

## Why GAO Did This Study

Federal employee whistleblowers—individuals who report allegations of wrongdoing—potentially help to safeguard the government from fraud, waste, and abuse. OSC was created to help protect whistleblowers. Probationary employees—generally those with less than 1 or 2 years of federal service—can be especially vulnerable to reprisal because they have fewer protections from adverse personnel actions, including termination.

A 2017 law included a provision for GAO to examine retaliation against whistleblowers in their probationary period. This report examines (1) the extent to which probationary employees filed whistleblower disclosures or reprisal complaints, (2) termination rates of complainants, and (3) OSC procedures related to probationary employees.

GAO used complaint data and workforce data to identify the probationary status of employees who filed claims with OSC from fiscal year 2014 to 2018 (the most recent full years of available data); estimated the number of instances where claimants were terminated; and reviewed OSC procedures.

## What GAO Recommends

GAO recommends that OSC require claimants to identify their status as permanent or probationary employees. OSC disagreed with GAO's recommendation. GAO continues to believe the recommendation is valid, as discussed in the report.

View [GAO-20-436](#). For more information, contact Yvonne D. Jones at (202) 512-2717 or [jonesy@gao.gov](mailto:jonesy@gao.gov).

# WHISTLEBLOWERS

## Office of Special Counsel Should Require Information on the Probationary Status of Whistleblowers

### What GAO Found

GAO found that existing data are not sufficient to determine if the rates of filing whistleblower disclosures, retaliation complaints, or both vary by probationary status. The average annual number of probationary and permanent federal employees from fiscal years 2014 to 2018 was approximately 1.9 million employees. Over this time frame, an average of approximately 2,800 employees—about 0.15 percent—filed complaints each year. Existing data were not sufficient to determine probationary status of employees for over 18 percent of each year's complaints. Therefore, it is not possible to determine whether probationary employees file at lower, comparable, or higher rates than their prevalence in the overall employee population. Specifically, probationary employees represented about 13.5 percent, on average, of the federal workforce, and GAO estimates that they filed from 6.6 percent to 18.2 percent of complaints.

GAO estimates suggest that both permanent and probationary employees who filed complaints were consistently terminated at higher rates than federal employees government-wide. For example, in fiscal year 2018, the termination rate for probationary employees government-wide was 1.1 percent, while the lowest estimated rate of termination among probationary employees who filed a complaint was 10.1 percent. For permanent employees, the overall termination rate was 0.3 percent, while the lowest estimated rate for filers was 2.9 percent.

GAO estimates also suggest that probationary employees who filed complaints were terminated at higher rates than permanent employees who did the same. For example, in fiscal year 2018:

- The lowest estimated termination rate for probationary employees who filed whistleblower disclosures (10.1 percent) exceeded the maximum estimated rate for permanent employees who did the same (5.2 percent).
- The lowest estimated termination rate for probationary employees who filed retaliation complaints (17.4 percent) exceeded the maximum estimated rate for permanent employees who did the same (9.9 percent).
- The lowest estimated termination rate for probationary employees who filed both types (14.1 percent) exceeded the maximum estimated rate for permanent employees who did the same (13.2 percent).

The Office of Special Counsel's (OSC) complaint form allows but does not require complainants to identify whether they are probationary or permanent employees when filing a whistleblower disclosure or retaliation complaint. OSC officials said they try to limit mandatory data fields to the information that is necessary for processing a case, and that they have no plans to do any analysis of employees in their probationary period who file claims. However, the higher rates of termination GAO found for filers generally, and probationary employees specifically, suggests that there could be a risk of unequal treatment. Without first identifying probationary employees who file whistleblower claims, OSC would lack complete data should it decide at some point to analyze the effect of probationary status on filers. Collecting and maintaining such data on every claimant would provide OSC or other entities the ability to analyze termination rates or other issues related to a whistleblower's probationary status.