

**STATEMENT OF
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FOR THE DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
JULY 17, 2018**

Chairman Roe, Ranking Member Walz, distinguished Members of the Committee; thank you for the opportunity to testify today in support of the Department of Veterans Affairs (VA) implementation of the Accountability and Whistleblower Protection Act: one year later. Let me also thank the Committee, and other members of Congress, for your on-going support of holding VA employees accountable for their performance and misconduct. Without that support, VA would not have been able to move forward in providing greater support for our Veterans. I am accompanied today by Mr. Kirk Nicholas, Executive Director for the Office of Accountability and Whistleblower Protection and Nathan Maenle, Principal Deputy Assistant Secretary for the Office of Human Resources and Administration.

The Office of Accountability and Whistleblower Protection (OAWP or the Office) represents the culmination of many years of effort to improve accountability within the Department of Veterans Affairs (VA) and to establish a new capability to centrally receive and address whistleblower disclosures. Congress built on and strengthened the capabilities developed internally by the Department creating OAWP through the VA Accountability and Whistleblower Protection Act (the Act), Public Law 115-41 in 2017.

OAWP absorbed and expanded on the work formerly performed by the Office of Accountability Review and the Central Whistleblower Office to establish an intake, investigation, and accountability vehicle to support the VA Secretary's efforts to better fulfill the Department's mandate to "...care for [those] who have borne the battle...".

OAWP serves to improve the performance and accountability of VA Senior Executives and employees through timely, and unbiased investigation of allegations of misconduct involving VA senior executives. OAWP also investigates allegations of whistleblower retaliation committed by supervisory employees. When these allegations are found to be factually true, OAWP provides a recommendation for an accountability action which could be for the removal, demotion, or suspension of the individual based on poor performance and/or misconduct.

OAWP is dedicated and empowered to provide transparency and build public trust and confidence throughout the entire VA system. The Office is committed to preserving the cultural integrity of the Department conducting balanced, fair, and efficient investigations of VA whistleblower disclosures, proposing timely remedial resolutions and providing responsive recommendations. The organization, actions, and statistics of this first year of OAWP are contained in both the June 30, 2018 Report To The Committee on Veterans Affairs of the Senate And The Committee on Veterans Affairs of the House of Representatives On the Activities of the Office of Accountability and Whistleblower Protection (2018 Annual Report) as follows.

Triage Division Statistics

Triage Division is the first point of contact for whistleblower disclosures and allegations of senior executive misconduct. The Triage staff assesses the information submitted and, as needed, conducts initial development of the submission with the disclosing party. Triage maintains oversight of all matters submitted to OAWP and ensures all issues are brought to resolution.

From June 23, 2017 through June 1, 2018, Triage Division has received nearly 2,000 disclosures. The specific types and quantities are displayed on the following charts.

Count of Disclosures by Type, by Month – Details

Disclosure Category	JUN 17	JUL 17	AUG 17	SEP 17	OCT 17	NOV 17	DEC 17	JAN 18	FEB 18	MAR 18	APR 18	MAY 18	Grand Total
WB retaliation	11	50	48	31	25	28	22	24	19	28	20	13	319
Violation of any law, rule or regulation	7	36	33	32	41	27	38	31	48	47	22	31	393
Gross mismanagement	1	6	10	5	7	10	2	6	7	6	5	4	69
Gross waste of funds		1		2		4	2		1	1	1	2	14
Abuse of authority	3	6	20	7	7	15	12	10	17	15	19	6	137
Substantial and specific danger to public health		2	4	3	2			3	4	9	2		29
Substantial and specific danger to safety		1	2	3	6	3	1	1		1	1	1	20
Not a WB disclosure	8	110	107	80	61	66	42	89	102	105	101	147	1018
Grand Total	30	212	224	163	149	153	119	164	198	212	171	204	1999

The above chart displays the type of disclosures received by month from June 2017 through May 2018.

Investigations Division Statistics

Investigations Division is the most visible division in OAWP, and it interacts with witnesses and Persons of Interest (POI) to resolve cases. Investigators conduct inquiries to gather evidence and testimony to resolve allegations of senior executive misconduct or whistleblower retaliation. Depending on the specifics of a case, inquiries may be conducted on-site or virtually.

On June 23, 2017, Investigations Division had a legacy workload from the Office of Accountability Review of 116 investigations involving 216 POIs.

From June 23, 2017 through June 1, 2018, Investigations Division:

- Completed 128 investigations involving 236 POIs;
- Received 261 cases involving 482 Senior Leaders;
- Had 125 pending or ongoing investigations, involving 264 POIs.

Advisory and Analysis Division Statistics

Advisory and Analysis Division is the principal accountability arm of OAWP. The staff analyzes investigative results and makes recommendations to VA leadership regarding appropriate steps to resolve matters. These could include performance management, disciplinary actions, or recommending no action.

From June 23, 2017 through June 1, 2018, Advisory and Analysis Division:

- Received 39 cases directly from Triage as fully developed matters (e.g. MSPB decisions or OSC findings) involving 65 POIs;
- Completed 182 cases, including 130 cases resulting from OAWP investigations;
- Recommended disciplinary or adverse actions in 54 cases involving 58 unique POIs;
- Had 49 potential disciplinary or adverse actions.

The Report itself conveys the first year's achievements and actions of the Office, but this effort did not come easily. The early leadership of OAWP worked diligently to resolve concerns, establish the organization, as well as continuing to triage, investigate and assess ongoing and emerging investigations. The necessity of implementation could not wait for culture change. Instead, the actions of the Office became the fulcrum for change. The Office began to gain credibility by its actions as 2017 closed with outreach programs being instituted for VA Senior Leader engagements and whistleblower intervention. These events began to help dispel the cloud of confusion hovering over the concept "accountability" as well as demystify the response required to address misconduct and retaliation at all levels. With each session, OAWP learned more of what was missing in the implementation, and also made progress in instructing VA Senior Leaders and employees on what accountability means and how to address the issues.

There have been a number of questions related to the implementation of the Act. For instance, there are questions regarding whether the VA is targeting lower level staff versus VA Senior Leaders. As you can see below and in the 2018 Annual Report, the numbers for 2014-2018 are similar in terms of misconduct actions targeting all levels of the organization. Only minor changes in disciplinary actions occurred after the implementation of OAWP.

Summary of Statistics from 2018 Annual Report

The 2018 Annual Report contains a number of statistics regarding the disciplinary and adverse actions taken involving VA employees since 2014. A brief summary of the information contained in that Report demonstrates that lower level

employees are not being disproportionately impacted by the Accountability Act. The percentage of disciplinary and adverse actions issued to general workforce employees both before and after enactment of the Accountability Act remains consistent.

Prior to the Act, positions in the general workforce (Wage Grade and Wage Leader 1-15; and GS 1-10) were disciplined as follows¹:

- From 2015 - 2016, 69% of the disciplinary actions (admonishment, reprimand, suspension less than 15 days) issued by the VA were to employees in the general workforce.
- From 2015 – 2016, 72% of the adverse actions (suspension of 15 days or more, demotion, removal) issued by the VA were to employees in the general workforce.
- From 2016 – 2017, 71% of the disciplinary actions (admonishment, reprimand, suspension less than 15 days) issued by the VA were to employees in the general workforce.
- From 2016 – 2017, 72% of the adverse actions (suspension of 15 days or more, demotion, removal) issued by the VA were to employees in the general workforce.

After enactment of the Act, positions in the general workforce (Wage Grade and Wage Leader 1-15; and GS 1-10) were disciplined as follows:

- From 2017 – 2018, 69% of the disciplinary actions (admonishment, reprimand, suspension less than 15 days) issued by the VA were to employees in the general workforce.
- From 2017 – 2018, 71% of the adverse actions (suspension of 15 days or more, demotion, removal) issued by the VA were to employees in the general workforce.

¹ The percentages contained here are approximate due to rounding.

Completing the Stand Up

Much work has been done to develop the transactional flow from disclosure to disciplinary recommendations. The process continues to be worked until it can predict how much work can be handled by the current number of individuals assigned to the activity, how long the work takes to complete, and how to begin to measure the quality of the work. To adequately predict the outcomes the Office needs good processes that produce reliable data. When these have stabilized OAWP will begin the development of the support policies and procedures for VA wide distribution. Having a full workforce will allow for better measurement, better identification of training needs and designing a quality of work life that can survive long term.

An additional benefit of the process mapping is that it helped identify data capture and management needs. The first benefit of the process mapping allowed the identification of cycle time through the process. The process was also able to identify the amount of work that the process can perform, and a quality metric that can be measured of the outputs. This provides the foundation for the selection of a case management system that will enable the process to work and help with our transparency efforts. Currently, an online update is published each month on disclosures, as well as the disciplinary actions that have been taken agency wide. OAWP has shared those files since mid-2017, and continues to refine the data capture and reporting VA wide and to Congress. The end state is that OAWP is now tracking actions via a “heat map” that permits a view of potential “hot beds” of misconduct to target rather than waiting for a disclosure or allegation. The goal is to prevent misconduct and to improve performance in various programs and organizations that sustain the delivery of work by the VA to the Veteran. The desired end state is to be “proactive” instead of “reactive.”

One lesson learned by OAWP is that it is hard for whistleblowers to reintegrate with their offices. OAWP hired Mr. Brandon Coleman, a former VA whistleblower, to help us understand what happens when an individual does decide to go public. The Office has developed and implemented a “whistleblower reintegration program,” which also links with the VA’s Employee Assistance Program to help individuals work through

the emotional crises that can occur following disclosure. The Office has had several successful events to date and is expanding the program to engage the workforce during the first stages of the disclosure to help guide them as events are triaged, investigated and closed. This has been incredibly time consuming so OAWP has added two members to that team. OAWP believes that it can help VA Senior Leaders and employees eventually see that finding defects and fixing them is a cultural issue, one that will help reinvigorate loyalty and trust up and down the rank and file. It is one effort of many, and probably the most critical in helping to change the culture in the VA.

A few other areas being strengthened are the re-designation of our investigations capabilities from Human Resources Specialist positions (201) to General Investigator positions (1810). Additional training has been added to the investigators' list: management inquiry training from the Immigration and Customs Enforcement (ICE) at the Department of Homeland Security; Human Audit and Digital Forensics from commercial events; and internal affairs from the Federal Law Enforcement Training Center (FLETC). Finally, OAWP is in the last stages of selecting a case management system that fits within the VA's Business Architecture.

Lastly, I invite you to read the OAWP 2018 Annual Report in its entirety. The product of this nascent organization, it will stimulate questions on how to better adapt this implementation across the Federal sector. Very few of the individuals hired over the last year had any experience with the aftermath of a major implementation, but they are certainly and rightfully proud of their hard work and selfless dedication in bringing OAWP to life while they completed critical activities within the Accountability Process.

Closing

The implementation of this Act honors our Nation's commitment to Veterans by better enabling VA to provide the high-quality care and benefits our Veterans have earned. It supports the Department's efforts to bring value and a source of pride for VA employees who are dedicated in servicing our Veterans. Mr. Chairman and Members of the Committee, this concludes my statement. Thank you for the opportunity to testify before the Committee today to discuss VA's implementation of the Accountability and

Whistleblower Protection Act. I would be happy to respond to any questions you may have.