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SEXUAL HARASSMENT

Opportunities Remain for VA to Improve Program Structure, Policies, and Data Collection

Statement of Thomas Costa, Director,
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GAO Highlights

Highlights of [GAO-22-106103](#), a testimony before the Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, House of Representatives

Why GAO Did This Study

Sexual harassment in the workplace can cause harmful psychological, physical, occupational, and economic effects for workers. Several federal laws, executive orders, and agency directives are aimed at preventing and addressing sexual harassment at federal agencies.

GAO issued a June 2020 report ([GAO-20-387](#)) that reviewed VA's efforts to prevent and address sexual harassment at the agency. In this report, GAO made seven recommendations. This testimony discusses VA's efforts to implement GAO's recommendations to 1) ensure VA's EEO structure is properly aligned; 2) improve the agency's policies to prevent and address sexual harassment of VA employees; 3) collect and analyze data to inform VA about sexual harassment of its employees; and 4) improve relevant training.

To update the status of the recommendations, GAO analyzed newly-available federal survey data on the prevalence of sexual harassment and reviewed agency guidance and documentation.

What GAO Recommends

In its June 2020 report, GAO made seven recommendations, including that VA ensure that its EEO Director position is not responsible for personnel functions; require managers to report sexual harassment centrally; and require additional employee training. VA is in various stages of implementing the recommendations. VA concurred with all but the EEO Director position recommendation, which GAO maintains is warranted.

View [GAO-22-106103](#). For more information, contact Thomas Costa at (202) 512-4769 or costat@gao.gov.

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SEXUAL HARASSMENT

Opportunities Remain for VA to Improve Program Structure, Policies, and Data Collection

What GAO Found

The Department of Veterans Affairs (VA) has taken steps to improve its efforts to prevent and address sexual harassment, but could realign its organizational structure, further strengthen policies, and better assess data. Most notably, VA has not taken sufficient action in response to our two priority recommendations on its structure for equal employment opportunity (EEO). GAO's 2020 report made seven recommendations for VA to address aspects of agency policies and complaint processes that may have hindered agency efforts to combat sexual harassment. VA has implemented two of these recommendations and five require additional action to be fully implemented. For example, VA has:

- **Formalized its Harassment Prevention Program (HPP) and updated training materials.** VA implemented two recommendations from GAO's 2020 report. First, VA formalized its HPP, which seeks to prevent harassment and address it before it becomes unlawful. In March 2022, VA finalized its HPP Handbook that outlines key processes the agency should follow in addressing sexual harassment allegations. Second, VA has developed new mandatory training that includes more information on sexual harassment and the reporting processes available to employees.
- **Not yet realigned its EEO organizational structure to avoid potential conflicts of interest.** GAO made two recommendations to help address potential conflicts of interest; neither has been fully implemented. For example, VA's EEO Director continues to oversee both EEO complaint processes and general personnel functions. According to the Equal Employment Opportunity Commission—the agency tasked to ensure agency compliance with EEO requirements—this practice does not adhere to one of its key directives to ensure fair complaint processing.
- **Not yet fully reviewed policies and information documents to ensure consistency.** GAO found some policies and information documents were not consistent with the overarching sexual harassment policy and some have outdated or missing information. VA said it is developing procedures to help ensure all policies are complete and accurate across VA, but has not yet completed its efforts.
- **Not yet completed efforts to collect and assess complete information on sexual harassment.** GAO found that VA lacked a full picture of sexual harassment at VA because it did not require managers to report all complaints nor had it assessed other available data. VA now requires managers to report all complaints, and it developed a tracking system to capture this information. However, VA has not assessed data on these complaints or finalized plans for assessing other available data.
- **Not yet developed clear requirements for evidence needed to ensure corrective actions were taken.** GAO found that VA did not require documentation of corrective actions taken in all sexual harassment cases. VA has since begun tracking some of these corrective actions. However, VA has not yet clearly specified to managers the procedures for documenting corrective actions.

Chairman Pappas, Ranking Member Mann, and Members of the Subcommittee:

I am pleased to be here today to discuss the status of recommendations from our June 2020 report on sexual harassment at the Department of Veterans Affairs (VA).¹ Sexual harassment in the workplace can cause harmful psychological, physical, occupational, and economic effects for harassed employees. Sexual harassment negatively affects employees and employers and, if sufficiently severe or pervasive, or results in an adverse employment action, may constitute a form of unlawful employment discrimination prohibited by Title VII of the Civil Rights Act of 1964. Our 2020 report reviewed VA's efforts to prevent and address sexual harassment of its employees. We found that VA had policies to prevent and address sexual harassment in the workplace, but some aspects of these policies and the complaint processes may have hindered those efforts.

In our 2020 report, we made seven recommendations to improve VA's organizational structure, policies, data collection, and training. Although VA has started to take steps to implement these recommendations, fully addressing them would better protect VA's employees from sexual harassment. We identified two of these recommendations as priorities for VA.²

My statement today summarizes the findings from our June 2020 report related to VA's equal employment opportunity (EEO) program structure, VA policies to prevent and address sexual harassment of VA employees—including training, and how VA uses data on sexual harassment to inform its efforts. Specifically, this testimony provides an

¹GAO, *Sexual Harassment: Inconsistent and Incomplete Policies and Information Hinder VA's Efforts to Protect Employees*, [GAO-20-387](#) (Washington, D.C.: June 15, 2020).

²Priority open recommendations are the GAO recommendations that warrant priority attention from heads of key departments or agencies because their implementation could save large amounts of money; improve congressional and/or executive branch decision-making on major issues; eliminate mismanagement, fraud, and abuse; or ensure that programs comply with laws and funds are legally spent, among other benefits. In May 2021, we added two recommendations for VA to fix its equal employment opportunity (EEO) program structure to our list of priority open recommendations for VA and they remain priorities in the June 2022 priority recommendation letter. GAO, *Priority Open Recommendations: Department of Veterans Affairs*, [GAO-21-469PR](#) (Washington, D.C.: May 10, 2021) and GAO, *Priority Open Recommendations: Department of Veterans Affairs*, [GAO-22-105630](#) (Washington, D.C.: June 30, 2022).

update on our June 2020 recommendations that VA has 1) implemented; and 2) not fully implemented.

For this testimony, we obtained and assessed agency reports on actions related to the recommendations in our June 2020 report. We also analyzed new survey data from the Merit Systems Protection Board's (MSPB) 2021 Merit Principles Survey of federal employees, which asked federal employees about sexual harassment in the workplace, among other workforce questions.³ Detailed information on our June 2020 report's objectives, scope, and methodology is available in that report.⁴

The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits covered employers from discriminating against job applicants or employees because of their race, color, religion, sex (including pregnancy), or national origin.⁵ The U.S. Supreme Court and the Equal Employment Opportunity Commission (EEOC) have held that sexual harassment is a form of sex discrimination prohibited by Title VII when meeting certain criteria. With respect to federal employers, such as VA, Title VII specifically requires that all federal personnel actions be made free from discrimination based on race, color, religion, sex, or national origin, and authorizes EEOC to enforce these provisions. EEOC provides leadership and guidance to federal agencies on all aspects of the federal government's EEO programs.

³We found the survey data reliable for our purposes of providing contextual information on employees' perceptions of sexual harassment at VA.

⁴[GAO-20-387](#).

⁵42 U.S.C. § 2000e-2. In addition, the U.S. Supreme Court has interpreted Title VII's prohibition on sex discrimination as prohibiting covered employers from discriminating against job applicants or employees because of their sexual orientation or gender identity. See *Bostock v. Clayton County, GA*, 140 S. Ct 1731, 1754 (2020) ("In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee. . . . An employer who fires an individual merely for being gay or transgender defies the law.").

EEOC has issued regulations to implement federal equal employment opportunity requirements in the federal sector and ensures federal agency compliance with its regulations through reviews of agencies' EEO policies and by providing technical assistance to identify and address deficiencies. EEOC also monitors and evaluates agencies' affirmative programs for equal employment opportunity. As part of such programs, EEOC expects federal agencies to have an effective anti-harassment program—in addition to a formal EEO complaint process—to prevent harassment on all protected bases, including sex.

EEOC has issued directives and guidance to help federal agencies implement and comply with its regulations. For example, Management Directive 110 provides federal agencies with EEOC's policies, procedures, and guidance on the processing of employment discrimination complaints governed by EEOC regulations.⁶

VA harassment complaints. VA has three primary methods to address sexual harassment complaints:

1. **Management addresses the issue.** VA's sexual harassment policy requires managers to conduct informal investigations into all allegations of sexual harassment and take corrective actions, such as training or disciplinary measures, as warranted. In this testimony, we refer to these steps as the management process.
2. **Harassment Prevention Program (HPP) works with management to ensure the issue is addressed.** VA's HPP has been operating since early 2016 and is intended to prevent and address harassment—including sexual harassment—before it becomes unlawful. HPP staff are to review that managers have taken the proper steps to stop harassment and prevent its recurrence.
3. **Equal employment opportunity (EEO) process addresses the issue.** Employees may choose to file a complaint through VA's EEO process, which is designed to promptly, fairly, and impartially process and investigate allegations of discrimination based on a Title VII-protected class, such as sex or race.

VA employees can use one or all of these methods, including using all three concurrently. VA's Office of Resolution Management, Diversity &

⁶Management Directive 110 refers to EEOC, *EEO Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Washington, D.C.: Aug. 5, 2015). See <https://www.eeoc.gov/federal-sector/management-directive/management-directive-110>.

Inclusion (ORMDI) oversees the agency's EEO program and HPP.⁷ Each of VA's three administrations: National Cemetery Administration (NCA), Veterans Benefits Administration (VBA), and Veterans Health Administration (VHA) also have EEO offices.

Recent anti-discrimination laws and executive orders. Since our report was issued in 2020, several legislative and executive branch actions have been taken to strengthen anti-discrimination laws and enhance policies for diversity, inclusion, equity, and accessibility.⁸ For example, the January 2021 Deborah Sampson Act of 2020 (Deborah Sampson Act) required VA to establish a comprehensive policy throughout VA to end harassment, including sexual harassment and gender-based harassment, and sexual assault.⁹ The policy is required to include, among other things, reporting mechanisms and mandatory training on how to report and address harassment and sexual assault.

In addition, the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act) established requirements for federal agency EEO programs.¹⁰ This act required federal agencies to establish an EEO program independent of the agency's human capital or general counsel office and also that the head of each federal agency's EEO program shall report directly to the head of the agency.

In June 2021, the President signed Executive Order 14035, *Diversity, Equity, Inclusion and Accessibility in the Federal Workforce*,¹¹ which called for the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget, in coordination with the Chair of the EEOC, and in consultation with certain other federal agencies, to develop and issue a government-wide Diversity, Equity, Inclusion, and Accessibility Strategic Plan. Among other things, the plan is required to:

⁷In 2019, the Office of Resolution Management (ORM) became the Office of Resolution Management, Diversity & Inclusion (ORMDI).

⁸GAO has not analyzed VA's compliance with these laws and actions.

⁹Pub. L. No. 116-315, tit. V, sec. 5303, § 533, 134 Stat. 4932, 5038-41 (2021).

¹⁰Pub. L. No. 116-283, div. A, tit. XI, subtit. B, 134 Stat 3388, 3900-05 (2021).

¹¹Exec. Order 14035, 86 Fed. Reg. 34,593 (June 25, 2021).

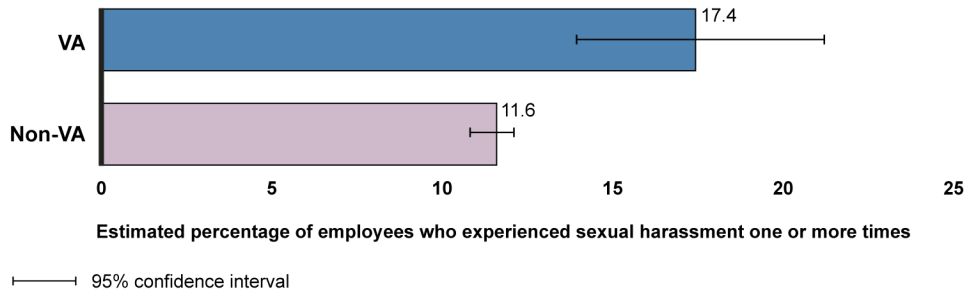
-
- include a comprehensive framework to address workplace harassment, including sexual harassment;
 - outline policies and practices to prevent, report, respond to, and investigate harassment;
 - promote mechanisms for reporting misconduct;
 - encourage bystander intervention; and
 - address training, education, and monitoring to create a culture that does not tolerate workplace harassment or other forms of discrimination or retaliation.

2021 data on sexual harassment at VA. MSPB conducted a survey in 2021 of a representative sample of federal employees.¹² The survey contained questions about employee experiences with sexual harassment and their perceptions of the harassment prevention efforts of their agency, such as on policies and training. According to our analysis, VA ranked as one of the federal agencies with the highest reported experience of sexual harassment.¹³ An estimated 17 percent of VA employees stated they had experienced one or more harassing behaviors, as compared to an estimated 12 percent of non-VA employees (see fig.1). MSPB's survey also asked questions about employee perceptions related to preventing and addressing sexual harassment. For example, 2021 MSPB survey data indicate that about 57 percent of VA employees agreed or strongly agreed that their work colleagues would stand up for someone who was experiencing sexual harassment, while 27 percent responded 'don't know', 'N/A', or did not respond to the question.

¹²MSPB conducts this survey periodically. The previous survey was conducted in 2016.

¹³We reported in 2020 that according to analysis of MSPB's 2016 survey, VA was among the federal agencies with the highest estimated percentage of employees indicating that they experienced sexual harassment from mid-2014 through mid-2016. See [GAO-20-387](#), p58. For the 2021 survey, the estimated percentage of employees indicating that they experienced sexual harassment from early 2019 through early 2021 was higher than the overall percentage for the rest of the federal government. VA employees reported a statistically significant higher rate of experiencing sexual harassment than employees at 16 agencies. VA's estimate was not significantly different from the 10 other agencies in the 2021 survey. According to MSPB, the greatly increased telework by federal employees during the reporting period covered by the 2021 Merit Principles Survey may have impacted the survey results (e.g., potentially decreasing the prevalence of some types of sexual harassment behaviors). Changes in survey responses could be attributed to possible changes in the nature of work due to the pandemic as well as absolute changes in the incidence of behaviors.

Figure 1: Estimated Percentage of Department of Veterans Affairs (VA) Employees and non-VA Federal Employees Who Reported Being Sexually Harassed in 2-year Period (early 2019 to early 2021)



Source: GAO analysis of Merit Systems Protection Board (MSPB) 2021 Merit Principles Survey. | GAO-22-106103

Note: The Merit Principles Survey was most recently administered in 2021 and asked whether respondents had experienced various sexual harassment behaviors in the preceding 2 years. The survey was distributed in early 2021, so results cover employee experiences from early 2019 through early 2021. This figure represents the estimated percentage of employees who experienced at least one of the following sexual harassment behaviors included in the survey: unwelcome communications of a sexual nature; unwelcome invasion of personal space; unwelcome sexually suggestive looks or gestures; pressure for sexual favors; pressure for dates; unwelcome sexual teasing, jokes, comments, or questions; unwelcome exposure to sexually oriented material in any format; unwelcome exposure to sexually oriented conversations; offer of preferential treatment in the workplace in exchange for sexual favors; use of derogatory or unprofessional terms related to a person’s gender; stalking; or rape or sexual assault or attempted rape or sexual assault.

According to VA data, sexual harassment complaints filed through HPP have increased since fiscal year 2018, when there were 40 cases. After declining in fiscal year 2019, cases increased to 53 in fiscal year 2021.¹⁴ VA EEO cases alleging sexual harassment have declined since fiscal year 2018, from 185 cases in that year to 136 cases in fiscal year 2021.¹⁵ We previously reported that, regarding the extent of sexual harassment, the difference in numbers responding through an anonymous survey and formal reporting numbers is not surprising. A 2016 EEOC study reviewed literature on workplace harassment and noted that the least common response to experiencing harassment is to report the harassment or file a complaint.¹⁶

¹⁴We did not assess what factors may have contributed to the trends in HPP complaints.

¹⁵We use ‘case’ or ‘complaint’ to refer to a report alleging sexual harassment.

¹⁶U.S. Equal Employment Opportunity Commission, *Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace* (Washington, D.C.: June 2016), p. 16.

VA Could Further Improve Efforts to Prevent and Address Sexual Harassment

Although VA has taken some steps to start addressing most of the recommendations in our June 2020 report on sexual harassment, the agency has yet to fully address five of our seven recommendations (see table 1).¹⁷ In 2022, VA formalized its HPP and now has a finalized HPP Handbook that outlines key processes the agency should follow in addressing sexual harassment allegations. VA also developed three new trainings that include more information on the reporting processes available to employees, including the HPP, and provide more in-depth information on sexual harassment.¹⁸ Five other recommendations from our June 2020 report remain open. Most notably, VA has not taken sufficient actions in response to our two priority recommendations to realign its reporting structure for EEO to adhere to EEOC's Management Directive 110 and realign its EEO Program Manager positions in accordance with VA policy. In addition, VA has not yet fully reviewed its policies to ensure consistency or completed its efforts to collect and assess complete information on sexual harassment and corrective actions taken.

Table 1: Status of GAO's 2020 Recommendations to Strengthen VA's Efforts to Prevent and Address Sexual Harassment, as of July 2022

GAO Recommendation	Actions taken and additional actions needed to implement the recommendation	Priority Recommendation
Implemented		
VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness, in consultation with ORM, should finalize the Harassment Prevention Program (HPP) directive and handbook to formalize HPP. (Recommendation 4)	No further action needed.	-
VA's Deputy Assistant Secretary for Resolution Management should require additional training for all VA employees on identifying and addressing sexual harassment, including the HPP process. For instance, VA could make training that is currently offered in some facilities mandatory for all employees (e.g., Prevention of Sexual Harassment) or develop new mandatory training. (Recommendation 7)	No further action needed.	-

¹⁷VA agreed with all recommendations except the EEO Director position recommendation.

¹⁸According to the training materials, these new mandatory trainings include information to address provisions in the Deborah Sampson Act.

GAO Recommendation	Actions taken and additional actions needed to implement the recommendation	Priority Recommendation
Not fully implemented		
VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness should realign VA's Equal Employment Opportunity (EEO) Director position to adhere to the applicable Equal Employment Opportunity Commission (EEOC) directive by ensuring the position is not responsible for personnel functions. (Recommendation 1)	Additional Actions: Ensure that VA's EEO Director is not responsible for personnel functions and work with EEOC on the correct alignment of this position.	✓
VA's Deputy Assistant Secretary for Resolution Management should complete VA's EEO Program Manager realignment initiative at Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) in accordance with VA policy. (Recommendation 2)	<p>Actions Taken: Most VBA EEO Program Managers realigned under ORMDI. (National Cemetery Administration realignment previously completed.)</p> <p>Additional Actions: Complete plans to realign EEO Program Managers at VBA and undertake similar efforts to realign VHA EEO Program Managers.</p>	✓
VA's Deputy Assistant Secretary for Resolution Management should ensure that ORM reviews all existing VA and administration policies and information documents to make sure they are current, complete, and aligned with VA's sexual harassment policy. (Recommendation 3)	<p>Actions Taken: Developing procedures to conduct a review of all policies.</p> <p>Additional Actions: Review all policies and ensure they are current, complete, and aligned with VA's sexual harassment policy.</p>	-
VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness, in consultation with ORM, should require managers to report all sexual harassment complaints they receive to ORM and ORM should use this information—and other available data about sexual harassment prevalence at VA—to assess and improve its efforts to prevent and address sexual harassment. (Recommendation 5)	<p>Actions Taken: Updated its policy to require managers to report all sexual harassment allegations, which are uploaded and monitored in a tracking system.</p> <p>Additional Actions: Monitor and assess data to ensure completeness. Use sexual harassment complaint tracking system data, and other available information about sexual harassment prevalence at VA (e.g., survey data), to inform program improvements.</p>	-
VA's Deputy Assistant Secretary for Resolution Management should develop and implement policies and procedures to ensure that, for sexual harassment complaints addressed through the management process, any corrective actions decided on are implemented, including requiring managers and supervisors to provide evidence to ORM that these actions occurred. (Recommendation 6)	<p>Actions Taken: HPP Handbook includes a statement that managers should ensure corrective action is taken.</p> <p>Additional Action: Clarify policies and procedures for managers to document evidence of corrective action. Monitor that evidence (e.g., documentation) of corrective actions is entered into VA's tracking system.</p>	-

Source: GAO-20-387 and Department of Veterans Affairs (VA). | GAO-22-106103

Notes: In 2019, the Office of Resolution Management (ORM) became the Office of Resolution Management, Diversity & Inclusion (ORMDI).

Priority open recommendations are the GAO recommendations that warrant priority attention from heads of key departments or agencies because their implementation could save large amounts of

money; improve congressional and/or executive branch decision-making on major issues; eliminate mismanagement, fraud, and abuse; or ensure that programs comply with laws and funds are legally spent, among other benefits.

VA Has Formalized Its Harassment Prevention Program and Developed New Training

Finalization of Harassment Prevention Program policies. VA has taken steps to formalize HPP by establishing an agency directive and a handbook. In June 2020, we found that VA had not finalized its policies for HPP, although the program had been operating for over 4 years. We identified areas where VA's failure to formally approve and distribute HPP policy had contributed to inconsistent implementation and a lack of awareness about HPP. For example, we found that VA administrations and HPP staff were administering aspects of the program differently, such as how investigations were to be conducted and documented. On December 8, 2020, VA issued its HPP directive (VA Directive 5979—Harassment Prevention Policy), which outlines roles and responsibilities to help VA maintain a harassment-free workplace. On March 21, 2022, VA finalized its HPP Handbook, which provides guidance, instructions, and mandatory procedures for VA organizations and key stakeholders at every level of the organization. The agency has also posted these documents to its webpage and distributed the information to employees.¹⁹

New training materials. VA has expanded its training to include further information aimed at sexual harassment. In June 2020, we reported that VA's required training did not have in-depth information on identifying and addressing sexual harassment, such as scenarios or detailed reporting information. For example, the mandatory training included no mention of VA's HPP. According to VA, the agency developed new training that replaced the mandatory VA-wide training for employees and managers that was in place at the time of our 2020 report. These new courses include more in-depth information and scenarios on identifying and addressing sexual harassment. The courses also include information on the HPP process and how it compares to the EEO process. In September 2021, VA issued a memorandum that outlined three new mandatory trainings for VA employees:

- EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors;

¹⁹The HPP Directive and Handbook are located on the Office of Resolution Management, Diversity & Inclusion's Harassment Prevention Program webpage: <https://www.va.gov/ORMDI/HPP.asp>.

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- Harassment Prevention and Accountability Training; and
 - No FEAR Act Training.²⁰

VA Could Realign Its Organizational Structure, Further Strengthen Policies, and Assess Data to Better Prevent and Address Sexual Harassment

EEO Director position misaligned. In June 2020, we reported that the structure of VA’s EEO program did not adhere to EEOC’s Management Directive 110. This directive provides federal agencies with EEOC’s policies, procedures, and guidance on the processing of employment discrimination complaints governed by EEOC regulations.²¹ To avoid potential conflicts of interest, this directive states that the agency official(s) responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO complaint process. However, VA’s EEO Director oversees both VA’s personnel functions and its EEO functions. This issue had been previously highlighted in EEOC reports and in response, VA had stated that it would explore options to address the issue. However, at the time of our June 2020 report, no change had been made. We recommended that VA work with EEOC to realign its EEO Director position to adhere to EEOC’s directive by ensuring the position is not responsible for personnel functions. VA did not originally agree with this recommendation and reiterated that the EEO Director is not involved in the daily management, advising, or oversight of the EEO complaint process.

Updates that VA provided to GAO on this recommendation have varied and have inconsistently addressed the issues we raised. In August 2021, VA said that it concurred with our recommendation and described efforts to review the placement of ORMDI (whose head reports to the EEO Director) within VA’s structure. Specifically, in April 2021, VA chartered the Inclusion, Diversity, Equity, & Access (I-DEA) Task Force. The objectives of this task force included redefining VA’s approach to and establishing best practices for diversity-related concerns in accordance

²⁰In June 2022, VA officials reported that these three new trainings replaced the VA-wide trainings that GAO reviewed for our 2020 report. In addition to addressing our recommendation, these new trainings also include some information outlining provisions in the Deborah Sampson Act.

²¹Management Directive 110 states that heads of federal agencies are responsible for ensuring that employment discrimination complaints are processed fairly, promptly, and in accordance with the complaint processing procedures set out in 29 C.F.R. Part 1614 and with the guidance incorporated in paragraph eight of the Directive.

with Executive Orders 13985 and 14035.²² VA stated that the Task Force's efforts would include a review of ORMDI, to include its alignment and structure. In December 2021, the agency also indicated that it was exploring options for implementing our EEO Director alignment recommendation. Nevertheless, as of February 2022, VA had no plans to realign its EEO Director position.

Most recently, in July 2022, VA officials said that while they had been exploring it, the agency no longer concurred with the recommendation, and no realignment was planned at the present time. Having the same person in charge of general oversight of EEO complaint processes and personnel actions can create, at a minimum, the appearance of a conflict of interest and erode employees' trust that sexual harassment complaints will be handled appropriately. Although even one instance of sexual harassment is problematic, given the relative prevalence of reported sexual harassment at VA, this conflict is of particular concern. We maintain that VA should work with EEOC to ensure that its EEO Director position adheres to EEOC's Management Directive 110.

Many EEO Program Manager positions misaligned. In addition to the placement of the EEO Director, VA's EEO Program Managers are misaligned. VA officials said full-time EEO Program Managers should report to ORMDI instead of the director of their local facility. However, only two of VA's three administrations have undergone efforts to realign their EEO Program Managers under ORMDI. National Cemetery Administration's (NCA) EEO Program Manager realignment was completed in fiscal year 2017. Veterans Benefits Administration (VBA) realignment had begun by October 2017 and as of April 2022, all but

²²Executive Order 13985 called for federal agencies to, among other efforts, assess potential barriers that underserved communities may face in accessing federal government programs and services, and produce a plan to address these barriers. Exec. Order 13985, 86 Fed. Reg. 7,009, 7,010 (Jan. 20, 2021), available at <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>. Executive Order 14035 called for the reestablishment of a government-wide initiative to promote diversity and inclusion in the federal workforce, among other things. Exec. Order 14035, 86 Fed. Reg. 34,593, 34,595 (June 25, 2021), available at <https://www.federalregister.gov/documents/2021/06/30/2021-14127/diversity-equity-inclusion-and-accessibility-in-the-federal-workforce>.

three of 16 full-time VBA EEO Program Managers had been realigned.²³ VBA has a plan for realigning the remaining full-time EEO Program Managers by the end of fiscal year 2022. VA officials previously reported that they realigned NCA and VBA EEO Program Managers in order to prevent real or perceived conflicts of interest, and to ensure that the position is neutral and not beholden to facility management. They also stated that the realignment will help ensure that the agency complies with a statutory requirement that such employees not report to the facility director.²⁴

However, VA has been inconsistent in its responses to our inquiries on the agency's plans to realign Veterans Health Administration (VHA) EEO Program Managers, and plans to realign VHA EEO Program Managers have stalled. VA initially stated, in 2020, that it would develop a plan for the realignment of the VHA EEO Program Managers that would be contingent upon the availability of funds. The agency also noted that the realignment of VHA EEO Program Managers would take longer than for the other two administrations, due to VHA's organizational complexity and size, and that the realignment would not occur until fiscal year 2024 and beyond. VA indicated in January 2021 that a plan was being developed to address the realignment of VHA EEO Program Managers, but in April 2022, VA stated that the agency did not have plans for the realignment for VHA EEO Program Managers.

VA has since acknowledged that changes are needed to VHA EEO Program Manager positions to comply with the Cummings Act. In a July 2022 response, VA stated that one solution would be to reclassify VHA

²³According to VA officials, VBA conducted this realignment to comply with EEOC's March 2018 assessment of VBA's EEO program, which recommended, among other things, that VBA consider appointing full-time EEO Program Managers for offices with more than 600 employees. As of the time of this assessment, there were 16 VBA offices with more than 600 employees. VBA offices with fewer employees have part-time EEO Program Managers who have collateral duties as Human Resources Specialists and are not aligned under ORMDI. In February 2022, VA officials stated that a proposed plan has been developed for the realignment of the remaining 21 collateral duty VBA EEO Program Managers who are also serving as Human Resources Specialists. VA did not provide a timeline for implementing this realignment. Officials stated that this was done because the Cummings Act required EEO and human resources functions to be separate to avoid conflicts of interest.

²⁴See 38 U.S.C. § 516(b)(2). This provision, added by the Veteran's Benefits Act of 1997, requires that "employees performing employment discrimination complaint resolution functions at a facility of the Department shall not be subject to the authority, direction, and control of the Director of the facility with respect to those functions."

EEO Program Manager positions from the EEO series to a miscellaneous program series.²⁵ According to VA officials, the current VHA structure may cause confusion about the role of EEO Program Managers in the EEO process.²⁶ Nevertheless, VA did not indicate that VHA's current EEO Program Manager roles would change. Changing job titles or classifications, if EEO Program Manager duties and reporting structure remain the same, will not address our recommendation. We maintain that VA should realign VHA EEO Program Managers.

Process to help ensure consistent and current policies and information. Although VA has updated its HPP policies, we previously found that VA and its administrations maintained multiple, inconsistent policies for preventing and addressing sexual harassment of employees. We found that some aspects of VA's policies may also hinder the agency's efforts to prevent and address sexual harassment in the workplace. For example, although VA had an overarching policy explaining its efforts to address sexual harassment, additional policies and information at the agency and administration levels were not consistent with VA's overarching policy. Some of these policies were also outdated or missing information.

In May 2020, VA officials indicated the agency would develop a new process for reviewing its policies and information, and in December 2021, indicated this process would be implemented upon completing the HPP Handbook. As of June 2022, VA said that ORMDI was finalizing procedures to conduct a review and ensure that all policies and information are current, complete, and aligned with VA's HPP Handbook. VA said that it will implement its review process by the end of the fiscal year. Reviewing all existing policies and information documents to make sure they are current, complete, and consistent would help to ensure that

²⁵VA reported that EEOC indicated that reclassifying these staff would address the conflict of interest.

²⁶We previously reported that EEO Program Managers, generally, are physically located at VA facilities, even if they report to ORMDI. Neither full-time nor part-time EEO Program Managers actually process EEO complaints; instead, ORMDI's EEO staff, such as EEO counselors, case managers, and investigators do so. However, EEO Program Managers at the facilities interact with employees about the EEO process. At smaller facilities, an EEO Program Manager may fill this role on a part-time basis and have other duties. According to VA officials, these part-time EEO Program Managers may report to their local facility directors since the remainder of their duties relate directly to the facilities and not to the EEO process. Full-time EEO Program Managers are sometimes referred to by their General Schedule series—GS-0260 series EEO Specialists—but for purposes of this statement, we refer to them as EEO Program Managers.

employees and managers have clarity about VA's policies and procedures.

Required reporting of sexual harassment complaints and assessment of available data. In 2020, we found that although the agency collected information on some allegations, it did not have centralized information on complaints addressed through the management process. VA lacked centralized complaint information because there was no requirement for managers to report complaints to ORMDI after managers received them. VA has since required managers to report to ORMDI all sexual harassment allegations. In addition, VA stated that it launched a new tracking system on December 1, 2021, which will allow managers to report complaints, outcomes, and corrective actions. Officials noted that the system will be used to track trends, target training, and establish which VA facilities require a compliance review. VA indicated that it plans to review the data in the tracking system at the end of fiscal year 2022. As managers are still learning the features of the new system and the handbook governing its use was recently finalized, it is too early to evaluate the effectiveness of this system, or whether VA is using these data to inform program improvements.

While complaints made to VA officials—through any of the channels available—provide important information about reported sexual harassment, assessing additional data could reveal other areas for focus. In June 2022, VA indicated that it plans to review data sources in addition to the EEO and HPP complaint data, such as information from the Disruptive Behavior Reporting System and remediation plans.²⁷ Officials stated that this would allow an analysis of trends to help improve VA's efforts to prevent and address sexual harassment. However, they did not indicate which data or metrics from these sources would be useful for improving agency efforts, and they did not describe plans for analyzing federal government survey data on sexual harassment, such as MSPB survey data. We maintain that analyzing additional data on prevalence of sexual harassment, whether from internal or external sources, could be helpful to VA in better understanding sexual harassment at the agency.

²⁷The Disruptive Behavior Reporting System is a VHA secure, web-based electronic system to collect and manage reports of behavioral events that cause a safety concern. According to the HPP Handbook, a remediation plan is a detailed plan required to be created when a facility or staff office receives five or more substantiated sexual harassment, or sexual assault allegations or a combination thereof in the fiscal year. The plan will include actions to be taken to remedy non-compliance and prevent harassment, sexual harassment and sexual assault in the future.

Required reporting of corrective actions. We found that although VA had policies and procedures to ensure corrective actions through the EEO process, there was no such policy for sexual harassment complaints addressed through the management process or HPP. To address this, VA officials told us that it would require managers and supervisors to upload corrective action documents in a system by the end of September 2021, and that the requirement would be in the HPP Directive and Handbook. VA only collects information on corrective actions that are disciplinary in nature, such as reprimands, suspensions, or firings. Information on other non-disciplinary actions, such as verbal warnings, training, and written counseling, are not yet collected. According to agency officials, VA plans to establish a process to track these other actions by the end of fiscal year 2022.

In addition, the finalized HPP Handbook notes that as part of HPP compliance reviews at VA facilities, ORMDI should check to ensure that any imposition of corrective action is prompt, consistent, and proportionate to the severity of harassment, if harassment is determined to have occurred. Although the handbook notes the need for ensuring corrective action, it does not explain how managers should document this information for ORMDI, such as through a tracking system. Further, it does not outline the specific evidence (i.e., documentation) that should be included or by when this evidence should be submitted.²⁸ Without specifying a procedure for documenting corrective actions, VA lacks assurance that appropriate action will be consistently taken against sexual harassment allegations.

In conclusion, while VA has taken some steps to address our recommendations and combat sexual harassment, significant issues still hamper its ability to effectively protect its employees. The agency has improved its policies for anti-harassment, but without taking steps to address the structure of its EEO program, these efforts will not have the full intended effect. Further, without having a process to review all relevant policies to ensure they are consistent and current, employees may not have the right information about what to do when sexual harassment occurs. Lastly, VA's efforts to address sexual harassment could continue to be hindered without additional efforts to collect and

²⁸The HPP Handbook states that management should propose the appropriate corrective action within one business day of all substantiated allegations, and within three business days, the HPP office must be notified of the corrective action or any other measures taken to address the substantiated allegations. According to the handbook, the HPP process should be completed within 30 business days beginning at the day of notification.

assess data on sexual harassment, including monitoring documentation of corrective actions to ensure that such action has been taken. Absent these steps, some VA employees may lack trust in how VA handles allegations of sexual harassment or other forms of abuse. To better protect VA employees against sexual harassment, VA policies and programs should ensure accountability for addressing such allegations.

Chairman Pappas, Ranking Member Mann, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Thomas Costa, Director, Education, Workforce, and Income Security at (202) 512-4769 or costat@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Nyree Ryder Tee (Assistant Director), Dana Hopings (Analyst in Charge), Mary Edgerton, and Michael Naretta. In addition, key support was provided by Andrew Bellis, MacKenzie Cooper, Amanda Miller, Mimi Nguyen, Dae Park, Joy Solmonson, Almeta Spencer, Rebecca Kuhlmann Taylor, Adam Wendel, and Khristi Wilkins. Contributors to the reports on which this statement is based can be found in those reports.

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