct in VA and reported it that they believed VA would support or strongly support them. In contrast, almost a third (about 32 percent) of VA employees stated that they believed VA would reprise or strongly reprise against them. About 28 percent of VA employees stated that they did not know or had no basis to judge.

To determine possible reasons that VA employees who stated that they supported reporting misconduct to a great or very great extent but were generally or very unwilling to do so (unwilling), we looked at their responses to other questions. We also compared their responses to those of employees who stated that they supported reporting misconduct to a great or very great extent and were generally or very willing to report it (willing). Of VA employees who stated that they would be unwilling to report misconduct, about 2 percent stated that VA supported to a great or very great extent the federal policy of ensuring that employees who report misconduct should be protected from reprisal. In addition, only about one-fourth (26 percent) of VA employees who stated they would be willing to report misconduct also stated that VA supported to a great or very great extent the federal policy. Of those who were unwilling to report misconduct, about 65 percent stated VA protection for its employees against reprisals was either generally or very inadequate. In addition, most VA employees—93 percent of those unwilling and 71 percent of those willing to report misconduct—stated that if reprisals had previously been taken against whistleblowers at VA, it would have a great or very great importance in discouraging them from reporting misconduct.

Of those VA employees unwilling to report misconduct, about 71 percent expected that VA would reprise or strongly reprise against them if they reported misconduct. When asked in what ways VA would reprise against them, about 65 percent of those unwilling to report misconduct stated that VA would probably or definitely deny them an expected promotion. In addition, about 61 percent of those who were unwilling to report misconduct stated that VA would probably or definitely harass them. About 72 percent of those unwilling to report misconduct stated VA would probably or definitely lower their next performance appraisal.

When we looked more closely at the responses of VHA employees to determine whether there was a difference of at least 10 percentage points between the answers of VHA employees whose VA medical facility was located in a town or small city or a medium or large city, we found such a difference in the answers to three questions by location of facility.[16] Specifically, when asked about the adequacy of protection against reprisal for VA employees, 44 percent of VHA employees at facilities in towns or small cities reported that such protection was very to generally inadequate compared with 30 percent of such employees at facilities in medium or large cities. Also, when asked whether misconduct was a problem at VA, 29 percent of VHA employees at facilities in towns or small cities reported that misconduct was a problem to a great or very great extent compared with 16 percent of such employees at facilities in medium or large cities. Finally, 41 percent of VHA employees at facilities in towns or small cities stated that if they became aware of misconduct in VA and reported it that they believed VA would reprise or strongly reprise against them. In contrast, 28 percent of such employees at facilities in medium or large cities stated that if they became aware of misconduct in VA and reported it that they believed VA would reprise or strongly reprise against them.

Appendix II contains a copy of the questionnaire that we sent to VA employees with the weighted number and percentage of VA employees responding to each item. Appendix III contains the results of our analysis of the percentage of VA employees who stated that they supported reporting misconduct to a great or very great extent compared with those who were generally or very unwilling to do so and the confidence intervals of those results.

VA Whistleblower Complaints Filed With Agencies That Provide Protection

MSPB and OSC provided data to us on whistleblower complaints filed by employees at VA and governmentwide[17] for fiscal years 1994 through 1998 that had been closed by MSPB as of June 24, 1999, and OSC as of June 17, 1999. According to MSPB and OSC data, the total number of whistleblower complaints filed annually by VA employees has increased every fiscal year except one since 1994, when the Whistleblower Protection Act was amended. There was a decrease in complaints filed by VA employees from fiscal year 1997 to fiscal year 1998. Governmentwide, the number of whistleblower complaints filed annually by federal

[16]In our questionnaire, we defined a town or small city as having a population of less than 100,000 and a medium or large city as having a population of 100,000 or more.

[17]Governmentwide totals at MSPB and OSC include executive branch agencies except the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the Postal Service. These agencies are not covered under the Whistleblower Protection Act.

employees has increased every fiscal year, except for 1996, since the amendments were enacted in 1994. The number of whistleblower complaints filed by VA employees comprised about 13 percent of whistleblower complaints governmentwide for fiscal years 1994 to 1998, and VA accounted for about 13 percent of federal civilian employment covered by the Whistleblower Protection Act. Over the same period, VA employees received corrective or favorable actions for about 12 percent of complaints filed, compared to about 16 percent governmentwide.

Table 1: Disposition of Whistleblower Complaints Filed by VA Employees Compared With Dispositions Governmentwide in Fiscal Years 1994-1998

	Fiscal years					
Complaints filed and disposition	**1994**	**1995**	**1996**	**1997**	**1998**	**Total**
Complaints filed						
MSPB[a]	51	46	55	55	78	285
OSC[b]	80	92	127	141	85	525
Total VA	131	138	182	196	163	810
Governmentwide	928	1,135	1,074	1,412	1,461	6,010
Corrective or favorable actions						
MSPB[c]	12	10	11	9	15	57
OSC[d]	8	13	8	8	2	39
Total VA	20	23	19	17	17	96
Governmentwide[e]	182	215	171	186	179	933
Reprisal not proven						
MSPB	6	5	9	5	6	31
OSC	11	12	8	9	10	50
Total VA	17	17	17	14	16	81
Governmentwide	223	188	162	231	271	1,075
Dismissed						
MSPB[f]	31	29	33	40	57	190
OSC[g]	61	67	111	124	73	436
Total VA	92	96	144	164	130	626
Governmentwide	503	716	725	982	1,007	3,933

Note 1: Dispositions include complaints that employees filed at more than one agency. Employees can appeal a disposition to MSPB after going to OSC if either (1) OSC terminated its efforts on their cases or (2) OSC failed to complete its efforts on their complaints within 120 days after employees filed the complaint with OSC. Certain complaints may be brought directly to MSPB. These are referred to as otherwise appealable actions, which include removal for unacceptable performance, reduction in grade, and suspension for more than 14 days.

Note 2: Neither the VA nor governmentwide totals include VA employee complaints filed with the Department of Labor's Wage and Hour Division or OSHA. In FY 1994, one complaint was filed by a VA employee with Labor; in FY 1996, four VA complaints were filed; and three were filed in FY 1997.

[a]Numbers for complaints filed at MSPB are closed cases as of June 24, 1999.

[b]Numbers for complaints filed include allegations of whistleblower reprisal contained in closed cases filed with OSC as of June 17, 1999. Each case may contain more than one allegation.

[c]Numbers for corrective actions or favorable actions include the following MSPB categories: corrective actions ordered and settled. Seven corrective actions based on the MSPB categories of reversal and mitigated or modified have been excluded because the cases may have been decided on violations of prohibited personnel practices other than whistleblower reprisal, even though whistleblower reprisal was initially alleged.

[d]Numbers for corrective or favorable actions include the following OSC categories: agency took corrective action after OSC request, dispute between complainant and agency resolved, and complainant declined corrective action offered.

[e]Governmentwide numbers exclude 69 corrective actions based on the MSPB categories of reversal and mitigated or modified because the cases may have been decided on violations of prohibited personnel practices other than whistleblower reprisal, even though whistleblower reprisal was initially alleged.

[f]Numbers for dismissed actions include the following MSPB categories: timeliness, jurisdiction, agency cancels actions or fails to prosecute, withdrawn by complainant, and without prejudice to refiling.

[g]Numbers for dismissed actions include the following OSC categories: complainant failed to supply additional information, extension beyond 240 days refused by complainant, insufficient evidence for further action, complainant filed individual right of action with MSPB, unable to contact complainant--no basis for further action, complainant withdrew the complaint, deferred to equal employment opportunity process, misidentified by complainant, misidentified by OSC, and not within OSC's jurisdiction.

Source: OSC and MSPB.

The number of corrective or favorable actions for VA whistleblower complaints has decreased since fiscal year 1994, except for 1995. In that year, the corrective or favorable actions were slightly higher. Governmentwide, corrective or favorable actions rose and fell in alternate years during the period. The number of VA complaints that were dismissed increased until 1997, then decreased in fiscal year 1998. Reasons complaints could be dismissed include timeliness (premature or late filing), lack of jurisdiction by the agency receiving the complaint, withdrawal of the complaint by the employee, or insufficient evidence. Table 1 shows a breakdown of the disposition of whistleblower complaints filed by VA employees for fiscal years 1994 through 1998 compared with such dispositions governmentwide.

As table 1 shows, MSPB and OSC data contain 96 total corrective or favorable actions taken for VA whistleblower reprisal complaints filed at those 2 agencies for fiscal years 1994 through 1998. Of those actions, 36 were for reprisal complaints for which VA took corrective action for the employee, and 60 were for settlements between VA and the employees who filed the complaints. Settlements do not necessarily indicate that reprisal did or did not occur. For example, sample MSPB settlement agreement language states that this agreement does not constitute an admission of guilt, fault, or wrongdoing by either party. According to an MSPB official, MSPB emphasizes settling disputes rather than determining who is right. Agencies sometimes settle because pursuing a complaint in the U.S. Court of Appeals for the Federal Circuit may not be cost effective or because of the existence of evidence indicating that reprisal might have occurred.

In addition, there were seven complaints that involved whistleblower reprisal filed at MSPB for which VA took corrective actions. MSPB reversed, mitigated, or modified actions that VA had taken against these seven complainants. These actions may have been based on violations of prohibited personnel practices other than whistleblower reprisal even though whistleblower reprisal was initially alleged. According to MSPB, a review of the individual cases would be needed before a definitive statement could be made as to whether the corrective actions were taken based on whistleblower reprisal or some other prohibited personnel practice. We did not include these among the 36 reprisal complaints for which VA took corrective action.

VA officials did not know the extent or outcomes of all VA whistleblower reprisal complaints filed within VA or with other agencies for this 5-year period. VA officials from the offices of Human Resources and the IG said that they also did not know what actions, if any, VA took against VA managers when reprisal was found to have occurred. Without an awareness of the extent or outcome of whistleblower reprisal complaints filed against VA, VA officials lack an important measure of the extent of whistleblower reprisal at the agency and data that could be used to determine whether VA could take additional steps to ensure compliance with its policy of not tolerating reprisal.

According to a letter signed by the Secretary of VA to the Subcommittee on Oversight and Investigations of the House Committee on Veterans' Affairs, to gather information concerning complaints for which employees were found to have suffered whistleblower reprisal for a 10-year period, ending May 1999, VA officials consulted with OSC and MSPB and surveyed VHA and NCA facilities. The letter identified five complaints for which "employees were found to have suffered reprisal because of their whistleblowing." The letter explained what actions, if any, VA took against the five supervisors or management officials who were found to have reprised against employees. We did not reconcile the difference between the 5 cases VA identified and the 36 cases in which OSC and MSPB data show that VA took corrective action for the employee. VA officials said that perhaps the data MSPB and OSC provided us for complaints for which corrective action was taken included data for prohibited personnel practices other than whistleblower reprisal. However, OSC and MSPB officials told us that the 36 cases are, to the best of their knowledge, cases in which whistleblower reprisal was at least one of the allegations for which corrective action was taken.

Conclusions

There has been long-standing congressional concern about whistleblower reprisal at VA since the early 1990s, and congressional committees have held numerous hearings on VA having provided inadequate medical care to veterans, which VA medical employees have exposed. Whistleblowers at VA who expose misconduct at medical centers help provide protection to veterans from indifferent service and poor medical care.

From the enactment of the amendments to the Whistleblower Protection Act in October 1994 until March 1999, VA had done little to inform its employees about their rights to protection against reprisal when reporting misconduct. Almost all of VA's actions have taken place since the beginning of March 1999, nearly 5 years after the Whistleblower Protection Act was amended to require federal agencies to educate their employees on their rights to whistleblower protection. Also, VA has not developed a long-term plan of intended actions for informing all employees about their specific rights to whistleblower protection or how it plans to measure the effectiveness of such actions. Without a long-term plan for informing VA employees about their right to whistleblower protection and given VA's record for implementing the educational requirement of the Whistleblower Protection Act, VA cannot ensure that it will continue its efforts to keep employees informed about their rights to whistleblower protection.

Further, despite VA's efforts to inform its employees about whistleblower protection and VA's stated commitment that whistleblower reprisal will not be tolerated, our survey results, which were collected soon after VA's efforts to inform employees of their rights, suggest that many employees are not aware of VA's commitment or their rights to such protections. Our survey results also indicate that VA employees' level of awareness of their rights to protection are comparable to the level of awareness we reported existed governmentwide in 1992, before the enactment of the amendments to the Whistleblower Protection Act. Specifically, our survey results indicate that about 43 percent of VA employees reported that they either were not aware or only somewhat aware of laws protecting federal employees who "blow the whistle" on misconduct. This level of awareness is similar to what we reported in 1992 (about 41 percent) for federal employees governmentwide,[18] when we suggested that Congress consider requiring agencies to inform employees periodically on their right to protections from reprisal and where to report reprisal.[19] In addition, about 58 percent of VA employees felt to some, little, or no extent that they had

[18]GAO/GGD-92-120FS.

[19]GAO/GGD-93-3.

enough information about where to report misconduct, which is comparable with the percentage of federal employees who felt the same way in 1992 (61 percent).

In addition to providing a measure of the effectiveness of VA's efforts to inform its employees about whistleblower protection, our survey results concerning the willingness of VA employees to report misconduct, indicate that a fear of reprisal in the existing organizational culture could deter VA employees from coming forward with allegations of misconduct. For example, although many VA employees did not seem confident that they would be protected if they reported misconduct, about 83 percent of them supported to a great or very great extent the idea that VA employees should report misconduct. This level of support is similar to what we reported in 1992 (about 83 percent) for employees governmentwide. However, a smaller portion, about 50 percent, of VA employees stated that they would be either generally or very willing to report it, which is comparable to the percentage of governmentwide employees who felt the same way in 1992 (about 57 percent). Looking more closely at our survey results for VA employees who supported reporting misconduct but were unwilling to do so further indicates that fear of reprisal could deter them from reporting misconduct. For example, of those who supported reporting misconduct but were unwilling to report it, about two-thirds (65 percent) of VA employees stated that VA protection for its employees against reprisal was either generally or very inadequate.

VA did not know the extent or outcomes of all VA whistleblower reprisal complaints filed within VA or with other agencies, including complaints for which reprisal was determined or the complaint was settled and what actions, if any, VA took against VA managers when reprisal was found to have occurred. Without an awareness of the overall number of whistleblower reprisal complaints filed against VA, complaints for which reprisal was determined to have occurred, or complaints that were settled, officials at VA lack an important measure of the extent of whistleblower reprisal at the agency and cannot analyze the extent to which further actions are needed to ensure compliance with VA's stated policy of no tolerance for such reprisal. For example, without a system for tracking actions that VA has taken against its managers when reprisal was found to have occurred, VA cannot be certain whether appropriate corrective action was taken when reprisal occurred, whether individual managers were found to have reprised more than once, or whether reprisal occurred more than once in a particular geographic area or field facility. Thus, VA may not be aware of a culture in which a fear of reprisal is localized to a particular geographic region or medical facility.

We recognize that changing an organizational culture takes time. By sending memorandums committing themselves in writing to instilling a culture that does not tolerate whistleblower reprisal, top VA officials have taken a first step to changing VA's organizational culture concerning whistleblowing. As we reported in 1992,[20] a consensus exists among experts in organizational culture that an organization's beliefs and values affect the behavior of its members. In that report, we stated that for a successful culture change top management must be totally committed to the change in both words and action, and organizations must provide training that promotes and develops skills related to their desired values and beliefs.

Although top VA officials have committed themselves in words, it remains to be seen whether the actions, including training that develops skills related to desired values and beliefs, necessary to sustain such a change will follow.

Recommendations

We recommend that the Secretary of Veterans Affairs establish a long-term plan of intended actions with target dates for (1) informing on a periodic basis all employees of their whistleblower rights and (2) measuring the effectiveness of such actions, such as with a periodic survey of employees.

We also recommend that the Secretary design and implement a system for tracking overall whistleblower complaints; complaints for which reprisal was determined or the complaint was settled; and what actions, if any, VA took against VA managers when reprisal was found to have occurred. In addition, we recommend that VA analyze these data periodically to ascertain whether additional steps are needed to ensure that reprisal is not tolerated.

Agency Comments and Our Evaluation

In a March 13, 2000, letter (see app. IV), the Assistant Secretary for Planning and Analysis provided VA's comments on a draft of this report. Overall, VA said that the draft report was thorough and objective and will assist VA in meeting its goal of promoting a culture where employees feel free to raise concerns without fear of reprisal.

VA concurred with our recommendations. Regarding our recommendation that VA establish a long-term plan for informing all employees of their whistleblower rights on a periodic basis, VA identified several efforts with target dates that are to be undertaken during 2000, which are to continue the department's 1999 initiatives. VA also said that it would develop a

[20]GAO/NSIAD-92-105.

mechanism to measure the effectiveness of its efforts, as we recommend. We view these as positive developments. As we point out in the report, changing an organizational culture takes time. We are encouraged that VA has begun to develop a long-term plan with target dates for intended actions.

VA also concurred with our recommendation that it design and implement a system for tracking whistleblower complaints and their disposition and analyze such data to ascertain whether additional steps are needed to ensure that reprisal is not tolerated. VA pointed out that it may be difficult to create a tracking system that captures all complaints and their disposition. According to VA, complaints are filed in many forums, and it may not be possible to obtain information on all of them. For example, VA said that OSC maintains the confidentiality of complainants and will not inform an agency when a complaint is filed or its reasons for dismissing a complaint, and thus VA could not access this information to construct its own database. VA said, however, that OSC can provide reports containing general findings. We are pleased that VA said that it would make a good faith effort to track complaints.

We recognize that VA cannot obtain information on individual cases from OSC and VA's IG while complaints are being investigated because of confidentiality considerations. However, as we say in the report, VA should be aware of the overall numbers of whistleblower reprisal complaints, those for which reprisal was determined to have occurred, and those where settlements occurred. Information should be available on (1) the overall number of complaints without compromising the confidentiality of the individual complainant, (2) individual cases where VA was involved once reprisal has been determined to have occurred and corrective actions have been taken by VA, and (3) individual cases where VA was party to a settlement agreement.

VA expressed concern that our draft report referred to certain OSC and MSPB cases as instances of "proven" retaliation. It believed the use of the term proven was misleading because although OSC makes assessments regarding the merits of complaints, it does not adjudicate cases. Therefore, such cases are not technically proven. We have clarified the terminology used in the report. As we stated earlier in the report, OSC does not adjudicate cases (that is MSPB's role). OSC investigates whistleblower reprisal complaints, and if it believes that reprisal has occurred, OSC will seek to resolve the complaint with the agency involved. Resolution can take the form of corrective action by the agency at OSC's request and disciplinary action against the supervisor responsible for the

reprisal. OSC will attempt to resolve the matter in this manner before prosecuting the case before MSPB. We believe that cases for which the agency agrees to take corrective action should be among those tracked and analyzed by VA. We also believe that VA should be tracking and analyzing the cases that OSC and MSPB classified as settlements. Without tracking and analyzing these cases, among other things, VA cannot determine the extent to which further actions are needed to ensure compliance with VA's policy of no tolerance for whistleblower reprisal or be certain that the appropriate corrective action was taken for the employee or the appropriate disciplinary action was taken against a manager when reprisal was found to have occurred.

VA also made several additional comments suggesting clarifications or the addition of contextual information in the report. These comments are discussed in appendix IV.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to Representative Corrine Brown, Ranking Minority Member, Subcommittee on Oversight and Investigations, House Committee on Veterans' Affairs; Senator Arlen Specter, Chairman, Senate Committee on Veterans' Affairs; Senator John D. Rockefeller IV, Ranking Minority Member, Senate Committee on Veterans' Affairs; and the Honorable Togo D. West, Jr., Secretary of Veterans Affairs. We are also providing copies to the Honorable Elaine Kaplan, Special Counsel; the Honorable Beth S. Slavet, Acting Chairperson of the Merit Systems Protection Board; the Honorable Alexis M. Herman, Secretary of Labor, and the Honorable Richard A. Meserve, Chairman of the Nuclear Regulatory Commission. We will make copies available to others upon request.

Please contact me on (202) 512-8676 if you or your staff have questions. Key contributors to this report are listed in appendix V.

Sincerely yours,

Michael Brostek

Michael Brostek
Associate Director, Federal Management
and Workforce Issues

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Abbreviations

IG	Inspector General
MSPB	Merit Systems Protection Board
NCA	National Cemetery Administration
NRC	Nuclear Regulatory Commission
OSC	Office of Special Counsel
OSHA	Occupational Safety and Health Administration
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration

Objectives, Scope, and Methodology

The Chairman of the Subcommittee on Oversight and Investigations, House Committee on Veterans' Affairs asked us to gather information on the awareness and level of confidence that VA employees, particularly medical personnel, have regarding whistleblower protection. Our objectives were to (1) review actions VA has taken since October 1994--enactment of the 1994 Whistleblower Protection Act amendments--to inform its employees about their rights to protection against reprisal when reporting misconduct; (2) evaluate the extent to which VA employees are aware of their rights to such protection; and (3) evaluate the extent to which VA employees are willing to report misconduct in VA operations, should they become aware of it. We also agreed to provide information on the number and disposition of whistleblower reprisal complaints VA employees filed with agencies responsible for providing whistleblower protection.

To respond to our objective on actions VA has taken to inform its employees about their whistleblower rights, we interviewed and gathered information from VA headquarters officials. We did not contact VA regional officials. We also interviewed OSC officials because of their consultation role required by the 1994 amendments to the Whistleblower Protection Act.

To respond to the objectives of VA employees' awareness of their rights and willingness to report misconduct, we designed and pretested a questionnaire that we sent to a randomly selected, statistically representative stratified sample of VA employees. The questionnaire design was drawn almost entirely from a questionnaire dealing with the same topic that we administered to a governmentwide sample of federal employees in 1992.[1] We tailored the 1992 questionnaire to be VA-specific and asked additional questions that would, among other things, allow us to identify responses for title 38 medical employees from the Veterans Health Administration (VHA) and the population size of location of the respondents' VA medical facility. In our questionnaire, we defined a town or small city as having a population of less than 100,000 and a medium or large city as having a population of 100,000 or more.

VA provided us with overall counts of VA employees, including separate counts for VHA, Veterans Benefits Administration (VBA), and National

[1] Whistleblower Protection: Survey of Federal Employees on Misconduct and Protection From Reprisal (GAO/GGD-92-120FS, July 14, 1992).

Cemetery Administration (NCA) as of March 31, 1999.[2] VA also identified the number of VHA employees who were title 38 medical personnel.[3] Table I.1 shows VA data on the number of VA employees. Because we were particularly interested in medical personnel, the table identifies personnel as being title 38 or title 5 in VHA.

Table I.1: Number of VA Employees as of March 31, 1999

Category of employees	Number of employees[a]
VHA	
Title 38[b]	54,997
Title 5[c]	147,386
Non-VHA[d]	16,653
Total	219,036

[a]Number of employees include full time, part time, and intermittent but does not include 16,080 residents.

[b]This number does not include residents because of high turnover and unavailability of addresses.

[c]This number includes canteen workers and other title 5 employees.

[d]This number includes employees from the VBA, NCS, and VA headquarters.

Source: Data provided by VA.

At our request, from these data VA then provided us with a stratified, random sample of employee names and addresses. We did not verify the randomness or accuracy of the sample VA provided. Table I.2 shows the number of names and addresses provided.

Table I.2: Sample of VA Employees by Strata

Category	Number of employees[a]
VHA	
Title 38[b]	399
Title 5[c]	400[d]
Non-VHA[e]	398
Total	1,197

[a]Number of employees include full time, part time, and intermittent but does not include residents.

[b]This number does not include residents because of high turnover and unavailability of addresses.

[c]This number includes canteen workers and other title 5 employees.

[d]This number includes some employees that are covered by both title 5 and title 38 provisions. We estimated that about 26,692 employees were covered by title 5 and title 38.

[e]This number includes employees from VBA, NCA, and VA headquarters.

[2]Most federal employees in the executive branch are in the competitive civil service, which is employed under a set of personnel laws contained in title 5 of the U.S. Code.

[3]Because VA needed to recruit physicians, dentists, and nurses in an expedited manner after World War II, a separate personnel system was created for these occupations under title 38 of the U.S. Code in 1946. Other occupations were periodically added to title 38, including optometrists, physician assistants, podiatrists, expanded-function dental auxiliary, occupational therapists, pharmacists, practical nurses, and respiratory therapists and technicians. However, not all staff in medical professions are covered under title 38.

Source: Data provided by VA.

Beginning on June 1, 1999, we mailed questionnaires to the 1,197 VA employees for whom VA provided mailing addresses. On June 29, 1999, and July 31, 1999, we sent follow-up questionnaires to those who did not respond. Finally on September 10, 1999, we mailed a follow-up letter. Table I.3 summarizes the breakdown of the sample--employees responding and not responding to the questionnaire.

Table I.3: Breakdown of VA Employees Responding and Not Responding to the Questionnaire

Breakdown of sample	Number
Total VA employees sampled	1,197
Questionnaires returned by Postal Service due to inadequate address or no forwarding address	20
Refuse to participate	2
Questionnaires not returned	391
Usable questionnaires returned	784

The overall response rate was 65.5 percent. For VHA title 38, the response rate was 65.7 percent, 63.5 percent for VHA title 5, and 67.3 percent for non-VHA.

After calculating the weighting of responses to our questionnaire based on the number of VA employees a given response represents, we weighted the 784 usable returned questionnaires to represent the population of 219,036 VA employees at VHA, VBA, NCA, and VA headquarters. Because we sampled a portion of VA employees, the results of our questionnaire are estimates of all VA employees' views and are subject to sampling error. For example, the estimate that 36 percent of employees reported hearing from sources other than VA about their right to protection from reprisal when reporting misconduct at VA is surrounded by an error margin of $\pm$ 4 percentage points at the 95-percent confidence level. This error margin thus indicates that there is a 95-percent chance that the actual percentage falls between 32 and 40 percent. The overall survey results in this report have 95 percent confidence intervals of less than $\pm$ 5 percentage points unless otherwise noted. The confidence interval for the title 38 medical employees was no greater than $\pm$6 percentage points unless otherwise indicated.

The overall results are generalizable to all VA employees. The results for the VHA title 38 medical employees are generalizable to this group within VA. Although we did not test the validity of the respondents' answers or

the comments they made, we took several steps to check the quality of our questionnaire data. We reviewed and edited completed questionnaires, made internal consistency checks on selected items, and checked the accuracy of data entry on a sample of questionnaires.

In addition to sampling errors, the practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted, in the sources of information that are available to respondents, or in the types of people who do not respond can introduce unwanted variability into the survey results. We took steps in the development of the questionnaire, the data collection, and the data editing and analysis to minimize nonsampling errors. These steps, which we discussed earlier, included pretesting and editing the questionnaires.

This report expresses the viewpoints and attitudes of VA employees. All responses were anonymous. We did not determine if their views accurately reflected situations that existed within the various VA facilities or major components.

To provide information on the number and disposition of whistleblower reprisal complaints VA employees filed with agencies responsible for providing whistleblower protection, we asked federal agencies, that are required by law to assist federal employees who believe that they have been retaliated against for whistleblowing, to provide us with such data for fiscal years 1994 through 1998, the year for which the most recent data were available for all agencies. The federal agencies we contacted were the Office of Special Counsel (OSC), the Merit Systems Protection Board (MSPB), and the Department of Labor's Occupational Safety and Health Administration (OSHA). We also gathered information from the Nuclear Regulatory Commission (NRC), which investigates nuclear safety concerns and may investigate whistleblower reprisal complaints under its statutory authority; however, federal employees must file such complaints with OSHA to receive personal remedies for whistleblower retaliation. From these data, we categorized the dispositions into broad, general groupings, including corrective or favorable actions, reprisal not proven, and dismissed. We did not verify the accuracy of the data provided by the agencies.

To aid us in meeting our objectives, we also reviewed applicable laws, regulations, and guidance regarding whistleblower reprisal.

Survey of VA Employees on Whistleblower Protection

GAO U. S. General Accounting Office

Survey of Department of Veterans Affairs Employees on Whistleblower Protection

Introduction

The U.S. General Accounting Office (GAO), an agency of Congress, is gathering information on Department of Veterans Affairs (VA) employees awareness and confidence regarding whistleblower protection. Our purpose is to determine (1) how aware VA employees are of their rights to protection against reprisal when reporting misconduct and (2) how willing they are to report misconduct in VA operations, should they become aware of it.

Federal employees, including VA employees, may be protected under several whistleblower laws. These laws were enacted to strengthen and improve protection of employees' rights, prevent reprisal against employees who have blown the whistle, and help eliminate misconduct in government. The Whistleblower Protection Act is the primary law that protects federal employees from whistleblower reprisal. Under the act, agencies are responsible for the prevention of whistleblower reprisal. Agencies' inspectors general can receive and investigate whistleblower reprisal complaints. The Office of Special Counsel (OSC) serves as an independent investigative and prosecutorial agency to protect employees, former employees, and applicants for employment from prohibited personnel practices, especially reprisal for whistleblowing. A whistleblower also has the right to go to the Merit Systems Protection Board (MSPB) in certain circumstances for protection against reprisal.

Federal employees may also go to the Department of Labor's Occupational Safety and Health Administration (OSHA) to be protected from reprisal for whistleblowing related to environmental laws (such as the Clean Air Act and the Safe Drinking Water Act) as well as activities dealing with radioactive materials regulated by the Energy Reorganization Act for the Nuclear Regulatory Commission (NRC).

We are surveying VA employees who may be covered by these laws. You were randomly selected to complete the survey. Your participation in this survey is completely voluntary. Your frank and honest answers will help GAO advise Congress on employee protection under these laws.

Your answers to this anonymous questionnaire do not contain sufficient information to identify you or any other individuals who respond. In order to ensure anonymity, we ask that you return the enclosed postcard separately, indicating that you have completed and returned your questionnaire. We need these cards returned so that we can send a follow-up questionnaire to those who do not return their postcards and questionnaires.

The questions can be easily answered by checking boxes or filling in blanks. The questionnaire can be completed in about 15 minutes. Space has been provided at the end of the questionnaire, and additional pages may be added for any comments you may want to make.

Please remember to return the postcard separately from the questionnaire to ensure your anonymity. Return the completed questionnaire in the enclosed preaddressed, prepaid envelope within 10 days of receipt. In the event the envelope is misplaced, the return address is:

U.S. General Accounting Office
Dallas Field Office
Attn: James W. Turkett
1999 Bryan Street, Suite 2200
Dallas, TX 75201

If you have any questions about this questionnaire, please call James W. Turkett at (214) 777-5627.

Thank you for your cooperation and assistance.

1

Definitions - Please Read

Whistleblower - A commonly used term describing a federal employee who reports misconduct within or related to federal operations, including contractors.

Misconduct - A summary term used to indicate the violation in federal sector operations of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or acts that are of substantial and specific danger to public health and safety.

Reprisal - Taking or threatening to take a personnel action against an employee for reporting misconduct.

I. Awareness

1. Before receiving this questionnaire, how aware, if at all, were you that there are laws to protect VA employees who "blow the whistle" on misconduct? *(Check one.)*

N=218,826

1. ❒ Very greatly aware 10.1%
2. ❒ Greatly aware 20.3%
3. ❒ Moderately aware 26.3%
4. ❒ Somewhat aware 24.6%
5. ❒ Not aware 18.6%

2. To what extent, if at all, are you aware of how the whistleblower protection laws protect VA employees against reprisal? *(Check one.)*

N=218,826

1. ❒ Very great extent 3.0%
2. ❒ Great extent 7.4%
3. ❒ Moderate extent 22.4%
4. ❒ Some extent 25.1%
5. ❒ Little or no extent 42.0%

3. Have you received any information **from VA** about your right to protection from reprisal when reporting misconduct in VA? *(Check one.)*

N=218,826

1. ❒ Yes ➜ ***Continue with question 4.*** 42.6%
2. ❒ No \ > ***Skip to question 6.*** 38.2%
3. ❒ Don't know / 19.1%

4. How did VA present this information? *(Check all that apply.)*

	N's reported
1. ❒ Presentations/training	23,686
2. ❒ Memo, letter, pamphlet, poster, notice, or regulation/policy	74,569
3. ❒ Article in an agency newsletter	15,209
4. ❒ Discussion with managers/ supervisors	8,671
5. ❒ Other - Please specify: _____	2,979

5. Did the source(s) that you checked in question 4 provide information about the roles of each of the following in protecting you from reprisal? *(Check one box in each row.)*

	Yes (1)	No (2)	Don't know/ don't remember (3)
a. VA supervisors or other management N=89,738	55.2%	12.9%	31.9%
b. VA Inspector General N=88,761	35.5%	18.0%	46.5%
c. Office of Special Counsel N=90,810	30.0%	19.7%	50.3%
d. Merit Systems Protection Board (MSPB) N=88,761	26.9%	19.7%	53.5%
e. Office of Safety and Health Administration (OSHA) N=88,551	29.5%	18.4%	52.1%

2

6. Have you heard from sources **other than VA** about your right to protection from reprisal when reporting misconduct in VA? *(Check one.)*

N=218,826

1. ❒ Yes ➜ ***Continue with question 7.*** 36.0%
2. ❒ No \ 56.9%
3. ❒ Don't know / 7.2%

> ***Skip to question 9.***

7. What was the source(s) of this information? *(Check all that apply.)*

	N's reported
1. ❒ Newspaper(s)	37,554
2. ❒ Magazine(s)	16,331
3. ❒ TV, radio coverage	29,658
4. ❒ Union source	15,678
5. ❒ Word of mouth	30,126
6. ❒ Other - Please specify: _____	12,504

8. Did the source(s) that you checked in question 7 provide information about the roles of each of the following in protecting you from reprisal? *(Check one box in each row.)*

	Yes (1)	No (2)	Don't know/ don't remember (3)
a. VA supervisors or other management N=78,309	34.0%	38.7%	27.3%
b. VA Inspector General N=77,395	24.1%	40.3%	35.6%
c. Office of Special Counsel N=77,185	17.0%	43.2%	39.8%
d. Merit Systems Protection Board (MSPB) N=76,542	19.5%	39.4%	41.1%
e. Occupational Safety and Health Administration (OSHA) N=77,247	23.5%	39.0%	37.5%

9. To what extent, if at all, do you feel you have enough information about where to report misconduct, if such activities would come to your attention? *(Check one.)*

N=218,616

1. ❒ Very great extent 5.2%
2. ❒ Great extent 9.2%
3. ❒ Moderate extent 21.6%
4. ❒ Some extent 22.5%
5. ❒ Little or no extent 35.1%

---

6. ❒ Don't know/no basis to judge 6.4%

II. Climate Regarding Reporting Misconduct

10. In your opinion, how adequate or inadequate is the protection against reprisal for VA employees who report misconduct? *(Check one.)*

N=218,764

1. ❒ Very adequate 4.0%
2. ❒ Generally adequate 16.8%
3. ❒ Neither adequate nor inadequate 9.9%
4. ❒ Generally inadequate 18.0%
5. ❒ Very inadequate 15.4%

---

6. ❒ Don't know/no basis to judge 35.9%

For questions 11 through 19, please refer to the definition of misconduct on page 2. Examples of misconduct are stealing federal funds or property, violations of federal laws or regulations, and health and safety violations.

For the purpose of this survey, please consider only matters that are serious rather than trivial.

11. To what extent, if at all, do you support the idea that VA employees should report misconduct if they become aware of it? *(Check one.)*

N=218,764

1. ❒ Very great extent 48.1%
2. ❒ Great extent 35.3%
3. ❒ Moderate extent 11.0%
4. ❒ Some extent 2.8%
5. ❒ Little or no extent 1.0%

---

6. ❒ No opinion 1.9%

3

12. To what extent, if at all, do you currently consider misconduct to be a problem at VA? *(Check one.)*

N=219,036

1. ❒ Little or no extent	23.2%
2. ❒ Some extent	28.2%
3. ❒ Moderate extent	18.0%
4. ❒ Great extent	10.7%
5. ❒ Very great extent	8.5%
6. ❒ Don't know/no basis to judge	11.4%

13. Overall, in your opinion, to what extent, if at all, does VA support the federal policy of ensuring that employees who report misconduct are protected from reprisal? *(Check one.)*

N=218,974

1. ❒ Very great extent	4.9%
2. ❒ Great extent	9.6%
3. ❒ Moderate extent	13.2%
4. ❒ Some extent	15.8%
5. ❒ Little or no extent	16.6%
6. ❒ Don't know/no basis to judge	40.0%

14. If you became aware of misconduct in VA and reported it, in your opinion, would VA support you, reprise against you, or neither? *(Check one.)*

N=218,640

1. ❒ Strongly support me	2.4%
2. ❒ Support me	20.8%
3. ❒ Neither support nor reprise against me	17.1%
4. ❒ Reprise against me	25.5%
5. ❒ Strongly reprise against me	6.4%
6. ❒ Don't know/no basis to judge	27.9%

15. Currently, if you became aware of misconduct in VA, how willing or unwilling would you be to report it? *(Check one.)*

N=218,826

1. ❒ Very willing	18.7%
2. ❒ Generally willing	31.5%
3. ❒ Undecided	28.3%
4. ❒ Generally unwilling	13.1%
5. ❒ Very unwilling	3.7%
6. ❒ Don't know/no basis to judge	4.8%

4

16. VA employees may report misconduct within or related to federal operations, including contractors, to the places listed below.

To what extent, if at all, would you be willing to report misconduct to each of the following places? ***(Check one box in each row.)***

		Little or no willingness (1)	Somewhat willing (2)	Moderately willing (3)	Greatly willing (4)	Very greatly willing (5)	Don't know/no basis to judge (6)
a. Your supervisor or other management	N=215,505	20.7%	13.2%	19.9%	20.7%	21.2%	4.3%
b. VA Office of Health and Safety	N=214,194	13.6%	15.7%	20.6%	17.3%	16.4%	16.4%
c. Government hotlines	N=216,331	11.1%	13.3%	21.4%	20.2%	20.1%	14.0%
d. VA Inspector General	N=216,355	15.2%	15.3%	20.8%	12.9%	17.2%	18.5%
e. U.S. General Accounting Office	N=214,588	15.9%	15.9%	17.9%	11.6%	14.7%	24.0%
f. Office of Special Counsel	N=214,588	17.2%	14.8%	17.0%	12.0%	14.2%	24.7%
g. Federal Bureau of Investigation	N=215,712	22.0%	16.2%	14.2%	9.7%	16.2%	21.7%
h. U.S. Attorney's Office	N=214,886	20.3%	17.4%	15.8%	10.1%	15.8%	20.5%
i. Member of Congress	N=215,331	24.1%	16.1%	15.3%	11.9%	15.9%	16.7%
j. News media	N=216,391	45.4%	13.5%	11.9%	7.5%	7.8%	13.9%
k. Occupational Safety and Health Administration (OSHA)	N=215,712	15.0%	16.8%	22.1%	13.7%	15.9%	16.5%
l. Nuclear Regulatory Commission (NRC)	N=211,329	18.9%	13.8%	16.9%	8.3%	11.9%	30.2%
m. Other - Please specify: _____ _____	N=21,271						

17. Do you think VA management or others in VA would or would not take the following actions if you were to report misconduct? ***(Check one box in each row.)***

		Definitely would not (1)	Probably would not (2)	Uncertain (3)	Probably would (4)	Definitely would (5)	Don't know/no basis to judge (6)
a. Deny expected cash award or bonus	N=215,653	10.6%	17.6%	25.7%	18.4%	10.6%	17.2%
b. Deny expected promotion	N=216,479	9.5%	18.0%	24.4%	24.5%	11.7%	12.0%
c. Dismissal	N=214,430	17.9%	28.1%	25.4%	12.9%	5.5%	10.3%
d. Duties/responsibilities reduced or lowered	N=215,381	13.0%	24.4%	22.5%	21.8%	7.6%	10.8%
e. Harassment	N=215,381	11.9%	20.2%	23.0%	19.0%	15.0%	11.0%
f. Lower next performance appraisal	N=214,712	10.1%	19.9%	23.6%	23.6%	11.9%	10.8%
g. Positive recognition by management	N=214,738	15.0%	31.0%	27.2%	10.5%	4.9%	11.3%
h. Positive support by your peers	N=214,034	9.2%	21.3%	31.2%	22.0%	5.9%	10.4%
i. Promotion	N=214,837	21.4%	34.3%	21.6%	7.0%	3.6%	12.0%
j. Reassignment of work location	N=214,712	9.3%	19.5%	33.5%	20.7%	6.1%	10.9%
k. Social isolation by peers	N=215,256	8.9%	26.1%	32.9%	15.3%	6.6%	10.2%
l. Reassignment of work schedule	N=212,516	8.7%	22.7%	29.9%	20.9%	7.2%	10.6%
m. Other - Please specify: _____ _____	N=14,637						

5

18. How important, if at all, would the following be in **encouraging** you in reporting misconduct that occurred within VA? ***(Check one box in each row.)***

IF I THOUGHT THAT . . .	Very great importance (1)	Great importance (2)	Moderately important (3)	Somewhat important (4)	Little or no importance (5)	Don't know/no basis to judge (6)
a. I could report it and remain anonymous N=214,492	50.3%	23.7%	13.5%	4.3%	5.4%	2.8%
b. Something would be done to correct the activity I reported N=216,751	64.2%	26.4%	4.1%	1.3%	1.8%	2.1%
c. I would be protected from any sort of reprisal N=216,171	67.2%	21.2%	6.1%	1.5%	1.7%	2.4%
d. The problem was something I considered very serious N=215,256	64.7%	26.0%	3.7%	1.3%	1.4%	2.9%
e. I could report it without people thinking badly of me N=215,961	36.0%	22.8%	17.0%	9.7%	12.2%	2.5%
f. I would be positively recognized by management for a good deed N=213,738	19.1%	11.5%	17.6%	12.1%	35.3%	4.3%
g. I could receive some sort of cash award N=212,391	4.8%	4.1%	11.8%	9.5%	64.9%	4.9%
h. Other - Please specify: _____ _____ N=8,660						

19. How important, if at all, would the following be in **discouraging** you in reporting misconduct that occurred within VA? ***(Check one box in each row.)***

IF I THOUGHT THAT . . .	Very great importance (1)	Great importance (2)	Moderately important (3)	Somewhat important (4)	Little or no importance (5)	Don't know/no basis to judge (6)
a. Reprisals had previously been taken against whistleblowers at VA N=216,961	54.0%	20.4%	8.9%	3.5%	3.4%	9.8%
b. I would be identified even though I requested anonymity N=217,023	56.8%	21.5%	10.1%	4.3%	4.1%	3.2%
c. Nothing would be done to correct the activity I reported N=216,813	63.9%	22.9%	5.8%	1.8%	2.4%	3.2%
d. I would not be protected from various types of reprisal N=216,171	64.4%	20.4%	7.9%	2.5%	1.3%	3.5%
e. People would think badly of me N=214,590	19.5%	13.9%	23.7%	18.1%	21.4%	3.3%
f. Other - Please specify: _____ _____ N=6,425						

6

III. Background

20. How long have you been employed by VA? *(Check one.)*

N=217,813

1. ❒ Less than 1 year 5.2%
2. ❒ 1 to 5 years 19.3%
3. ❒ 6 to 10 years 21.2%
4. ❒ 11 to 15 years 17.5%
5. ❒ 16 to 20 years 13.7%
6. ❒ 21 to 25 years 12.8%
7. ❒ 26 to 30 years 8.0%
8. ❒ Over 30 years 2.3%

21. What is your pay category or pay plan? *(Check one.)*

N=215,652

1. ❒ General Schedule or equivalent (GS, GG, GW, etc.) 68.8%
2. ❒ Wage System (WG, WS, WL, WD, WN, etc.) 13.9%
3. ❒ Executive schedules (EX, ES, SR, ST, SL, etc.) 0.7%
4. ❒ VA Canteen Schedule (VC only) 0.8%
5. ❒ VA Medical Schedule (VM, VN, VP only) 9.1%
6. ❒ Other - Please specify: _____ 6.7%

22. In what branch of VA do you work? *(Check one.)*

N=219,036

1. ❒ Veterans Health Administration 92.4% ➜ ***Continue with qst. 23.***
2. ❒ Veterans Benefits Administration 5.0%
3. ❒ National Cemetery Administration 0.7%
4. ❒ Other - Please specify: _____ 1.9%

> ***Skip to question 26.***

23. If you work in the Veterans Health Administration, what is your job series or job category? ***(Check only one.)***

N=202,383

1. ❒ Dentist (Dental Officer series) 0.3%
2. ❒ Expanded-function Dental Auxiliary 0.2%
3. ❒ Health Systems Administrator (Series 670) 1.7%
4. ❒ Occupational Therapist 0.3%
5. ❒ Optometrist 0.4%
6. ❒ Pharmacist 3.4%
7. ❒ Physical Therapist 0.3%
8. ❒ Physician (Medical Officer series) 7.1%
9. ❒ Physician Assistant 0.6%
10. ❒ Podiatrist 0.2%
11. ❒ Practical Nurse (including vocation nurse) 7.5%
12. ❒ Registered Nurse (including nurse-anesthetist) 18.4%
13. ❒ Respiratory Therapist and Technician 1.7%
14. ❒ Other Health Care – Please specify: _____ 26.7%
15. ❒ Other Non-Health Care - Please specify: _____ 31.3%

24. If you work in the Veterans Health Administration, what type of facility do you work in? *(Check one.)*

N=195,531

1. ❒ Large medical center (more than 400 beds) 38.5%
2. ❒ Medium medical center (between 200 and 400 beds) 31.1%
3. ❒ Small medical center (less than 200 beds) 21.9%
4. ❒ Community based outpatient clinic (Remote location from parent facility) 2.7%
5. ❒ Independent outpatient clinic 1.1%
6. ❒ A nonmedical facility such as VHA Headquarters 1.2%
7. ❒ Other - Please specify: _____ 3.5%

7

25. If you work in the Veterans Health Administration, which of the following best describes the location of the facility in which you work? *(Check one.)*

N=195,373

1. ❒ In or near a small town of less than 10,000 people or a rural area 2.7%
2. ❒ In or near a large town of 10,000 to 25,000 people 7.0%
3. ❒ In or near a small city of 25,000 to 100,000 people 21.7%
4. ❒ In or near a medium-size city of 100,000 to 500,000 people 27.5%
5. ❒ In or near a large city of more than 500,000 people 41.1%

26. What is your official work schedule? *(Check one.)*

N=217,541

1. ❒ Full-time (but not seasonal, on-call, or intermittent) 88.9%
2. ❒ Part-time (but not seasonal, on-call, or intermittent) 7.1%
3. ❒ Seasonal (either full-time or part-time) 0.6%
4. ❒ On-call or intermittent (either full-time or part-time) 1.1%
5. ❒ Other - Please specify: _____ _____ 2.3%

27. What, if any, is your union affiliation? *(Check one.)*

N=216,666

1. ❒ I am a dues-paying member of a union 24.2%
2. ❒ I don't pay dues, but there is a union I could join 44.8%
3. ❒ I don't pay dues and there is no union I could join 8.8%
4. ❒ I am a management or supervisory employee not eligible to join a union 17.2%
5. ❒ Don't know 5.0%

28. What is your current employment status? *(Check one.)*

N=216,800

1. ❒ I have a career or career-conditional appointment 89.9%
2. ❒ I have a temporary (or term) appointment 5.0%
3. ❒ I have a student, intern, or resident-type appointment 2.0%
4. ❒ Other - Please specify: _____ _____ 3.2%

IV. Comments

29. If you have any comments regarding any of these questions or other concerns about protection from reprisal or reporting serious misconduct, please use the space provided below. If necessary, attach additional pages.

27.9% of all respondents entered a comment

72.1% of all respondents had no comment

Thank you very much for your cooperation.
Please return your completed survey in the enclosed envelope. Return the postcard separately.

8

Responses of VA Employees Who Support Reporting Misconduct

To determine possible reasons that VA employees who stated in their questionnaire responses that they supported reporting misconduct to a great or very great extent but were generally or very unwilling to do so ("unwilling"), we looked more closely at their responses to other questions. We also compared their responses to those of employees who stated that they supported reporting misconduct to a great or very great extent and were generally or very willing to report it ("willing"). Table III. 1 shows the opinions of those respondents who supported reporting misconduct at VA (question 11) and whether they were willing or unwilling to report it (question 15) as well as the confidence intervals for these estimates.

Table III.1: Opinions of VA Employees Who Support VA Employees Reporting Misconduct

	VA employees supporting to a great or very great extent that VA employees should report misconduct (n=182,449)			
	Those generally or very willing to report misconduct (n=104,738)	95 percent confidence interval	Those generally or very unwilling to report misconduct (n=27,064)[a]	95 percent confidence interval
VA supported to a great or very great extent the federal policy of ensuring that employees who report misconduct should be protected from reprisal	26%	20% to 31%	2%	0% to 4%[b]
VA protection for its employees against reprisals was either generally or very inadequate	23	17 to 28	65	53 to 78
If reprisals had previously been taken against whistleblowers at VA, it would have a great or very great importance of discouraging you from reporting misconduct	71	65 to 77	93	86 to 98
VA would reprise or strongly reprise against them if they reported misconduct	20	14 to 25	71	59 to 82
Ways VA would probably or definitely reprise against them				
Deny them an expected cash award	24	19 to 30	58	46 to 71

	VA employees supporting to a great or very great extent that VA employees should report misconduct (n=182,449)			
	Those generally or very willing to report misconduct (n=104,738)	95 percent confidence interval	Those generally or very unwilling to report misconduct (n=27,064)[a]	95 percent confidence interval
Deny them an expected promotion	29	23 to 35	65	53 to 77
Harass them	28	23 to 34	61	48 to 73
Lower their next performance appraisal	29	23 to 34	72	61 to 83

Note: We also compared our survey results for those who were generally or very willing to report misconduct with those who reported being generally unwilling to report misconduct, very unwilling, undecided, or did not know/had no basis to judge. The differences between the two groups for the same set of questions contained in the table were also statistically significant.

[a]Those who were undecided or did not know/had no basis to judge about reporting misconduct accounted for 50,374.

[b]"0%" is a rounded 0.

Source: GAO analysis of questionnaire responses.

Comments From the Department of Veterans Affairs

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON DC 20420

MAR 13 2000

Mr. Michael Brostek
Associate Director, Federal Management
and Workforce Issues
General Government Division
U. S. General Accounting Office
Washington, DC 20420

Dear Mr. Brostek:

We have reviewed your draft GAO report, ***WHISTLEBLOWER PROTECTION: VA Did Little Until Recently to Inform Employees About Their Rights*** (GAO/GGD-00-70). We appreciate the fact that this review follows closely on VA's actions to promote a culture where employees feel free to raise their legitimate concerns without fear of reprisal. GAO's comments have presented a valuable opportunity to consider the effects of our actions on attaining our goal and to factor them into our ongoing and future efforts. We appreciate that GAO evaluators provided us opportunities to address related issues on an ongoing basis during the review. Enclosure 1 provides specific comments to your recommendations. Overall, we find the report to be a thorough, objective review that will assist us in meeting our goal. However, there are some areas that we think should be clarified.

See comment 1.

We believe the title of the report, "VA Did Little Until Recently to Inform Employees About Their Rights," should reflect the stated purpose for the review. As written, the title singles out one aspect of a comprehensive review, giving it more significance than VA's current efforts; this is inconsistent with the even-handed tone of the report. We do not disagree that VA could have done more in the past; however, we believe the title detracts from the aggressive actions that VA has taken over the course of the past year and will continue to take in the future. As the report indicates, the Office of Special Counsel (OSC) noted that VA's outreach efforts were better than the efforts of most federal agencies. We suggest that you revise the title to either reflect the current state of the program or to simply reflect the nature of the review.

See comment 2.

The GAO report states that the majority of VA employees have limited, or no knowledge about their rights to whistleblower protection. VA has instituted an aggressive series of initiatives designed to change the culture within VA regarding the rights and protections afforded to employees who engage in whistleblowing activities. The report mentions a number of these initiatives, and we have provided a summary as Enclosure 2 to this letter. Also under separate cover, we have forwarded to your office three binders that contain the responses to a survey of 42 field facilities. These responses provide examples of the types

2. Mr. Michael Brostek

of initiatives that local VHA field facilities have implemented. In addition, the Office of Human Resources Management (OHRM) sent an e-mail message to all Human Resources Managers in the field requesting information as to whether they had incorporated whistleblower information into supervisory training and new employee orientation. A majority of the respondents indicated that they include whistleblower training in supervisory training and new employee orientation. This kind of information will assist us in analyzing the effectiveness of our efforts.

While extensive information has been published, we recognize that more needs to be done in order to increase employee awareness. Some of our continuing efforts are addressed in our responses to the specific recommendations.

See comment 3.

The GAO report also refers to VA's decision not to distribute a copy of a pamphlet entitled "The Role of the U.S. Office of Special Counsel." This comment could be misconstrued as a finding that based on cost, VA made a decision to not disseminate substantive whistleblower information. The pamphlet is 22 pages long and provides detailed information on prohibited personnel practices, the Hatch Act, and whistleblower disclosures. VA has published information in a more concise, streamlined manner, such as the one page attachment to the Secretary's memorandum explaining employee avenues of appeal. However, recognizing the potential value of the pamphlet, VA took a more cost effective approach in making the pamphlet available to employees. During the spring of 1999, VA's OHRM transmitted an electronic mail message to field Human Resources Management Offices (HRMOs). The message contained a link to the OSC's pamphlet entitled "The Role of OSC". The OHRM advised its HRMOs to print copies of the pamphlet and place them on display in the HRM offices and to forward this pamphlet to local union officials as a way of including our partners in our outreach efforts.

On pages 6 and 37, the report states that VA did not know the extent or outcomes of all VA whistleblower reprisal complaints filed within VA or with other agencies. This statement provides only a partial picture and conveys the erroneous impression that the information is available or can be assembled feasibly. Complaints are filed in many forums, and it is impossible for any agency to have knowledge of them all. For example, the OSC, which is charged with investigating whistleblower complaints, maintains the confidentiality of complainants to the greatest extent possible. OSC will not inform an agency when a complaint is filed, nor will it inform an agency of the reasons for dismissing a complaint. The fact that VA is unaware of many complaints is also clear from several discussions with staff of the House Veterans Affairs Committee (HVAC), Subcommittee on Oversight and Investigations. On several occasions, the HVAC Subcommittee staff have discussed with VA officials, in both general and specific terms, the complaints they receive, some of which they believe have merit and others that they conclude after review do not have merit.

3. Mr. Michael Brostek

The Subcommittee staff does not share all of those complaints and their outcomes with VA. However, VA is readily able to obtain information from existing databases regarding the cases where an employee has raised the allegation in an appeal to the Merit Systems Protection Board (MSPB), and can further determine the outcome of the appeal.

On pages 36 and 38, the report points out that data obtained from OSC and the MSPB indicate 43 cases of "proven" retaliation. We believe this is a legitimate area of inquiry, particularly when trying to ascertain the extent to which employees are subjected to reprisal. However, we are concerned that the conclusions drawn from the data are not supportable and misleading. In several places, the report characterizes the cases reported by OSC and MSPB as "proven" instances of reprisal. It should be noted that OSC does not adjudicate cases. While the OSC makes assessments regarding the merits of the complaints, it serves a prosecutorial role; the MSPB has the ultimate authority to decide if a complaint has been proven.

See comment 4.

It is our understanding that the MSPB database, upon which GAO relied, contains data elements that identify the cases where reprisal was an issue raised in the appeal and show whether the appealed action was reversed or mitigated. It is also our understanding that the MSPB database does not show if the basis for reversal/mitigation was due to whistleblower reprisal. The only way to determine if whistleblower retaliation was found is to review each decision. We also note that the MSPB data provided to GAO indicate that, during the 10/1/93 – 3/31/99 period, there were five VA cases where corrective action was ordered. Corrective action is ordered in cases where the appealed action must be rescinded or changed in some fashion. Although it does not necessarily represent that there was a finding of reprisal in that case, this figure is consistent with the number of cases (five) that VA had reported to the HVAC Subcommittee on Oversight and Investigations. (One of those five VA-reported cases was subsequently reversed (Costello v. MSPB and OSC, USCA Fed. Cir., #97-3410, 7/16/99.))

Thank you for the opportunity to comment on your draft report.

Sincerely,

Dennis Duffy
Assistant Secretary for
Planning and Analysis

Enclosures

Enclosure 1

Department of Veterans Affairs Comments to GAO Draft Report,
WHISTLEBLOWER PROTECTION: VA Did Little Until Recently to Inform Employees About Their Rights
(GAO/GGD-00-70)

GAO recommends that the Secretary of Veterans Affairs establish a long-term plan of intended actions with target dates for

1. **informing on a periodic basis all employees of their whistleblower rights and**

Concur - The Department has already embarked on a path that promotes a culture where employees feel free to come forward with their legitimate concerns without fear of reprisal. As part of our continuing efforts, we have developed language to be included in the Employee Handbook regarding this issue and established a target date for issuance of the handbook by the spring of 2000. We have also augmented the annual ethics training plan for the coming training cycle to incorporate whistleblower protections. We also will issue annual notices to employees as reinforcement of the Department's views. The target date for the notice is March 2000. In addition, a nation-wide ethics training program is planned for the fall of 2000. It will be broadcast by satellite, and will include a segment on whistleblowing.

2. **measuring the effectiveness of such actions, such as with a periodic survey of employees.**

Concur - Agreeing with this, we will develop an appropriate mechanism.

GAO also recommends that the Secretary design and implement a system for tracking overall whistleblower complaints; complaints for which reprisal was determined or the complaint was settled; and what actions, if any, VA took against VA managers when reprisal was found to have occurred. In addition, GAO recommends that VA analyze these periodically to ascertain whether additional steps are needed to ensure that reprisal is not tolerated.

Concur - VA will establish a system for tracking complaints, of which we are aware, for purposes of identifying trends. VA initially identified the establishment of a tracking system as a potential means to assess the effectiveness of efforts to ensure that employees were not being subjected to whistleblowing reprisal and that managers and supervisors who engaged in reprisal were held accountable. It is important to note that this was just one of a number of strategies under consideration that were intended to achieve the overarching objective of ensuring that employees felt free to raise their legitimate complaints without fear of

Enclosure 1

Department of Veterans Affairs Comments to GAO Draft Report,
WHISTLEBLOWER PROTECTION: VA Did Little Until Recently to Inform Employees About Their Rights
(GAO/GGD-00-70)
(Continued)

reprisal. After a careful examination of the issues involved in developing a tracking system, we determined that there would be significant problems associated in creating a tracking system that provided comprehensive, reliable, meaningful information. For example, OSC maintains data on complaints filed with that office, and can provide reports containing general findings that could be helpful in assessing general trends. However, VA could not otherwise have access to this information for constructing its own database due to OSC's need to protect the confidentiality of complainants. Nevertheless, VA will make a good faith effort to track complaints to the extent feasible.

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Enclosure 2

SUMMARY OF ACTIONS TO ADDRESS WHISTLEBLOWING IN VA

AREAS OF FOCUS: Communication; Training; Accountability; OSC Liaison.

COMMUNICATION

The following actions have been taken:

- Secretary's letter dated March 9, 1999.
- Under Secretary for Health letter dated April 9, 1999.
- Under Secretary for Benefits letter dated April 27, 1999.
- Acting Under Secretary for Memorial Affairs letter dated April 29, 1999.
- Information on OHRM web site, with links to the OIG and OSC. The OHRM web site includes a Microsoft PowerPoint presentation that can be downloaded and used for training purposes.
- Information on VHA, VBA, NCA, and ORM web sites, with links to OHRM web site.
- Article on whistleblowing in the April issue of Vanguard.
- Within VHA, the Under Secretary for Health required the following actions to address the rights and protections of whistleblowers: the revision of all employee orientation material and handbooks; the posting of information in prominent, highly visible public locations; discussion of employee rights and responsibilities in local e-mails and newsletters; in-house training for all managers and supervisors.

TRAINING

- The Office of General Counsel provided training for VHA VISN Directors in May 1999. Additional training was requested by local VHA facilities and provided by Regional Counsels.
- A satellite broadcast, "Whistleblowing: Rights, Remedies, and Rewards" was presented on September 16, 1999, by the Office of General Counsel, the VA

Learning University, and the Office of Special Counsel. Both the Special Counsel and VA's General Counsel personally participated in the broadcast.

- In conjunction with the satellite broadcast, a web site was developed for use on a time limited basis allowing VA employees to e-mail questions to the Office of General Counsel for response.

ACCOUNTABILITY

- The Secretary, and the Under Secretary for Health, have communicated to senior executives that reprisal against VA employees will not be tolerated, and that disciplinary action will be taken against individuals found guilty of reprisal.

- Through its educational and outreach efforts, VA has increased the level of sensitivity and awareness of all VA managers and supervisors to manage in an ethical and responsible manner.

- Rapid Response Investigative Teams are being deployed to review allegations of serious misconduct against VA senior managers, including those involving whistleblowing retaliation.

LIAISON WITH OFFICE OF SPECIAL COUNSEL

- The General Counsel established a formal protocol and liaison between VA's regional counsels and OSC that facilitates the OSC review of complaints.

- Ms. Ruth Robinson-Ertel, OSC's Associate Special Counsel for Investigation, spoke to VA Regional Counsels in June 1999 regarding the liaison function.

The following are GAO's comments on VA's March 13, 2000, letter.

GAO Comments

1. VA suggested that we revise the title to reflect either the current state of its whistleblower program or the nature of the review. We do not believe that the title of the report needs to be changed. In our view, the title captures the central message of the report. VA acknowledges that it could have done more in the past to educate employees about their whistleblower protection rights, and we believe the title reflects this fact. We also believe that the report fairly and comprehensively discusses the actions VA has taken over the course of the past year.

2. VA included as an enclosure to its letter a summary of actions that VA has taken to address whistleblowing in VA. Most of these actions were shared with us by VA during our work and were included in our draft report. We have included additional actions brought to our attention in the text, where appropriate.

VA also provided us with 3 binders of information it collected from 42 VHA field facilities on whistleblower initiatives implemented at the local level. As we reported on page 10, VA officials told us that they instructed VHA field offices to include information on whistleblowing in local newsletters and E-mails, but they could not verify that their instructions were met. Subsequently, VA surveyed some facilities to learn what actions were taken. VA also surveyed VHA field Human Resources Managers about whether they had incorporated whistleblower information into local supervisory training and new employee orientation. We agree with VA that collecting and analyzing this type of information will aid it in reviewing the effectiveness of its efforts and help ensure that VA initiatives are implemented by field facilities.

3. VA was concerned that our reference to its decision not to distribute the OSC pamphlet on "The Role of the Office of Special Counsel" could be misconstrued as based solely on cost. On page 13 of the report, we recognize that VA did not purchase the pamphlet based in part on factors other than cost. While we do not believe that the report could be misconstrued to say that VA chose not to distribute the pamphlet solely because of cost, we have added to the report information on other methods VA has used to provide information contained in the pamphlet. For example, we added that VA advised its Human Resources offices to place copies of the pamphlet on display and forward copies to union officials.

4. VA stated that it understood that the data we obtained from MSPB did not show that the corrective actions in reversal or mitigation cases were due to whistleblower reprisal. The MSPB data included in the draft report were provided by that agency for cases it classified as whistleblower reprisal cases. MSPB later clarified these data and informed us that seven cases may have been decided on violations of prohibited personnel practices other than whistleblower reprisal. MSPB did not rule out whistleblower reprisal as the violation but said that a review of the individual cases would be needed before a definitive statement could be made. Information on the individual cases was not readily available at MSPB to make such a determination. We have adjusted the data, accordingly.

VA also stated that MSPB data provided to us for the period October 1, 1993, through March 31, 1999, indicated that there were five VA cases where corrective action was ordered. The period covered by our review ends with fiscal year 1998, and the data provided to us by MSPB for the fiscal years 1994 through 1998 show that MSPB ordered corrective actions in five cases. MSPB data also show that there were two cases where corrective action was ordered during the first 6 months of fiscal year 1999.

GAO Contacts and Staff Acknowledgments

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