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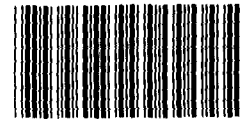
**Testimony**  
Before the Committee on Veterans' Affairs  
House of Representatives

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**FEDERAL  
EMPLOYMENT**

**Sexual Harassment at the  
Department of Veterans Affairs**

Statement of  
Nancy Kingsbury, Director,  
Federal Human Resource Management Issues,  
General Government Division



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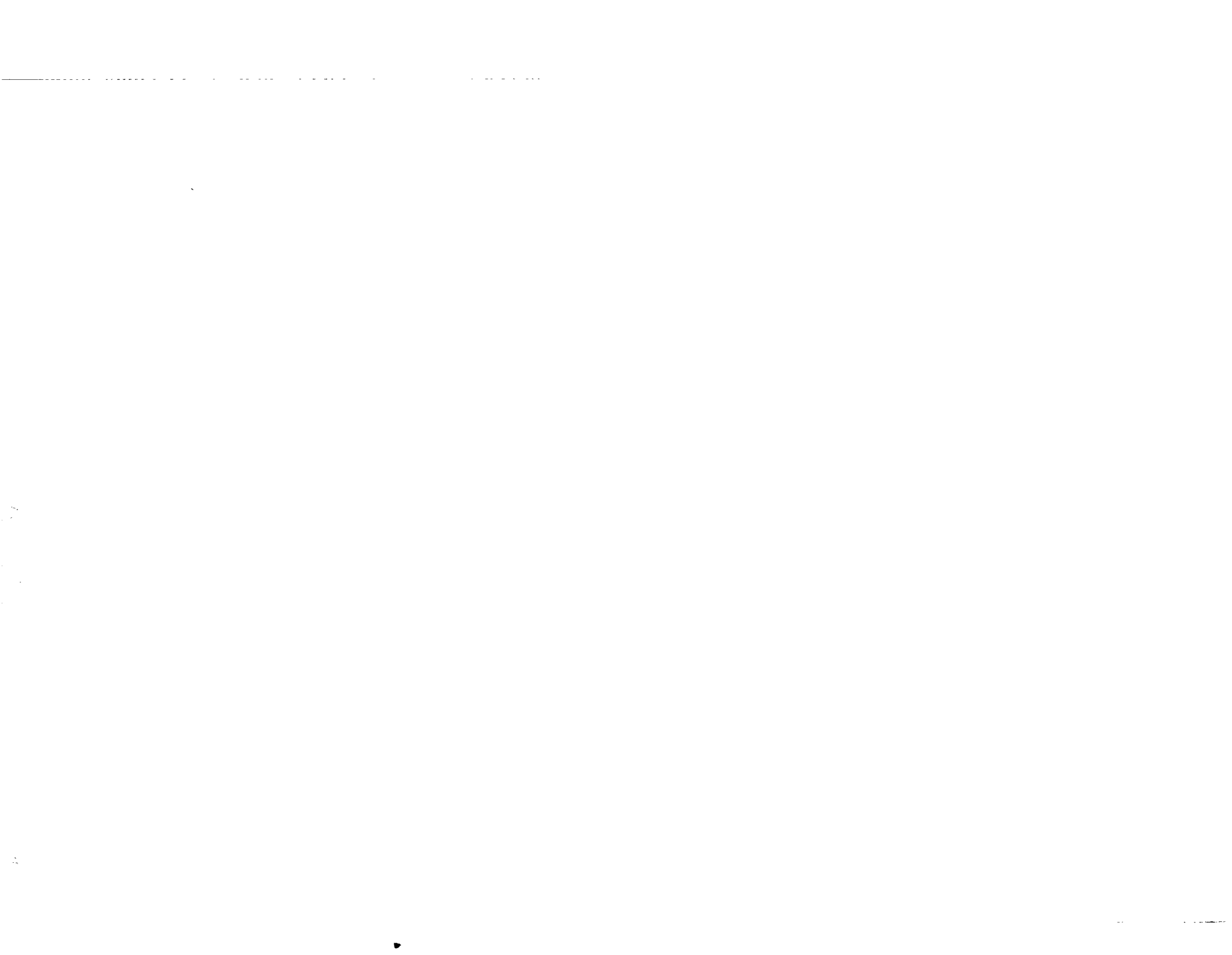
Sexual Harassment at the Department of Veterans Affairs  
Summary statement by  
Nancy Kingsbury, Director  
Federal Human Resource Management Issues

GAO recently has begun a review at the Department of Veterans Affairs (VA) to identify whether there are any factors that discourage employees at VA's medical centers from filing sexual harassment complaints. To date, GAO has examined VA's Equal Employment Opportunity (EEO) policies and procedures, scrutinized 37 of 101 closed formal complaints filed at VA between fiscal year 1989 and the beginning of fiscal year 1993, met with the Secretary of Veterans Affairs, and interviewed officials in VA's EEO and IG offices.

The complaints GAO examined were filed, investigated, and resolved under a decentralized system which vested the responsibility for dealing with such complaints with the directors of VA's 171 medical centers. Counseling and investigations were done by employees who were assigned to do so on a part-time basis for relatively short periods of time. GAO's review found that (a) a third of the complaints were rejected on procedural grounds; (b) complaints that were accepted were not investigated promptly, thus requiring complainants to continue to work for long periods in the environment being complained about; and (c) about half of the complainants perceived that actions were taken or threatened against them in reprisal for their complaints. In GAO's view, the procedures used for complaint processing did not provide appropriate independence and oversight of complaint resolution because the medical center director was both the deciding official on the complaint and the management official responsible for ensuring a non-discriminatory environment.

Since his appointment in January, the Secretary of Veterans Affairs has taken several steps to resolve the problems noted above. He has established new procedures requiring joint review of complaints by medical center directors and regional officials, a program of mandatory sexual harassment training for employees, and a task force to consider further actions which may be necessary. While these steps are significant, it will take time to assess their impact, and concerns remain about the timeliness of complaint resolution and the qualifications and availability of part-time counselors and investigators.

The proposed Department of Veterans Affairs Employment Discrimination Act goes even further in changing VA's process for managing its sexual harassment cases. However, GAO also noted that the Senate has a bill, S. 404, which proposes alternative procedures for all federal agencies in dealing with sexual harassment. In enacting H.R. 1032, the Committee may want to continue to monitor such alternative approaches as the VA program is implemented, to see whether the VA experience can offer lessons learned that can be applied governmentwide.



Mr. Chairman and Members of the Committee:

I am pleased to be here today to participate in this hearing on H.R. 1032, a bill which proposes new procedures for handling employment discrimination complaints, including complaints of sexual harassment, at the Department of Veterans Affairs. At the time we received your request to testify on the proposed Department of Veterans Affairs Employment Discrimination Act, we were in the process of responding to a request by your Subcommittee on Oversight and Investigations to review VA's procedures for handling sexual harassment complaints. Our review has focused on examining the records of closed formal sexual harassment complaints to determine how the cases were processed and resolved.

Although our review is still underway, we are providing today our interim observations on VA's system for handling sexual harassment complaints. I will also comment on initiatives undertaken by the new Secretary of Veterans Affairs to resolve some of the problems we observed, and on how the proposed Department of Veterans Affairs Employment Discrimination Act would address these problems.

#### BACKGROUND

Under the Civil Rights Act of 1964, as amended, EEO regulations, and numerous federal court decisions, federal agencies are held to rigorous standards in prohibiting sexual harassment in the workplace. For example, under these laws, an employer can be liable for sexual harassment committed in the workplace if it failed to take adequate measures to prevent it. In addition, employers can be liable for sexual harassment committed by supervisors, even if they were not aware of the harassment.

Regulations governing the procedures and timeframes under which federal agencies must address sexual harassment incidents are issued by the Equal Employment Opportunity Commission (EEOC). These procedures provide for (1) agency-provided informal counseling assistance to the complainant, (2) the opportunity to file a formal complaint against the alleged harasser by the complainant, (3) acceptance or rejection of the complaint by the agency on substantive or procedural grounds, (4) investigation of the complaint by the agency or the EEOC, and (5) a final decision on the complaint by the agency, the EEOC or a federal court. To meet these standards, it is necessary to ensure that employees and supervisors understand the nature of sexual harassment and their responsibilities to prevent it or to take appropriate action if it occurs.

## FORMAL COMPLAINTS OF SEXUAL HARASSMENT AT VA

According to VA's automated EEO database, a total of 101 sexual harassment complaints were closed between the beginning of fiscal year 1989 and the start of fiscal year 1993. To date, we have examined 37 of these closed formal complaints. Although all these complaints were presented to us by VA as closed, we found that 7 either were not closed, or they addressed other types of issues, such as reprisals.

The remaining 30 sexual harassment cases we reviewed in depth were from 29 medical centers. Of the 30, 10 were settled, 9 were closed by procedural rejection, 5 were withdrawn by the complainants, 5 were closed by the agency with no finding of discrimination, and the status of 1 could not be determined from the files. At least 19 of the 30 complainants alleged sexual harassment by supervisors, with most of the others being by co-workers. The types of alleged activity included sexual assaults (including intercourse), unwanted sexual advances that included touching and abusive language, exposure of private parts, and suggestive remarks.

### VA PROCEDURES FOR PROCESSING COMPLAINTS HAVE RECENTLY BEEN CHANGED

Under VA's system for handling the complaints we reviewed, the responsibility for processing and making most major decisions on the complaints was decentralized to the heads of field offices such as medical center directors. These directors or their designees (1) appointed employees at their center to be part-time counselors and investigators, (2) contacted the complainants about the acceptance or rejection of their complaints, and (3) proposed conditions for settling complaints. VA's procedures called for proposals by center directors to reject complaints to be approved by VA's Office of General Counsel at headquarters. Once a complaint was accepted however, there was little external oversight over the processes that were used and the decisions that were made.

In recent weeks, VA has taken certain actions to strengthen its system for dealing with sexual harassment. For example, it has revised complaint procedures to include oversight by regional offices of the handling of formal complaints by medical center officials, and provided medical center employees with the right to consult with the EEO counselor of their choice as they try to decide how to proceed with their informal complaint. VA also has recently established requirements and materials for new and periodic training that focuses on sexual harassment and complaint processing for all employees, EEO counselors and investigators. However, because of the recency of these changes, it is too early to assess their effect.

ORGANIZATIONAL STRUCTURE FOR COMPLAINT PROCESSING PROVIDED  
INSUFFICIENT INDEPENDENCE AND OVERSIGHT

Under the procedures in force until recently, VA's 171 medical center directors were the principal officials responsible for resolving sexual harassment complaints, but with limited oversight. As a result, the director was both (1) the employer representative ultimately responsible for operational activities at the medical center, and (2) the EEO officer responsible for assuring proper counseling, investigation, and resolution of sexual harassment complaints. Directors also appointed center employees to be EEO counselors. These counselors handled sexual harassment complaints on a part-time basis in addition to their regular duties. Moreover, because some complaints involved senior medical center officials or even directors themselves, the counselors were placed in the position of making recommendations that could adversely affect the director -- the person for whom they worked.

Given these potential tensions, VA employees who were not satisfied with the outcome of their complaints could understandably question the independence and objectivity of the medical center officials who dealt with them. In this regard, our review of the files also disclosed indications that certain medical center directors or their designees actively sought to discourage complaints from being filed.

MANY COMPLAINTS WERE EITHER PROCEDURALLY REJECTED, OR HAD THEIR  
ACCEPTANCE DELAYED

About one-third of the 101 formal sexual harassment complaints identified by VA as having been filed and closed since the beginning of fiscal year 1989 were rejected for procedural reasons; that is, they were deemed not to have been filed correctly. Of the 30 formal sexual harassment complaints we reviewed, 9 were procedurally rejected for reasons such as not contacting a counselor within 30 days of the alleged harassment. Six of the 30 complaints had been proposed for rejection by medical center directors, but the proposals were not accepted by the Office of General Counsel at VA headquarters. Two others were discouraged by the EEO counselors who provided incorrect information to the complainants.

This evidence -- that complainants may not have sufficient information to file complaints properly and that decisions to reject complaints were overturned as improper -- suggests that both complainants and agency officials doing EEO counseling and investigations and making EEO decisions needed further training as to how the EEO process, and especially the sexual harassment process, is supposed to work. Under an EEO system decentralized to 171 medical centers, however, it was difficult to ensure that training for handling sexual harassment complaints had been consistently provided.

As a further indication of a need for additional training, VA headquarters EEO officials told us that about one-third of the approximately 900 counselors and 300 investigators, most located at the medical centers, turn over each year. The officials said turnover prevented VA from training all counselors and investigators to properly handle complaints, or re-training them if they handled complaints improperly.

#### DELAYS IN SCHEDULING INVESTIGATIONS

Once complaints are accepted by the agency, they must be scheduled for investigation. According to VA officials, once a formal complaint was filed, each medical center director selected an investigator from a pool of employees temporarily available as investigators from centers other than the one headed by the director. Most of these employees had been appointed to serve on a part-time basis in addition to their regular duties.

In the 30 formal complaints GAO reviewed, 12 appeared to have been investigated. In 8 of the 12 complaints, an average of over 5 months had elapsed before investigations were scheduled. In the longest case, about 14 months elapsed before an investigation was scheduled. For complainants, such long timeframes extended the discomfort of the situation for which they had filed a complaint, and also could have led them and others to perceive that their complaints were not considered to be very important.

#### MANY COMPLAINANTS PERCEIVED REPRISALS

Of the 30 sexual harassment complaints we reviewed, 10 complainants perceived certain agency actions as reprisals against them for having filed their complaints. The actions alleged to have been taken included denial of leave, reductions in duties, unsatisfactory performance appraisals, and transfers against their will. Five additional complainants cited no definite agency actions, but said that supervisors threatened them with bad performance ratings or said they feared other reprisals. In at least seven cases, officials considered to be part of the centers' management - immediate or higher level supervisors, including a medical center director - were alleged as harassers.

Under the system in operation at VA until recently, such reprisal actions would have been difficult to detect. The officials whom complainants believed were guilty of reprisals could have been the officials initially responsible for determining whether reprisals had occurred.



THE DEPARTMENT OF VETERANS AFFAIRS EMPLOYMENT DISCRIMINATION ACT  
FURTHER CHANGES VA'S STRUCTURE FOR EXAMINING COMPLAINTS

Earlier, I pointed out changes made by the VA Secretary to strengthen the system for dealing with sexual harassment. H. R. 1032 goes even further in dealing with many of the conditions we observed. It establishes an Office of Employment Discrimination Complaints Resolution (Complaints Office) at VA. The director of this office would have sole responsibility for administering the procedures for resolving EEO complaints and would report directly to the VA Secretary or the Deputy Secretary. Under this organizational arrangement, the dual responsibilities of medical center directors as discussed above, would be eliminated.

Additionally, the proposed legislation requires the acceptance, rejection, and adjudication of complaints to be done by administrative law judges and provides that VA employees who would do the counseling and investigating in sexual harassment complaints be employed by and report to the Complaints Office. Administrative law judges would know the EEO process and it would appear that their decisions to accept or reject cases would be more consistently correct. Also, EEO work would be the full-time responsibility of counselors and investigators. Therefore, they would have no other duties competing for their attention and their training could be more easily managed.

H.R. 1032 has the potential for significantly improving VA's mechanism for handling of sexual harassment and other EEO complaints; however, it is not the only approach that is being considered. As you may know, the United States Senate is considering another bill, S.404, which proposes alternative procedures for all federal agencies in dealing with EEO complaints, including sexual harassment. In enacting H.R. 1032, the Committee may want to continue to monitor such alternative proposals as the VA program is implemented, to see whether the VA experience can offer lessons learned that can be applied governmentwide.

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In concluding my testimony, I offer the observation that successfully dealing with sexual harassment will take more than legislation. It is vitally important for management to make it clear that it will not tolerate such behavior and to back this up by effectively dealing with employees who engage in such practices. Based on my recent meeting with the Secretary of VA to discuss this issue, it appears to me that the Secretary is willing to make such a commitment. It will be important to review the situation at VA after some time has passed to determine the effect of his initiatives.

I would now welcome any comments or questions that you may have.  
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