



## Testimony

Before the Subcommittee on Oversight and Investigations and the Women Veterans Task Force, Committee on Veterans' Affairs, House of Representatives

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# SEXUAL HARASSMENT

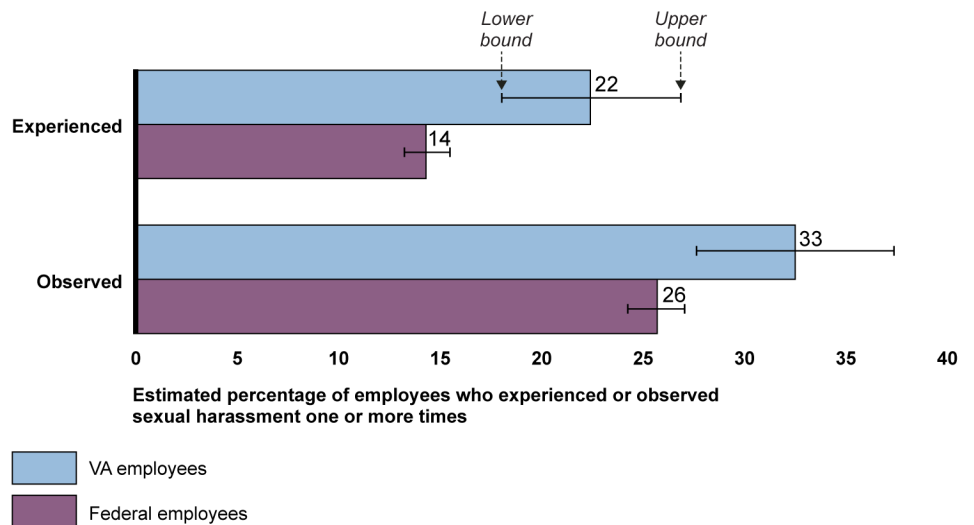
## VA Needs to Better Protect Employees

Statement of Cindy S. Brown Barnes, Director  
Education, Workforce, and Income Security

Chairman Pappas, Chairwoman Brownley, Ranking Member Bergman, and Members of the Subcommittee and Task Force:

I am pleased to be here to discuss our June 2020 report, released publicly last week, on sexual harassment at the Department of Veterans Affairs (VA).<sup>1</sup> Sexual harassment in the workplace can negatively affect both employees and the environment in which they work. According to data from the most recent Merit Systems Protection Board (MSPB) survey in 2016, an estimated 22 percent of VA employees, and 14 percent of federal employees overall, experienced some form of sexual harassment in the workplace from mid-2014 to mid-2016 (see fig. 1).

**Figure 1: Estimated Percentage of Department of Veterans Affairs (VA) Employees and Federal Employees Overall Who Experienced or Observed Workplace Sexual Harassment from Mid-2014 to Mid-2016**



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-654T

Note: The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors one or more times in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar. A more detailed explanation of our methodology is available in our report (see [GAO-20-387](#)).

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

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My statement summarizes the findings from our June 2020 report, which examines (1) the extent to which VA has policies to prevent and address sexual harassment of VA employees, (2) how available data inform VA about sexual harassment of its employees, and (3) the extent to which VA provides training to its employees on preventing and addressing sexual harassment.

For our report, we reviewed relevant federal laws, regulations, and policy and program documents. We analyzed VA's sexual harassment complaint data for fiscal years 2014 through 2019 for its equal employment opportunity (EEO) program and Harassment Prevention Program (HPP), and data from the most recent MSPB survey in 2016. We also interviewed VA officials at headquarters, and VA staff from facilities across VA, selected to include representation from VA's three administrations—Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA)—and staff positions that manage and implement VA's programs and policies to address sexual harassment. In addition, we interviewed two union officials and Equal Employment Opportunity Commission (EEOC) officials. A more detailed explanation of our methodology is available in our report.<sup>2</sup> Our work was performed in accordance with generally accepted government auditing standards.

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment that is sufficiently severe or pervasive, or that 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 (Title VII).<sup>3</sup>

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<sup>2</sup>[GAO-20-387](#).

<sup>3</sup>See 42 U.S.C. § 2000e-2. See also 42 U.S.C. § 2000e-16(a), which requires that all federal personnel actions be made free from discrimination based on sex, among other characteristics. According to EEOC, which enforces Title VII, harassment becomes unlawful when it is so frequent or severe as to create a hostile or offensive work environment, or when it results in an adverse employment decision. See 29 C.F.R. § 1604.11 for EEOC's regulations defining unlawful sexual harassment under Title VII. In this testimony, we use the term sexual harassment in a broader sense to refer to sexual harassment behaviors that may or may not meet the legal criteria necessary to be deemed unlawful discrimination.

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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.<sup>4</sup> 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.*<sup>5</sup> VA's HPP has been operating since early 2016 and is intended to prevent harassment—including sexual harassment—and address it before it becomes unlawful. HPP staff are to monitor 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, the purpose of which is 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 (ORM) oversees the agency's EEO program and HPP. VA's three administrations—VHA, VBA, and NCA—also have EEO offices.

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<sup>4</sup>VA's policy statement is titled "Department of Veterans Affairs Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement" and includes a section on sexual harassment. For purposes of this testimony, we refer to this policy statement as "VA's sexual harassment policy." See Department of Veterans Affairs, *Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement* (December 18, 2019). The management process is not designed to determine whether unlawful discrimination occurred.

<sup>5</sup>EEOC requires federal agencies to have a process for investigating and resolving complaints of discrimination, which at VA is called the EEO process, and an "anti-harassment" program, which at VA is called the Harassment Prevention Program (HPP). HPP is not designed to determine whether unlawful discrimination occurred.

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## VA's EEO Organizational Structures Are Misaligned and Key Policies Are Not Formalized

**Misalignment of EEO Director position.** VA's EEO organizational structure does not adhere to EEOC's Management Directive 110. 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.<sup>6</sup> However, VA's EEO Director oversees both VA's personnel functions and its EEO functions.<sup>7</sup> VA acknowledged this issue in reports to EEOC in fiscal years 2016 and 2017 and stated the agency would explore options to correct it. However, in January 2020, VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness told us that the EEO Director position he occupies is not out of compliance because he is not involved in daily management or oversight of the EEO program. In April 2020, EEOC officials told us that VA's EEO Director position remains out of compliance. Our report recommends that VA realign its EEO Director position to adhere to EEOC's directive by ensuring the position is not responsible for personnel functions. VA did not 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. However, 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. We continue to believe that VA should realign its EEO Director position to adhere to EEOC's Management Directive 110.

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<sup>6</sup>EEOC Management Directive 110 Chapter 1(IV)(A). According to the directive, the EEO program's processes often scrutinize and challenge the motivations and impacts of personnel decisions. In order to maintain the integrity of the EEO investigative and decision-making processes, the directive states that those EEO functions must be kept separate from the agency's personnel functions.

<sup>7</sup>EEOC regulations require federal agencies to designate a Director of Equal Employment Opportunity (EEO Director), who shall be responsible for advising the agency head on EEO matters, evaluating and improving the agency's EEO program, and providing for counseling and complaint processing, among other things. See 29 C.F.R. § 1614.102(b)(4), (c) and section III(A) of Management Directive 110. VA's EEO Director is the Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness, and oversees ORM and the Office of the Chief Human Capital Officer, among others.

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**Misalignment of EEO Program Manager positions.** VA officials said full-time EEO Program Managers should report to the Office of Resolution Management (ORM) instead of the director of their local facility.<sup>8</sup> However, two of VA's three administrations are not structured this way. VA officials said they decided to realign these positions from reporting to facility directors to reporting to ORM in order to prevent real or perceived conflicts of interest, to ensure the position is neutral and not beholden to facility management, and to comply with a statutory requirement that such employees not report to the facility director. NCA's EEO Program Manager realignment was completed in fiscal year 2017. VBA realignment started in October 2017 and was ongoing as of May 2020.<sup>9</sup> VA has not begun the realignment of VHA's 133 EEO Program Managers, and VHA officials said they did not think realignment was needed. Our report recommends that VA complete the realignment of the EEO Program Manager positions at VBA and VHA. VA agreed with this recommendation and described its plans to complete VBA realignment in fiscal year 2022 and develop a realignment plan for VHA after that, projected to start in fiscal year 2024. We believe VA should begin to plan now for VHA's EEO Program Manager realignment to avoid further delays.

**Incomplete or outdated policies and information.** While VA has an overarching sexual harassment policy regarding preventing and addressing sexual harassment of employees, and VA and its administrations have additional policies to support it, some policies and information documents are not consistent with the overarching sexual harassment policy and some have outdated or missing information. For example, these resources may not include all options employees have for reporting sexual harassment, which could result in confusion among employees and managers. Our report recommends that VA ensure that all VA and administration policies and information documents are current, complete, and aligned with VA's overarching sexual harassment policy. VA agreed with this recommendation and said it will develop a plan to

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<sup>8</sup>The EEO Program Manager at a VA facility generally serves as head of the EEO program and, for many facilities, is the only on-site EEO personnel. Generally, they are physically located at VA facilities, even if they report to ORM. EEO Program Managers do not actually process EEO complaints; instead, ORM'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.

<sup>9</sup>According to VA officials, 15 additional EEO Program Managers are to be realigned.

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address it by the end of December 2020 and begin implementing the plan by the end of March 2021.

**Delayed finalization of HPP.** The Harassment Prevention Program (HPP) has been an active VA program for over 4 years and is cited in VA's sexual harassment policy. However, neither the directive establishing HPP's policies nor its handbook of implementation guidance has been approved by VA leadership and distributed to employees. VA officials said the delay is due to numerous revisions to ensure the documents are clear and comprehensive, and that even without a directive and handbook, VA employees are aware of HPP through VA's sexual harassment policy and the HPP website. However, we found that VA's failure to approve and distribute HPP policy and guidance has contributed to inconsistent implementation and a lack of awareness about HPP. This includes inconsistent collection of HPP data and some EEO staff having an inaccurate understanding of HPP. Our report recommends that VA finalize the HPP directive and handbook. VA agreed with this recommendation and said it will finalize the documents by December 2020.

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## VA Lacks Comprehensive Information on Sexual Harassment Prevalence and on Corrective Actions Taken

**Limitations in use of sexual harassment data.** The Office of Resolution Management (ORM) relies on complaint data to understand the extent of sexual harassment at VA, but these data are incomplete. Specifically, VA does not have centralized information on complaints addressed through the management process because there is no requirement to report this information to ORM after managers receive an allegation.<sup>10</sup> According to VA policy, HPP is to provide centralized tracking, monitoring, and reporting to proactively respond to all allegations of harassment. However, HPP cannot effectively do this until VA has more comprehensive information on all reported allegations. In addition, VA does not use additional available information that could inform its efforts to address sexual harassment, such as data from the MSPB survey, which suggest that many employees do not file formal complaints when they experience sexual harassment.<sup>11</sup> Our report recommends that VA require managers to report all sexual harassment complaints to ORM, and that ORM should use this information, along with other available data, to assess and improve VA's efforts to prevent and address sexual

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<sup>10</sup>VA has data on EEO and HPP complaints, including management process complaints that are made known to HPP. For example, 180 sexual harassment cases were filed through the EEO process and HPP in fiscal year 2019.

<sup>11</sup>See our report for additional analysis of MSPB survey data ([GAO-20-387](#)).

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harassment. VA agreed with this recommendation and said it will implement a new system to address it by the end of September 2021.

**Incomplete tracking of corrective actions.** VA has policies and procedures to ensure that appropriate corrective actions occur for sexual harassment cases addressed through the EEO process, but not for cases addressed through the management process or HPP. In cases in which an investigation of a complaint results in a finding of discrimination (through the EEO process) or a finding of harassment (through the management/HPP process), corrective actions or other remedies may be appropriate. However, for cases that are resolved through the management process or HPP, VA does not require that managers provide evidence to ORM that appropriate corrective action, if any, was taken. ORM officials said documentation is not required because HPP staff—who are responsible for monitoring that managers address sexual harassment complaints—can follow up with the facility to obtain documentation, if needed. However, without access to documentation of corrective actions, there is no consistent way for ORM to hold management accountable for taking these steps. A lack of documentation does not mean that such corrective actions did not occur; nonetheless, without adequate documentation VA may not have reasonable assurance that they did. Such information is important to show that the agency takes harassment seriously and that those responsible are held accountable. Our report recommends, for sexual harassment complaints addressed through the management process, VA ensure that decided corrective actions are implemented, including requiring managers to provide evidence of such actions. VA agreed with this recommendation and said by the end of September 2021 it will require managers to upload evidence of corrective actions to its new system for reporting sexual harassment allegations.

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## VA Provides Limited Training on Sexual Harassment to Its Employees

VA provides information on sexual harassment policies and procedures as part of its broader online harassment trainings required for all employees and managers every 2 years, and through web pages and policy statements, posters, and brochures in VA facilities. However, the required trainings do not provide in-depth information on identifying and addressing sexual harassment. For example, they have one or no sexual harassment scenarios to help employees understand prohibited behaviors, and there is no information about HPP. Some facilities within VA's administrations supplement the VA-wide mandatory harassment training with additional training that is specifically focused on sexual harassment; however, not all VA employees are required to take it. Mandatory training focused on sexual harassment that includes clear and



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consistent information on HPP could substantially improve employee knowledge of VA policies and procedures, and help prevent sexual harassment or ensure it is properly handled when it occurs. Our report recommends that VA require additional training for all VA employees on identifying and addressing sexual harassment, including the HPP process. VA agreed with this recommendation and said by the end of September 2021 it will restructure its sexual harassment prevention training for all employees to make it more impactful.

In conclusion, an agency's ability to prevent and address workplace sexual harassment is important to ensuring that employees are healthy and productive. A wide range of issues currently hamper VA's ability to effectively protect its employees from such behavior. Absent additional action, some VA employees may continue to distrust VA's handling of allegations, and VA's efforts to prevent and address sexual harassment may remain limited. Further, VA's core values, which include integrity, advocacy, and respect, along with its ability to deliver the highest quality services to the nation's veterans, may be compromised. By implementing our report's seven recommendations, VA has the opportunity to better prevent and address sexual harassment and create a safer work environment for its employees.

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

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Cindy S. Brown Barnes; Director; Education, Workforce, and Income Security, at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@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 include Nyree Ryder Tee (Assistant Director), Rebecca Kuhlmann Taylor (Analyst-in-Charge), Susan Aschoff, Sarah Cornetto, Connor L. Kincaid, and Matthew W. Rowen. Other staff who made contributions to the report cited in the testimony are identified in the report.

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