



June 2020

SEXUAL HARASSMENT

Inconsistent and
Incomplete Policies
and Information
Hinder VA's Efforts to
Protect Employees

GAO Highlights

Highlights of [GAO-20-387](#), a report to congressional requesters

Why GAO Did This Study

According to estimates from a recent federal survey, 18 to 27 percent of VA employees experienced some form of sexual harassment at work from mid-2014 through mid-2016. Sexual harassment negatively affects employees and employers and, if severe or pervasive, can constitute unlawful employment discrimination prohibited by Title VII of the Civil Rights Act of 1964.

GAO was asked to review VA's efforts to prevent and address sexual harassment of its employees. This report examines (1) the extent to which VA has policies to prevent and address sexual harassment, (2) how available data inform VA about sexual harassment, and (3) the extent to which VA provides training to employees on preventing and addressing sexual harassment. GAO reviewed relevant federal laws, regulations, and policy and program documents; analyzed VA complaint data for fiscal years 2014 through 2019 and data from a 2016 federal survey; and interviewed VA officials at headquarters and select facilities across VA, two union officials, and EEOC officials.

What GAO Recommends

GAO is making 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 concurred with all but the EEO Director position recommendation, which GAO continues to believe is warranted.

View [GAO-20-387](#). For more information, contact Cindy S. Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov.

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Inconsistent and Incomplete Policies and Information Hinder VA's Efforts to Protect Employees

What GAO Found

The Department of Veterans Affairs (VA) has policies to prevent and address sexual harassment in the workplace, but some aspects of the policies and of the complaint processes may hinder those efforts.

- **Misalignment of Equal Employment Opportunity (EEO) Director position:** VA's EEO Director oversees both the EEO complaint process, which includes addressing sexual harassment complaints, and general personnel functions. According to the Equal Employment Opportunity Commission (EEOC), this dual role does not adhere to one of its key directives and creates a potential conflict of interest when handling EEO issues because the EEO process often scrutinizes and challenges the impacts of personnel decisions.
- **Incomplete or outdated policies and information:** VA has an overarching policy that outlines its efforts to prevent and address sexual harassment of its employees. However, some additional policies and information documents at the agency and administration levels are not consistent with VA's overarching policy, and are outdated or are missing information. For example, they may not include all options employees have for reporting sexual harassment, which could result in confusion among employees and managers.
- **Delayed finalization of Harassment Prevention Program (HPP):** VA has not formally approved the directive or the implementing guidance for the 4-year-old HPP, which is intended to prevent harassment and address it before it becomes unlawful; lack of formal approval could limit the program's effectiveness.

VA uses complaint data to understand the extent of sexual harassment and target resources to prevent and address it. However, such data are incomplete. For example, VA compiles information on allegations made through the EEO process and HPP (e.g., 180 sexual harassment cases were filed through the EEO process and HPP in fiscal year 2019), but does not require managers who receive complaints to report them to VA centrally. As a result, VA is not aware of all sexual harassment allegations across the agency. Without these data, VA may miss opportunities to better target its resources and to prevent and address sexual harassment.

VA provides training to its employees, but the required training does not have in-depth information on identifying and addressing sexual harassment. These trainings have one or no sexual harassment scenarios to help employees understand prohibited behaviors and do not mention HPP. Some facilities within VA's administrations—which include the Veterans Health Administration, Veterans Benefits Administration, and National Cemetery Administration—supplement the training, but providing additional information is not mandatory. Requiring broader training material, such as with more examples of sexual harassment and information on HPP, could improve VA employees' knowledge of the agency's sexual harassment policies and could help to prevent sexual harassment or ensure that it is properly handled when it does occur.

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Abbreviations

EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
HPP	Harassment Prevention Program
MSPB	Merit Systems Protection Board
NCA	National Cemetery Administration
ORM	Office of Resolution Management
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration

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June 15, 2020

Congressional Requesters

Sexual harassment in the workplace can cause harmful psychological, physical, occupational, and economic effects for harassed employees. It also affects the environment in which they work, such as through decreased performance and productivity, and increased turnover.¹ According to data from the most recent Merit Systems Protection Board (MSPB) survey in 2016, an estimated 14 percent of federal employees experienced some form of sexual harassment in the workplace from mid-2014 through mid-2016.² The survey also estimated that 22 percent³ of Department of Veterans Affairs (VA) employees had experienced sexual harassment, which is relatively high among the 24 federal agencies represented by the survey.

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 that is prohibited by Title VII of the Civil Rights Act of 1964 (Title VII).⁴ VA employs over 390,000 individuals and is the

¹U.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. v.

²MSPB is an independent, quasi-judicial agency that, among other activities, conducts special studies to assess whether the federal personnel system adequately ensures that the executive branch civil service is free from prohibited personnel practices. The MSPB survey included questions about whether federal employees had experienced or observed various sexual harassment behaviors; such behaviors may or may not be unlawful, depending on the circumstances. The MSPB survey used a probability sample and the 95 percent confidence interval for this estimate is 13 to 16 percent. See appendix I and appendix II for additional information on the MSPB survey and our analysis of MSPB survey data.

³The 95 percent confidence interval for this estimate is 18 to 27 percent.

⁴According to the Equal Employment Opportunity Commission (EEOC), 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 report, 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.

second largest agency in the federal government. Given the detrimental effects of sexual harassment and its reported prevalence at VA, it threatens to undermine VA's core values of integrity, commitment, advocacy, respect, and excellence, and VA's ability to fulfill its mission to deliver the highest quality services to the nation's veterans.

You asked us to examine VA's high prevalence of sexual harassment, as reported by MSPB, and VA's efforts to prevent and address sexual harassment in its workplace. This report 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.

To address these objectives, we reviewed relevant federal laws and regulations, as well as sexual harassment policies, guidance, and training materials at VA and within its three administrations: Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA).⁵ We analyzed data from MSPB's 2016 Merit Principles Survey of federal employees, which asked federal employees about sexual harassment in the workplace, among other workforce questions.⁶ In addition, we interviewed VA and administration headquarters officials who implement programs for VA and its administrations to prevent and address sexual harassment, as well as two union officials, and Equal Employment Opportunity Commission (EEOC) and MSPB officials.

To address the first objective, we reviewed relevant federal laws and regulations, and EEOC guidance on sexual harassment and equal

⁵For purposes of this report, we focused our review on VA's practices to prevent and address sexual harassment under Title VII of the Civil Rights Act of 1964. Executive Order 13160, overseen by the Department of Justice, prohibits discrimination on the basis of sex, among other characteristics, in federally conducted education and training programs and activities. 65 Fed. Reg. 124 (June 27, 2000). Any practices VA may have adopted to implement Executive Order 13160 were outside the scope of this report. We also did not conduct a comprehensive review of VA's compliance with EEOC regulations and guidance.

⁶See appendix I for additional details on this methodology.

employment opportunity (EEO) and anti-harassment programs.⁷ We also reviewed VA, VHA, VBA, and NCA sexual harassment policies, guidance, and information documents for processing sexual harassment complaints, and EEOC's assessments of VA's compliance with EEOC regulations and directives.⁸ We reviewed organizational structures for the EEO and anti-harassment programs and complaint processing for VA and its administrations, and compared these structures to EEOC directives and VA policy. We interviewed VA staff who manage VA's EEO and anti-harassment programs about their sexual harassment policies and efforts to prevent and address sexual harassment of VA employees. We also conducted semi-structured interviews with 29 VA staff who implement these programs to solicit their perspectives on VA's implementation of its sexual harassment policies.⁹ In addition, we assessed these policies, guidance, and information documents against the agency's overarching sexual harassment policy and federal internal control standards on communicating internally and implementing control activities.¹⁰

To address the second objective, we analyzed VA's internal data on sexual harassment complaints, including those filed through the EEO process and the Harassment Prevention Program (HPP).¹¹ We determined that VA's data, and MSPB data discussed earlier, were sufficiently reliable for the purposes of our reporting objectives. We reviewed VA and VA administrations' policies regarding sexual harassment reporting procedures. In addition, we reviewed VA policies for tracking outcomes of its EEO and HPP cases in which sexual harassment was found to have occurred, to determine whether VA's data collection practices were consistent with its policies and procedures. During our semi-structured interviews, we asked VA staff who implement VA's sexual

⁷EEOC 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).

⁸VA's documents about sexual harassment include official policies and guidance, procedural documents that contain instructions for implementing policies, and other information documents that provide information on the policies, guidance, and procedures. For purposes of this report, we use the term "information documents" to describe both procedural and information documents.

⁹See appendix I for additional details on our methodology.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014), principles 14 and 12.

¹¹See appendix I for additional details on our methodology.

harassment complaint programs about how they track outcomes of these cases. In addition, we compared VA's practices and plans for analyzing its internal data on sexual harassment of VA employees with federal internal control standards on using quality information.¹²

To address the third objective, we reviewed VA and VA administrations' policies for providing training to employees on sexual harassment and VA's sexual harassment programs. We reviewed materials from VA and VA administrations' training courses related to sexual harassment. During our semi-structured interviews with VA employees who implement the EEO and HPP programs, we asked about the training provided to employees. We compared training course materials with VA's sexual harassment policy to determine comprehensiveness. We also compared VA's practices for providing training with federal internal control standards on internal communication.¹³ Further details about our methodology can be found in appendix I.

We conducted this performance audit from October 2018 through June 2020 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 and Equal Employment Opportunity Commission Requirements

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

¹²[GAO-14-704G](#), principle 13.

¹³[GAO-14-704G](#), principle 14.

national origin.¹⁴ The Supreme Court and EEOC have held that sexual harassment is a form of sex discrimination prohibited by Title VII when it meets certain criteria.¹⁵ According to EEOC's regulations, unwelcome sexual conduct constitutes unlawful sexual harassment when (1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct is used as the basis for employment decisions; or (3) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.¹⁶ In order for sexual harassment to constitute a "hostile environment" in violation of Title VII, it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

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.¹⁷ EEOC provides leadership and guidance to federal agencies on all aspects of the federal

¹⁴42 U.S.C. § 2000e-2. Title VII generally covers private, state, and local government employers with 15 or more employees, as well as federal employers. The Supreme Court is currently considering whether Title VII's prohibition against discrimination on the basis of sex includes sexual orientation or gender identity. See *Altitude Express Inc. v. Zarda* (No. 17-1623), *Bostock v. Clayton County* (No. 17-1618), and *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC* (No. 18-107). VA's sexual harassment policy currently includes a prohibition against harassment on these bases. Other federal laws prohibiting discrimination in the workplace include the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title I of the Americans with Disabilities Act of 1990, sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008, among others. Such laws were outside the scope of our review.

¹⁵See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

¹⁶29 C.F.R. § 1604.11(a).

¹⁷42 U.S.C. § 2000e-16(a) and (b). In addition, the Civil Service Reform Act of 1978, as amended, prohibits executive branch agencies from discriminating in personnel actions based on race, color, religion, sex, national origin, age, disability, marital status, political affiliation, or on conduct which does not adversely affect the performance of the applicant or employee. 5 U.S.C. § 2302(b)(1) and (b)(10). Further, Executive Order 11478, as amended, generally prohibits discrimination in federal employment on the basis of race, color, religion, sex, national origin, handicap, age, sexual orientation, gender identity, or status as a parent, and requires covered federal agencies to maintain "an affirmative program of equal employment opportunity" for employees and applicants.

government's EEO programs.¹⁸ EEOC has issued regulations to implement federal equal employment opportunity requirements in the federal sector,¹⁹ and ensures federal agency compliance with EEOC 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.²⁰ 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.²¹

¹⁸See Exec. Order No. 12067, 43 Fed. Reg. 28,967 (July 5, 1978).

¹⁹29 C.F.R. pt. 1614.

²⁰See EEOC, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, available at https://www1.eeoc.gov/federal/model_eeo_programs.cfm?renderforprint=1.

²¹For purposes of this report, Management Directive 110 refers to EEOC, *EEO Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Washington, D.C.: Aug. 5, 2015).

VA's Organizational Structure for Preventing and Addressing Sexual Harassment

VA's Categories of Sexual Harassment Behaviors

Sexual coercion: Pressure or force to engage in unwanted sexual behavior (e.g., offer of preferential treatment in the workplace in exchange for sexual favors).

Unwanted sexual attention: unwelcome behaviors of a sexual nature that are directed toward an individual (e.g., unwelcome invasion of personal space).

Gender harassment: unwelcome behaviors that disparage or objectify others based on their sex or gender (e.g., unwelcome sexual teasing).

Source: Department of Veterans Affairs (VA) Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement (December 2019). | GAO-20-387

VA's sexual harassment policy defines sexual harassment as occurring when (1) acceptance of the harassment is required (explicitly or implicitly) for continued employment; (2) acceptance or rejection of the harassment by an individual impacts his/her treatment by the harasser; or (3) the harassment unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment for the target of the harassment or for observers.²² VA's sexual harassment policy groups sexual harassment behaviors into three broad categories: sexual coercion, unwanted sexual attention, and gender harassment (see sidebar). According to the policy, all allegations of sexual harassment must be taken seriously, and VA does not tolerate behaviors that interfere with an individual's work performance or that create an intimidating, offensive, or hostile work environment.

VA has two offices that administer its EEO and diversity management functions across the agency.

- The Office of Resolution Management (ORM) administers VA's EEO complaint processing system, and oversees the agency's Workplace Alternative Dispute Resolution Program and Harassment Prevention Program (HPP), which was created to stop harassing behaviors before they become unlawfully discriminatory. All these efforts are designed to ensure allegations of workplace harassment are handled in a fair and effective manner.²³ The Office of Diversity and Inclusion was aligned under ORM in October 2019.²⁴ The Office of Diversity

²²VA'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 report, 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).

²³ORM was established in 1997 in response to section 101 of the Veterans' Benefits Act of 1997, which required that VA's employment discrimination complaint resolution system be established and administered in an objective, fair, and effective manner that encourages timely and fair resolution. Pub. L. No. 105-114, § 101, 111 Stat. 2277, 2278. Among other things, the statute requires that employees performing employment discrimination complaint resolution functions at VA facilities shall not be subject to the authority of the facility's director with respect to these functions. See 38 U.S.C. § 516. According to VA, since its establishment, ORM's mission has expanded to a more proactive role in prevention and early resolution of workplace disputes.

²⁴We generally refer to ORM instead of ORM/Office of Diversity and Inclusion in this report since the report focuses on the ORM portion of the merged office.

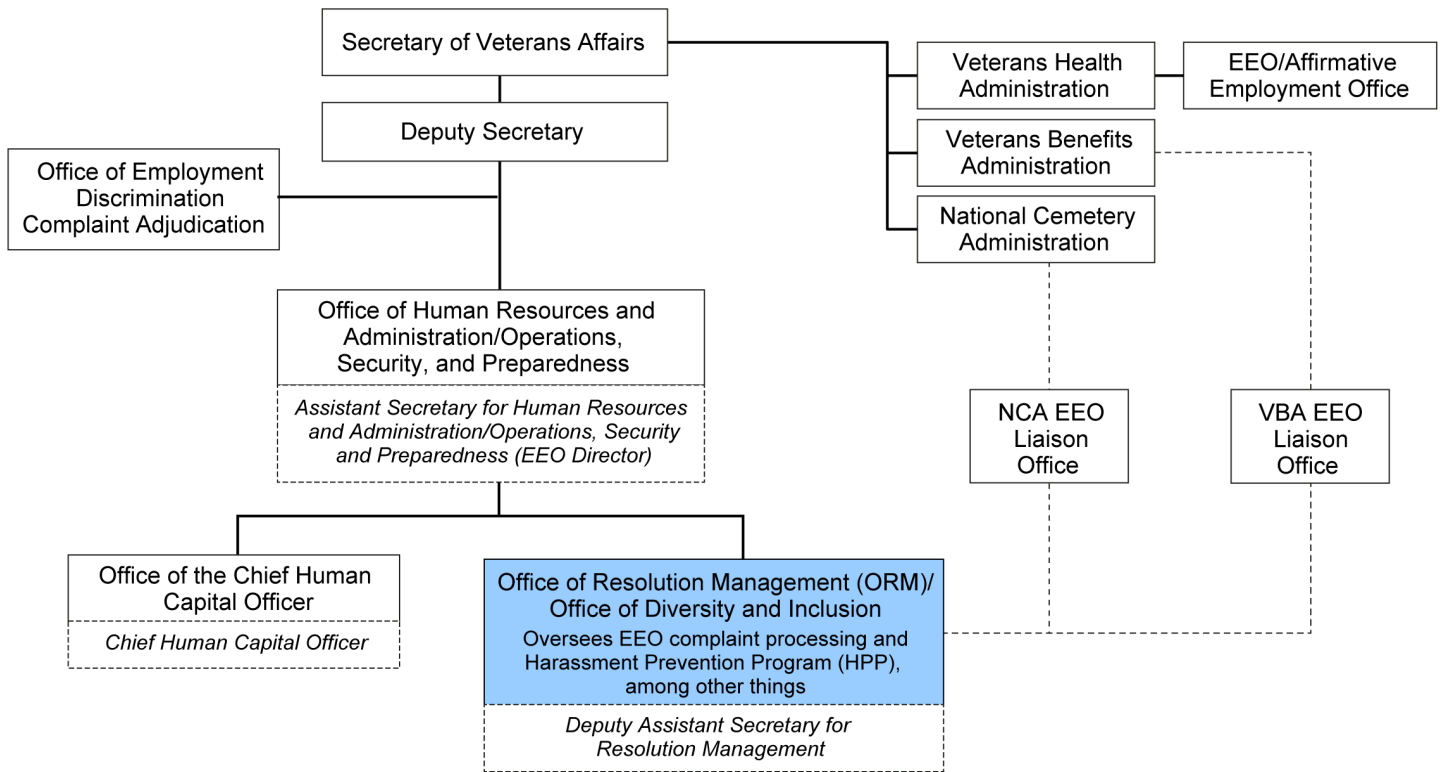
and Inclusion develops agency-wide EEO and diversity policies and provides training and communication on EEO and diversity topics, among other things. The Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness, who serves as VA's EEO Director, oversees ORM/Office of Diversity and Inclusion.²⁵

- The Office of Employment Discrimination Complaint Adjudication is an independent adjudicatory authority responsible for issuing final agency decisions and orders on the substantive merits of employment discrimination complaints by VA employees or applicants.²⁶ VA's Deputy Secretary oversees the Office of Employment Discrimination Complaint Adjudication. (See fig. 1.)

²⁵EEOC 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.

²⁶The Office of Employment Discrimination Complaint Adjudication was established by section 102 of the Veterans' Benefits Act of 1997. Pub. L. No. 105-114, § 102, 111 Stat. 2277, 2280 (codified at 38 U.S.C. § 319).

Figure 1: VA Organizational Chart for Equal Employment Opportunity (EEO) Functions



Source: GAO analysis of Department of Veterans Affairs (VA) information. | GAO-20-387

Note: This figure shows key VA offices and components discussed in our report. It does not show all offices and components that could be involved in the EEO process at VA.

In addition to those central VA offices, VA’s three administrations also have EEO offices.

- Veterans Health Administration (VHA) handles EEO functions in its Equal Employment Opportunity/Affirmative Employment Office. This office issues guidance on reporting allegations of harassment and assists VHA management in maintaining a workplace free of discrimination.
- Veterans Benefits Administration’s (VBA) EEO functions are carried out by the VBA EEO Liaison Office at ORM.

-
- National Cemetery Administration's (NCA) EEO functions related to complaints are handled by the NCA EEO Liaison Office, also at ORM.²⁷

VA's Methods to Address Sexual Harassment

VA has three primary methods to address sexual harassment complaints:

1. Management addresses the issue directly.
2. The Harassment Prevention Program (HPP) works with management to ensure the issue is addressed.
3. The equal employment opportunity (EEO) process addresses the issue.

VA employees can use one or all of these methods, including using all three concurrently.²⁸

Management Process

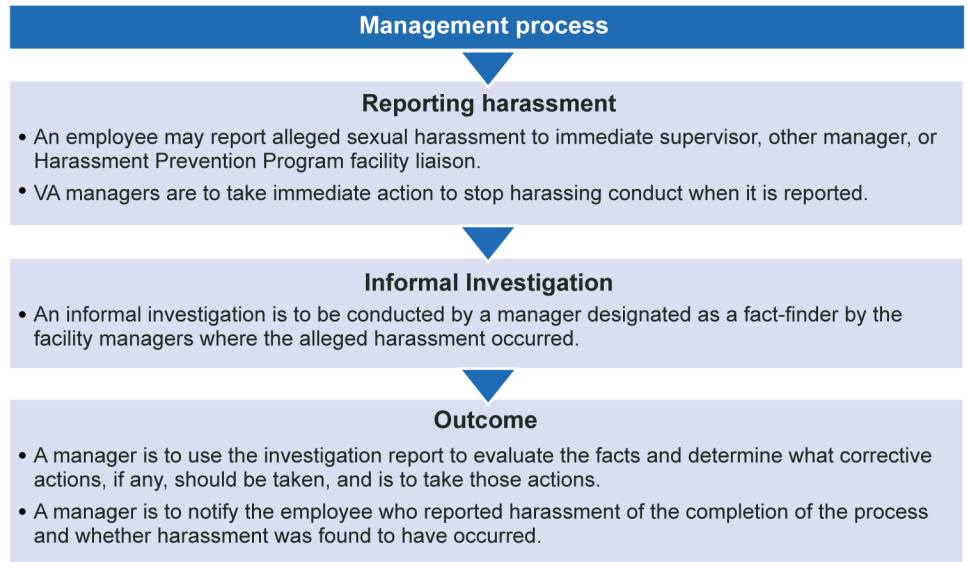
Employees can report sexual harassment directly to their supervisor or manager, or managers may observe the behavior themselves.²⁹ VA's sexual harassment policy requires managers who observe or are notified of sexual harassment allegations to take immediate and effective action to stop the harassment and ensure that it does not reoccur. In this report, we refer to this as the management process. According to VA's sexual harassment policy, managers are responsible for conducting informal investigations into all allegations of sexual harassment and for taking corrective actions such as training or disciplinary measures, as warranted. However, the management process is not designed to determine whether unlawful discrimination occurred. (See fig. 2.)

²⁷NCA's Diversity and Inclusion Office handles NCA's EEO functions other than those related to complaints, such as evaluating policies related to workforce diversity and workplace inclusion.

²⁸VA employees may report sexual harassment to multiple entities, such as a supervisor, other manager, EEO Program Manager (a staff member who is generally located on site at a facility), union official, Human Resources, HPP, and EEO. However, VA's methods for addressing such reports can be grouped into these three primary methods.

²⁹In this report, we use the terms supervisor and manager interchangeably.

Figure 2: Addressing Allegations of Sexual Harassment through the Management Process at VA



Source: GAO analysis of Department of Veterans Affairs (VA) information. | GAO-20-387

Harassment Prevention Program (HPP)

Employees may also report sexual harassment to an HPP facility liaison at their location or to VA’s HPP office, and HPP will inform the appropriate manager so that the manager can address the allegation through the management process described earlier in this report.³⁰ HPP was established in response to EEOC’s directive that agencies have a separate program in addition to the EEO process to address harassment complaints and stop harassing behaviors before they become discriminatory.³¹ HPP staff do not directly address or investigate sexual harassment allegations. Rather, according to VA’s sexual harassment policy, HPP staff are to monitor that managers have taken the proper steps to address harassment, such as:

³⁰In this report, we use the terms “facility” and “location” to refer to any VA field location or VA office, such as a VA medical center or VBA regional office. We refer to HPP’s Harassment Prevention Specialists as HPP staff, and to Harassment Prevention Coordinators—who are HPP’s local points of contact at VA facilities—as HPP facility liaisons.

³¹According to VA, the conduct covered by HPP is broader than the legal definition of unlawful harassment. It includes conduct that has not risen to the level of illegality, or conduct that is not based on a protected category.

-
- addressing inappropriate behavior before it becomes severe or pervasive;
 - conducting a prompt, thorough, and impartial inquiry/fact-finding (“informal investigation”) into allegations of harassing conduct; and,
 - taking immediate and appropriate corrective action when the agency determines that harassing conduct has occurred.

HPP, which has been operating since early 2016, intends for cases that it is involved in to be completed within 30 days, with the end goal of any harassing behavior stopping and not reoccurring. HPP is not designed to determine whether unlawful discrimination occurred.

Equal Employment Opportunity (EEO) Process

Employees may also choose to file a complaint through VA’s EEO process.³² The purpose of VA’s EEO program is to promptly, fairly, and impartially process and investigate allegations of discrimination based on a Title VII-protected class. Processing a complaint filed with the EEO program includes counseling by an EEO Counselor to attempt to resolve the issue, an investigation by the agency, and a final agency decision.³³ Complainants may also request a hearing before an EEOC administrative judge. Each stage of the EEO process is bounded by time frames, as specified in EEOC regulations.³⁴ For example, employees seeking to report allegations of discrimination (including sexual harassment) must contact an EEO Counselor within 45 calendar days of the incident. EEO program staff in ORM process the case. However, VA managers are still responsible under VA’s sexual harassment policy for taking steps to ensure the alleged behaviors have ceased and will not reoccur.

According to VA officials, when the management process and HPP fail to prevent harassment from becoming severe or pervasive enough as to be deemed unlawful, the EEO process seeks to bring “full relief” to a

³²In fiscal years 2014 through 2019, VA staff filed over 30,000 EEO cases, of which 915 included a claim of sexual harassment.

³³The EEO complaint process consists of two stages: informal (the “pre-complaint processing stage”) and formal. The goal of the informal stage is to resolve disputes through EEO counseling or alternative dispute resolution. If no resolution is reached during the informal stage, the complainant may decide to proceed to the formal stage by filing a formal complaint.

³⁴See generally 29 C.F.R. pt. 1614 and EEOC Management Directive 110.

prevailing complainant—placing them in the same position they would have been in had the discrimination not occurred.³⁵

VA Has Policies to Prevent and Address Sexual Harassment, but VA’s EEO Organizational Structures are Misaligned and Key Policies Are Not Formalized

VA’s EEO Organizational Structures Do Not Adhere to a Key EEOC Directive or VA’s Agency Policy

While VA has an overarching sexual harassment policy regarding preventing and addressing sexual harassment of employees, the agency’s EEO organizational structure does not adhere to EEOC’s Management Directive 110 or to ORM policy across VA administrations.

EEO Director

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.³⁶ However, VA’s EEO Director oversees both

³⁵Full relief may be provided through orders for the employer to provide remedies such as reinstatement, back pay, compensatory damages, and attorney fees to the complainant; and take corrective actions, such as requiring training and considering disciplinary actions for the offender and responsible management official. For purposes of this report, we refer to findings from the EEO process as “findings of discrimination.” By contrast, we refer to findings from the management/HPP process as “findings of harassment,” consistent with the HPP data.

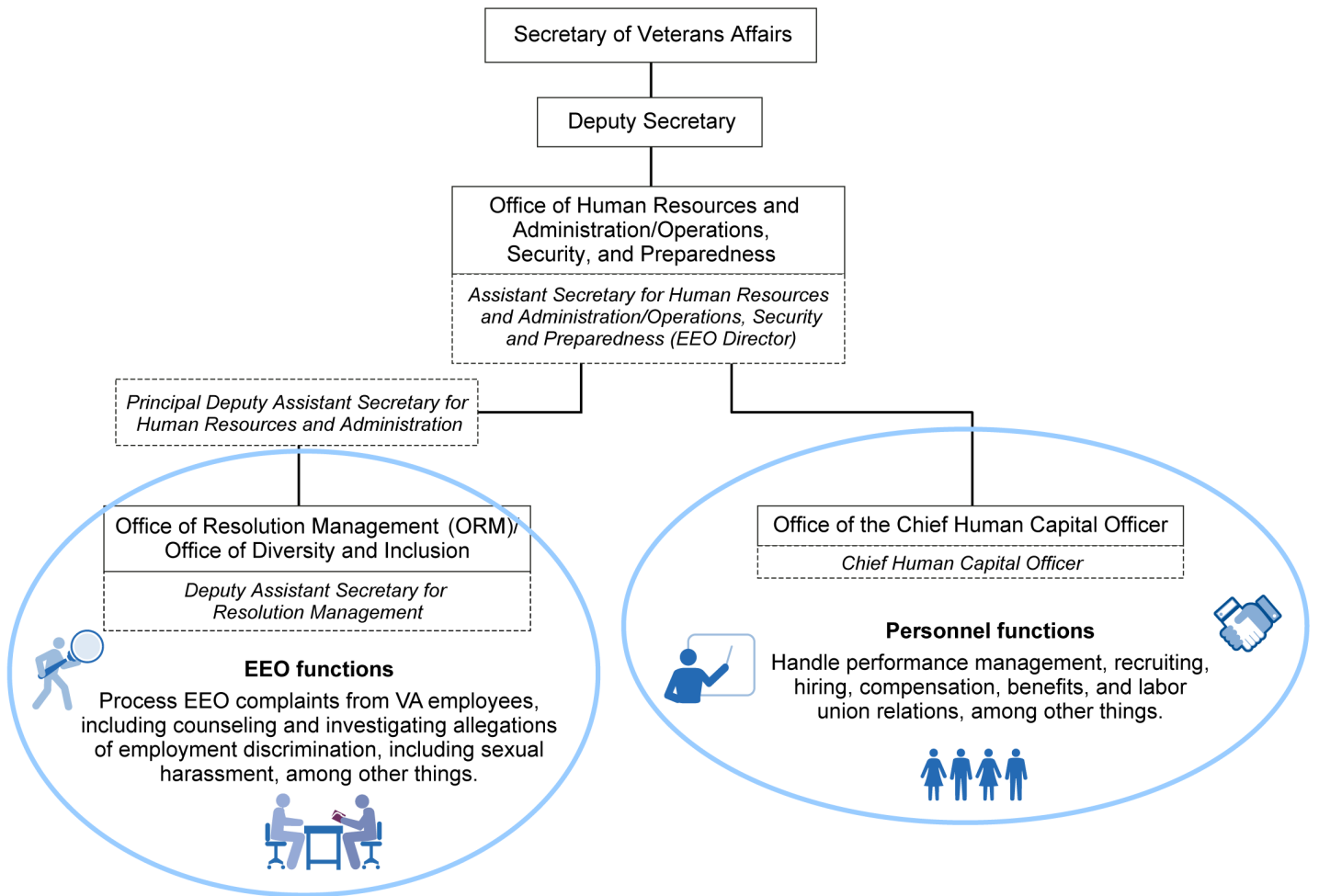
³⁶EEOC Management Directive 110 Chapter 1(IV)(A).

VA's personnel functions and its EEO functions (see fig. 3).³⁷ Separation of these functions is warranted, according to Management Directive 110, because 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 and avoid a conflict of interest or the appearance of one, the directive states that those EEO functions must be kept separate from the agency's personnel functions.³⁸

³⁷Specifically, 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. While ORM manages VA's EEO program and handles EEO cases, the other office deals with many different personnel functions, including performance management, recruiting and staffing, compensation, benefits, and labor union relations and negotiations.

³⁸See also Management Directive 715, section II(E), which provides that agencies must ensure that the investigation and adjudication function of the agency's complaint resolution process are kept separate from other agency offices with conflicting or competing interests. For purposes of this report, Management Directive 715 refers to EEOC, *EEO Management Directive 715 (EEO-MD-715)* (Washington, D.C.: Oct. 1, 2003).

Figure 3: VA's Equal Employment Opportunity (EEO) Organizational Structure



Source: GAO analysis of Department of Veterans Affairs (VA) information. | GAO-20-387

In November 2017, EEOC informed VA of this program deficiency in writing and noted that the agency was expected to provide a plan to correct the issue in the agency's Management Directive 715 report.³⁹ While VA acknowledged the issue in its fiscal years 2016 and 2017

³⁹Under Management Directive 715, federal agencies are required to annually submit a report on the status of activities undertaken pursuant to their EEO programs under Title VII, including a plan that sets forth the steps they will take in the future to correct deficiencies or further improve their EEO programs.

Management Directive 715 reports and noted it would explore options to correct it, the agency did not provide any specific plans to do so; nor did it acknowledge the issue in its fiscal year 2018 report.

Further, in January 2020, the Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness (Assistant Secretary), who serves as VA's EEO Director, told us that the EEO Director position is not misaligned or out of compliance because he is not involved in daily management or oversight of the EEO program. The Assistant Secretary said he has general oversight of the EEO program and does not have direct oversight of personnel functions, which are overseen by VA's Chief Human Capital Officer. Nonetheless, in April 2020, EEOC officials told us that VA's EEO Director position remains out of compliance, and that on February 7, 2020, EEOC issued a notice letter to VA identifying the conflict of interest issue as an outstanding program deficiency. Until VA's EEO Director position is realigned, VA's EEO organizational structure does not adhere to a key EEOC directive, and risks compromising the integrity of its EEO program's investigative and decision-making processes.

EEO Program Managers

To further avoid real or perceived conflicts of interest, VA officials said full-time EEO Program Managers should report to ORM instead of the director of their local facility. However, two of VA's three administrations are not structured this way.⁴⁰ 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. Most EEO Program Managers also serve as their facility's HPP facility liaison. These EEO Program Managers provide VA employees with training and information on the EEO program and Harassment Prevention Program (HPP); employees can report harassment to them and get assistance with initiating an EEO or HPP complaint.

⁴⁰EEO Program Managers, generally, are physically located at VA facilities, even if they report to ORM. Neither full-time nor part-time EEO Program Managers 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. 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 report, we refer to them as EEO Program Managers.

Prior to fiscal year 2017, EEO Program Managers reported to their facility's management, typically the on-site facility director. However, VA officials we interviewed said they decided to realign these positions 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 this realignment will help ensure that the agency complies with a statutory requirement that such employees not report to the facility director.⁴¹ VBA and NCA officials we interviewed said that separating the complaint process from administration management was important to instill trust in employees that their complaints will be treated fairly. In addition, two union officials we interviewed expressed a lack of trust that complaints brought to EEO Program Managers would be handled appropriately, because the EEO Program Manager's goal is to minimize the number of EEO cases filed against their facility.

According to VA's fiscal year 2017 Management Directive 715 report, VA began that year to realign these EEO Program Managers, moving them from reporting to facility directors to reporting to ORM. NCA realignment was completed in fiscal year 2017.⁴² VBA completed its initial realignment of six full-time EEO Program Managers from reporting to VBA headquarters to reporting to ORM in October 2017.⁴³ Another 15 were

⁴¹See 38 U.S.C. § 516(a)(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."

⁴²The Office of Information and Technology also realigned its EEO Program Manager position in fiscal year 2017.

⁴³According to VA officials, VBA conducted this realignment to comply with EEOC's January 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.

also identified for realignment, and efforts to do so were ongoing as of April 2020.⁴⁴

While VA stated that it was realigning its EEO Program Managers in its fiscal year 2016 and 2017 Management Directive 715 reports, and has in fact undertaken realignment in NCA and started it in VBA, it has not started such realignment in VHA. ORM officials said in February 2020 that they anticipated realignment for VHA's 133 full-time EEO Program Managers would start after fiscal year 2021—6 years after VA initially stated it was realigning these positions. Officials cited the lengthy federal budget process as the reason for this time frame.⁴⁵ However, VHA officials said that they did not have any plans for realignment and did not think it was needed. The Deputy Assistant Secretary for Resolution Management is aware of VHA's position on realignment and noted that ORM would work with VHA when the time comes to ensure realignment occurs.

Until realignments are completed for VBA and VHA EEO Program Managers, VA's EEO Program Manager structure remains misaligned with VA policy and inconsistent across VA administrations. Further, the different organizational structure among administrations increases VA's risk of inconsistent responses to sexual harassment complaints throughout the agency.

Outdated and Inconsistent Policies and Information May Create Confusion

VA and its administrations maintain multiple policies for preventing and addressing sexual harassment of employees, but some policies and information documents are not consistent with VA's overarching sexual harassment policy and some have outdated or missing information. VA's overarching sexual harassment policy defines sexual harassment, lays out management's responsibility to address it, and describes VA's EEO

⁴⁴According to VBA data, as of June 2019 there were 54 VBA EEO Program Managers, including the six already realigned to ORM and the 15 identified for realignment, with the remaining performing EEO Program Manager duties part-time and therefore reporting to their local facility directors. According to VA officials, the 15 EEO Program Managers identified for realignment are positions at 15 VBA regional offices that were identified as having more than 600 employees per office. Their roles are to change from providing EEO services and performing collateral duties to being full-time EEO Program Managers. In the realignment, they are to remain physically located at their regional offices but report to ORM. VA officials told us that they detailed three VBA EEO Program Managers to ORM in March 2020, and requested approval for realigning all 15 in the fiscal years 2021 and 2022 budget requests.

⁴⁵According to VA officials, any changes to the realignment of EEO Program Managers will be dependent on receiving budgetary approval. As such, they said that any changes to the EEO Program Manager positions will have to be part of the legislative budget process.

and HPP programs, among other things. While all VA administrations are expected to abide by VA's sexual harassment policy, they may also implement their own policies and procedures to support it. Officials from VA's administrations said any additional policies align with VA's sexual harassment policy.

However, we found outdated and missing information in various VA and administration policy and information documents we reviewed. Some policies and information documents are outdated and contain obsolete information. For example, as of October 2019, two obsolete VA policies related to harassment were included on VA's public website. Also, a link on VA's public website titled "What to do when you are not sure what to do" on a web page with resources related to EEO complaints and harassment took users to the web page for the now defunct VA Resolution Support Center.⁴⁶ Some policies and information documents are also missing important information, particularly on sexual harassment reporting procedures for employees and managers. For example, VBA's January 2019 "Prevention and Elimination of Sexual and Non-Sexual Harassment in the Workplace Policy Statement" does not mention the HPP facility liaison as a reporting option for employees and provides an inaccurate phone extension for HPP. As another example, a VHA document with information for managers on reporting allegations of sexual harassment does not include instructions for who supervisors or managers who have witnessed or have been notified of harassing conduct should report the conduct to—other than through their chain of command—such as to HPP or the HPP facility liaison.

We also found a lack of understanding among some VA staff about which policies are the official, current policies on sexual harassment. Throughout the course of our review, we requested from VA and its administrations all current policies related to sexual harassment. On several occasions, officials provided us what they said was complete and

⁴⁶After we asked VA officials about these policies, they explained that the website had not been updated and the outdated policies were subsequently removed. After we asked VA about the link to the defunct office, the web page for the defunct office was removed, and as of April 2020, the link directed users to an inoperable VA web page instead. Several other links on VA's public website that provide information related to reporting sexual harassment provided outdated information as well, such as an incorrect reporting procedure for sexual harassment, a non-working ORM phone number for employees wishing to file an EEO complaint, a brochure for a defunct office, and an outdated list of HPP facility liaisons. When we asked VA officials about these, they updated most of the related documents and website links.

current information that upon our review was determined to no longer be in use or was incomplete. For example, regarding policies or information documents no longer in use, VA initially provided us with an NCA policy and a VHA information document related to sexual harassment, both of which VA officials subsequently said were not in use because they had either never been distributed or were outdated.⁴⁷ This raises questions about whether VA officials responsible for implementing VA's sexual harassment policies have the correct information.

According to VA officials, ORM/Office of Diversity and Inclusion develops and distributes VA's sexual harassment policy and works with VA's Office of General Counsel to ensure compliance with it. ORM/Office of Diversity and Inclusion and Office of General Counsel officials do not, however, systematically review administrations' policies to ensure they are aligned with VA's sexual harassment policy. Instead, officials said ORM officials conduct spot checks on policies that are physically posted in VA facilities during their site visits. However, policies and information documents may not all be posted, so spot checks may not be sufficient to ensure that all administration policies and information documents align with VA's sexual harassment policy. VA and VA administration officials gave various explanations for why they initially provided outdated policy or information documents or failed to provide others, but these explanations did not sufficiently explain the lack of certainty about the agency's official, current policies on sexual harassment.

Federal internal control standards state that management should communicate quality information throughout the organization to achieve its objectives.⁴⁸ Outdated and incomplete information about sexual harassment policies could result in employees and managers being confused about policies and procedures, resulting in underreporting of sexual harassment, mistrust of the process, and inconsistent responses to sexual harassment complaints.

⁴⁷In addition, regarding the incomplete set of policy documents, as an example, VA did not initially provide VBA's Equal Employment Opportunity Policy Statement and did not provide it when we subsequently attempted to confirm that we had received all relevant policies, though the policy had been approved, and was thus available, before VBA responded to our requests. We received this policy after we specifically requested it from VA because we learned about it in EEOC's January 2018 assessment of VBA's EEO program.

⁴⁸[GAO-14-704G](#), principle 14.

Harassment Prevention Program's Lack of Formal Policy Could Hinder its Effectiveness

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 on implementation have been formally approved by VA leadership and distributed to employees, resulting in inconsistent implementation. VA's draft Directive 5979 establishes its harassment prevention policy and outlines VA's roles and responsibilities for maintaining a workplace free from harassment. The draft Harassment Prevention Handbook provides agency-wide guidance for administering HPP, including procedures for reporting allegations of harassment and monitoring how the management process addresses them.

Throughout the course of our review, VA officials provided different target completion dates for finalizing the HPP directive and handbook, most recently stating they anticipate formal approval and distribution to staff by June 2020. VA officials said that the delay in finalizing the HPP directive and handbook is due to numerous revisions to ensure that the documents are clear and comprehensive. Federal internal control standards state that management should provide policies that detail objectives, risks, and implementation of activities, among other things.⁴⁹ This would include providing a management-approved policy and implementing guidance for HPP, and interim guidance until the draft policy and guidance are finalized.

ORM officials said that even without a formalized directive and handbook, VA employees are aware of HPP through VA's sexual harassment policy and the HPP website. However, our review found that VA's failure to formally approve and distribute HPP policy and guidance has contributed to inconsistent implementation and a lack of awareness about HPP. According to ORM officials, because HPP is a centralized process overseen by ORM, all administrations should have the same processes for handling sexual harassment complaints via HPP. Three of seven HPP facility liaisons we interviewed said, however, that the absence of centralized, management-approved guidance made administering the program more difficult and could result in inconsistent implementation. Examples of areas where administrations and HPP staff were implementing the program differently include:

- who is responsible for entering information into the HPP case-tracking system and whether this staff member has direct contact with the complainant;

⁴⁹[GAO-14-704G](#), principle 12.

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- guidance provided to managers who conduct informal investigations of sexual harassment complaints, including what information an informal investigation report should contain and what format it should take;
 - how data and case information are collected and maintained, including what documents should be uploaded to the case-tracking system; and,⁵⁰
 - the frequency with which HPP staff should conduct data quality checks and what they should be assessing.

Examples of a lack of awareness of HPP include:

- EEO staff having inaccurate understandings of HPP; and,
- two union officials we spoke with not being familiar with HPP.

VA officials stated that recent updates to the draft handbook, and new data entry requirements and an updated case-tracking system user guide, would address some of these issues and lead to more consistency.⁵¹ Nonetheless, until VA has comprehensive policy and guidance that has been formally approved at the department level, HPP may continue to be implemented inconsistently throughout VA. Furthermore, the integrity and usefulness of its complaint data and case information—which VA uses to select locations for targeted site visits, deploy resources, and monitor timeliness of program steps—may be compromised. These limitations may reduce the effectiveness of HPP in preventing and addressing sexual harassment, and HPP data may not be useful as a tool for prevention or monitoring efforts.

⁵⁰During our review of all 94 HPP records from early 2016 through the end of fiscal year 2019, we found multiple instances of data entry errors. For example, we found records in which the date the case was closed preceded the date the informal investigation began or ended.

⁵¹Since VA recently implemented the data entry requirements and updated case-tracking system user guide, it is too early to tell whether they will address the data issues.

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

VA's Use of Sexual Harassment Data Has Key Limitations

ORM relies on reported allegations of sexual harassment to understand the extent to which it occurs at VA, but does not know the full extent of such reports across the agency. 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.⁵²

VA's administrations have different policies for reporting and tracking sexual harassment complaints addressed through the management process, but none of the administrations report all such sexual harassment allegations to ORM. For example:

- VHA maintains a spreadsheet of non-HPP and non-EEO sexual harassment claims (i.e., claims resolved through the management process at VHA), according to VHA officials, but the spreadsheet is not provided to ORM, and its completeness relies on VHA managers notifying the official who maintains it when allegations are received.
- VBA made an administration-wide procedural change during a training webinar in September 2019 to report all allegations of sexual harassment to HPP, including those addressed through the management process, according to VBA officials. VA officials said that in April 2020 they submitted the change for endorsement by the Under Secretary of Benefits, who heads VBA.

⁵²VA has data on EEO and HPP complaints, as well as management process complaints that are made known to HPP. In addition to EEO, HPP, and the management process, there are other avenues for VA employees to report sexual harassment, such as to a union representative, which VA also does not capture comprehensively. More information about VA's data on EEO and HPP complaints is provided in appendix III.

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- NCA's one EEO Program Manager, who also serves as the HPP facility liaison, maintains a tracking sheet for sexual harassment reports, and told us that it includes those complaints addressed through the management process, but is not shared with ORM.

These differences across administrations are not surprising because VA does not have a requirement for managers to report all sexual harassment allegations they receive to ORM. In June 2019, ORM officials said they would like managers to report all allegations of sexual harassment to HPP, but there is currently no requirement to do so. Three of 12 EEO staff we interviewed said that managers are not required to report sexual harassment allegations to ORM, and six were not sure whether there was such a requirement, indicating confusion about what managers are expected to do.⁵³ In contrast, VA's overarching sexual harassment policy states that managers who observe or are notified of harassing conduct are required to consult with HPP or an HPP facility liaison, and in February 2020, ORM officials told us that the agency is currently considering whether to include such a requirement in the HPP handbook. In addition, HPP is to provide centralized tracking, monitoring, and reporting to proactively respond to all allegations of harassment. However, until VA has more comprehensive information on all reported allegations of sexual harassment, HPP is not able to fulfill its objective to ensure that managers take the proper steps to address all harassment. Further, ORM may not be able to effectively target resources, such as training or other interventions, to mitigate risk at VA offices.

In addition to not having complete information on reported allegations of sexual harassment, VA does not use additional available information that could inform its efforts to address sexual harassment. For example, VA has not used data from the Merit Systems Protection Board (MSPB) survey, which show that a substantial percentage of VA employees

⁵³For more information on these semi-structured interviews, see appendix I.

experience sexual harassment.⁵⁴ For instance, according to our analysis of MSPB's 2016 survey data, an estimated 22 percent⁵⁵ of VA employees experienced sexual harassment at some point from mid-2014 through mid-2016, and about one-third⁵⁶ of VA employees observed such behaviors.

According to VA data, 158 sexual harassment cases were filed through VA's EEO process and HPP in fiscal year 2016, 168 in fiscal year 2017, 225 in fiscal year 2018, and 180 in fiscal year 2019 (see fig. 4).⁵⁷

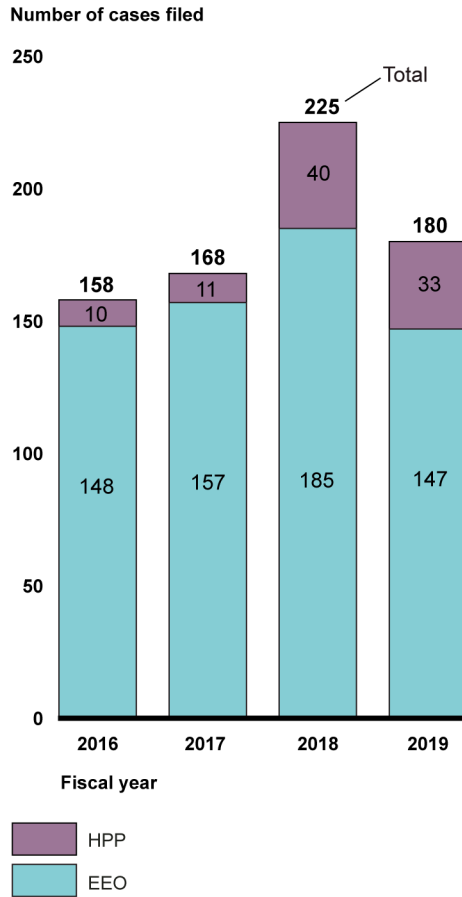
⁵⁴MSPB administers a periodic Merit Principles Survey of federal employees that covers a variety of workforce issues, prohibited personnel practices, and selected aspects of employee work experiences and work environments. This survey includes several questions on the incidence of sexual harassment in the workplace, actions taken by federal employees to address sexual harassment, and employee perceptions of federal agency policies and practices related to sexual harassment. The survey was most recently administered in 2016 and asked whether respondents experienced or observed various sexual harassment behaviors in the preceding 2 years. In this report, we characterize employees as having experienced sexual harassment if they responded in the MSPB survey that they experienced any of the sexual harassment behaviors included in the survey. Such behaviors may or may not be unlawful, depending on the circumstances. VA's sexual harassment policy prohibits the same behaviors that are included in the MSPB survey. Because MSPB followed a probability procedure based on random selections, its sample is only one of a large number of samples that might have been drawn using the same sampling procedure. Since each sample could have provided different estimates, we express our confidence in the precision of this particular sample's results as a 95 percent confidence interval (e.g., from "X" to "Y" percent). This is the interval that would contain the actual population value for 95 percent of the samples that could have been drawn.

⁵⁵The 95 percent confidence interval for this estimate is 18 to 27 percent.

⁵⁶The 95 percent confidence interval for this estimate is 28 to 37 percent.

⁵⁷As of December 2019, VA employed over 390,000 individuals. Increases and decreases in filed cases do not necessarily indicate that incidents of sexual harassment increased or decreased in a given year. It could be that employees are more or less comfortable filing cases that otherwise would have gone unreported, among other things.

Figure 4: Number of Equal Employment Opportunity (EEO) and Harassment Prevention Program (HPP) Sexual Harassment Cases Filed at VA, Fiscal Years 2016 through 2019



Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: Employees may file sexual harassment complaints through VA's HPP process (intended to prevent harassment and address it before it becomes unlawful) and VA's EEO process (intended to address complaints of unlawful employment discrimination). EEO and HPP complaints may be filed concurrently. This figure shows the number of EEO and HPP cases that were filed in the indicated fiscal years; these totals include cases that have not yet been resolved or closed. This figure does not show whether the EEO process resulted in a finding of discrimination, or whether the HPP process resulted in a finding of harassment.

VA officials told us that they use EEO data to create their annual No FEAR Act and EEOC Form 462 reports and to monitor EEO investigation

time frames.⁵⁸ They also said they use HPP data to select locations for on-site trainings, as well as to deploy budgetary resources and ensure timeliness of case processing. However, additional data from internal or external sources could be helpful to VA in better understanding sexual harassment at the agency, including within administrations and at facilities.

Although the difference in formal reporting numbers and numbers responding through an anonymous survey is not surprising, it is informative. A recent 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.⁵⁹ When we asked VA staff why they thought there might be differences in the numbers, 23 of 29 of the EEO staff, HPP staff, and HPP facility liaisons we interviewed said that VA employees may not report sexual harassment through VA's available reporting processes because of fear of retaliation or reprisal. VA officials acknowledged that they do not use third party survey information, such as that from MSPB, to inform the agency's efforts. Officials said they would be willing to do so in the future, if warranted.

Data from the MSPB survey also provide insight into the actions VA employees said they took when they believed they were sexually harassed in addition to or instead of reporting the harassment, as well as many other informative details about employees' experiences with sexual harassment at VA. For example, the survey results suggest that most

⁵⁸The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires federal agencies to report annually to Congress, EEOC, the Department of Justice, and the Office of Personnel Management on certain topics related to federal antidiscrimination and whistleblower protection laws, and to post quarterly on their public websites summary data pertaining to EEO complaints filed with the agency. Pub. L. No. 107-174, 116 Stat. 566, codified as amended at 5 U.S.C. § 2301 note. For example, VA posts on its public website the number of formal EEO complaints filed, the number of persons filing those complaints, the bases and issues alleged in the complaints, and the number of final agency actions in which discrimination is found, among other things. In addition to the No FEAR Act reporting and posting requirements, EEOC regulations require agencies to report to EEOC information about the status, processing and disposition of EEO complaints—both informal and formal—on an annual basis, known as the EEOC Form 462 Report. 29 C.F.R. § 1614.602(a). VA officials said that to monitor EEO investigation time frames, ORM produces weekly reports on EEO time frame data to discuss with investigator team leads and other relevant staff.

⁵⁹U.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.

employees do not file formal complaints and many try to deal with the situation by telling the harasser to stop and/or avoiding the harasser. See appendix II for additional analysis of MSPB survey data.

Federal internal control standards state that management should use quality information to achieve objectives and obtain relevant data from reliable internal and external sources.⁶⁰ Quality information is an important component to ensuring that VA meets the goals of its sexual harassment prevention efforts. While underreporting of sexual harassment may always occur, VA is missing opportunities to use available information to assess and target its efforts. Overall, more comprehensive data on sexual harassment—through internal data collection or external information—could be used to help HPP fulfill its objective to monitor how managers address sexual harassment. Such data would also help ORM better understand the types of sexual harassment that are occurring, and characteristics of those experiencing harassment and those alleged to be committing it, which would help ORM enhance its sexual harassment prevention efforts.

VA Does Not Fully Track Corrective Actions in Response to Sexual Harassment Findings

VA has policies and procedures to ensure that appropriate corrective actions occur for some sexual harassment cases, but not all. VA's sexual harassment policy states that supervisors should take responsible steps to promptly prevent and stop harassment, including conducting an effective inquiry into reported allegations and initiating appropriate corrective actions, as warranted. In cases where the 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.

For VA's EEO cases, there are processes for tracking and ensuring that any orders for remedies or corrective actions from the Office of Employment Discrimination Complaint Adjudication or EEOC are carried out.⁶¹ According to VA guidance, ORM's Office of Policy and Compliance

⁶⁰GAO-14-704G, principle 13.

⁶¹We reviewed case files for the 19 EEO cases that included sexual harassment allegations and were closed with a finding of discrimination (i.e., after an investigation, EEOC or VA's Office of Employment Discrimination Complaint Adjudication determined that unlawful discrimination did occur) in fiscal years 2014 through 2018. Of these, we identified three files where VA is currently conducting follow-up with the facilities to obtain proper documentation that the corrective actions ordered by the Office of Employment Discrimination Complaint Adjudication or EEOC were carried out.

monitors agency compliance with Office of Employment Discrimination Complaint Adjudication and EEOC decisions by obtaining documentation of subsequent actions taken and compiling a compliance report. Additionally, for cases decided by an EEOC administrative judge, VA submits the compliance report to EEOC and an EEOC compliance officer is assigned to work with VA to ensure that case documentation complies with EEOC requirements, according to EEOC officials.⁶²

For cases that are resolved outside of the EEO process, 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 can follow up with the facility to obtain documentation, if needed. However, according to VA's sexual harassment policy, the objective of HPP is to ensure that management takes immediate and appropriate corrective action when the agency determines that harassing conduct has occurred. Without access to documentation of corrective actions, there is no consistent way for ORM to do this. For example, of the 40 HPP sexual harassment cases filed in fiscal year 2018, 10 did not have a case file, including four that indicated that corrective action was taken. An additional 13 HPP cases that indicated that corrective action was taken did not include evidence in the case files that such actions occurred. When we asked why some files were missing such information, one HPP staff member noted that HPP has no authority to compel managers to provide such documentation.

While officials from each administration told us they have a process to ensure appropriate corrective actions occur for cases resolved through the management process, these processes varied across administrations and no administration reported to ORM on actions taken. For example, VHA officials told us that individual VHA facilities or VHA's Human Resources department have discretion to track this information, but VHA

⁶²Appendix Q of EEOC's Management Directive 110 lists documentation required to demonstrate compliance with EEOC orders. VA's EEO procedures also require documentation listed in Appendix Q of this EEOC directive to demonstrate compliance with Office of Employment Discrimination Complaint Adjudication orders. In addition, VA conducts an annual analysis of its EEO cases that result in a finding of discrimination, which tracks disciplinary actions in these cases, among other things. The report includes a summary of the number of responsible management officials that VA was ordered to consider taking disciplinary action against and the number of responsible management officials that actually received disciplinary action. However, this summary does not identify sexual harassment cases specifically; rather, it summarizes cases for all types of EEO claims. Thus, it cannot be used as a tool for evaluating trends regarding disciplinary actions taken against responsible management officials in EEO sexual harassment cases. This report also does not include information about HPP or management process cases.

does not do so centrally. VBA officials told us they ensure that appropriate corrective actions occur by following up with facility-level staff. NCA officials told us their Employment/Labor Relations office maintains a spreadsheet that tracks corrective actions that managers decide to take. In October 2019, ORM officials said there was ongoing discussion on whether to require managers to report to ORM that corrective actions that managers decided to take occurred, but they did not provide any details or time frames regarding a decision on such a requirement.

A lack of documentation of corrective actions taken does not mean that such 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. As evidenced by our interviews and MSPB data, there are concerns within VA that those who commit harassment are not held accountable. Eight of 29 of the EEO staff, HPP staff, and HPP facility liaisons, and the two union officials we interviewed, said that increasing accountability could improve VA's sexual harassment complaint processes. MSPB's survey also indicates that VA employees had concerns about the resolution of sexual harassment complaints. An estimated 21 percent of VA employees were not confident that sexual harassment allegations would be resolved in a fair and just manner, and an estimated 18 percent did not think VA would take appropriate action against a supervisor or manager who was found to have committed sexual harassment.⁶³ Without policies and procedures requiring that corrective actions decided upon as a result of the management process (including supporting evidence) be reported to ORM and tracked, VA is limited in its ability to ensure that those who commit harassing behavior are held accountable. Further, VA may be limited in its ability to ensure that managers and others who implement VA's programs to address sexual harassment are fulfilling their responsibilities.

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

⁶³The 95 percent confidence interval for these estimates is 17 to 25 percent and 14 to 22 percent, respectively.

policy statements, posters, and brochures in VA facilities.⁶⁴ However, these trainings do not provide in-depth information on identifying and addressing sexual harassment. The VA-wide mandatory harassment training covers anti-discrimination laws, workplace harassment issues, whistleblower policies, and employee protections against retaliation, among other things. The training provides the definition of sexual harassment, examples of behaviors that may constitute sexual harassment, a scenario that would constitute sexual harassment, and information on how employees should respond to and report incidents of sexual harassment.⁶⁵ The mandatory training for managers includes a brief definition of unlawful sexual harassment, but does not include any scenarios or specifics on how to respond to reports of sexual harassment.

Seventeen of 29 of the EEO staff, HPP staff, and HPP facility liaisons we interviewed said VA's sexual harassment training could be improved with relevant scenarios to help employees understand prohibited behaviors, or opportunities for employees to ask questions. They said, for example, that employees need opportunities to discuss real-life, modern examples of sexual harassment, such as those involving texting. In addition, an EEOC report highlighted other important areas of training, such as bystander intervention to teach employees how to recognize potentially problematic behaviors and empower them to take action.⁶⁶

VA administrations and facilities may supplement the VA-wide mandatory harassment training with additional training for employees (including managers and supervisors) that is specifically focused on sexual harassment.⁶⁷ For example, VHA, VBA, and NCA provide an in-person class or live webinar called Prevention of Sexual Harassment Training.

⁶⁴The Secretary of VA is required to ensure that all employees of the department receive EEO education and training. See 38 U.S.C. § 516(c).

⁶⁵The training also describes when harassment (on any basis, not specifically sexual harassment) becomes unlawful.

⁶⁶U.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), pp. 57-60.

⁶⁷In addition, when the EEO process results in a finding of discrimination related to sexual harassment, one remedy that may be required is in-person and online sexual harassment training for the responsible management official(s) and other appropriate employees. In fiscal year 2018, VA officials said that all 43 management officials and 5 employees required to attend such training did so, in accordance with the final agency decisions for the related findings of discrimination.

This class provides more detailed information on how to report allegations of sexual harassment and how managers should address them. Attendees learn about the effects of sexual harassment, how bystanders should respond to observed sexual harassment, and actionable steps managers and supervisors should take to address sexual harassment, which are not provided in the VA-wide mandatory harassment training. In addition, this training provides more detailed information on the topics covered in the VA-wide mandatory harassment training, such as more examples of sexual harassment behaviors and scenarios.

Although VA officials said they think this additional, in-person or live webinar training focused on sexual harassment is effective in increasing awareness of sexual harassment policies, not all employees at VA have taken it.⁶⁸ Administrations and facility directors decide whether to provide such training and, if so, whether to make it mandatory for their employees. In October 2019, VA officials told us that VA's Chief Learning Officer plans to add a sexual harassment prevention module to existing trainings for (1) new employees, (2) new supervisors, and (3) senior leadership by the end of fiscal year 2020. VA officials said they did not know when such training would be mandatory for all employees since the agency would need to determine the best delivery method to reach all employees.

Further, trainings provided by VA and the administrations often include general information about the EEO process but little or no information about HPP. The mandatory online harassment trainings for employees and managers do not mention HPP or that HPP and the HPP facility

⁶⁸According to VHA officials, VHA started offering the in-person Prevention of Sexual Harassment training in 2018 and, according to VHA data, provided it to about 48 percent of VHA employees in 2018 and about 88 percent in 2019. According to the VBA EEO Liaison Office at ORM, in 2018 and 2019, VBA regional offices provided VHA's Prevention of Sexual Harassment training to VBA employees, but did not collect attendance data. The office estimated that about one-third of VBA regional offices made the training mandatory, with 95 to 100 percent of employees participating, and about two-thirds of VBA regional offices did not make the training mandatory, with about 70 percent of employees participating. According to NCA officials, during 2018, NCA provided this training to almost half its employees, and in the first half of 2019, NCA provided this training to almost one-third of its employees. NCA officials told us that they plan to offer the in-person sexual harassment training at all NCA facilities by the end of fiscal year 2020, however, attendance at the training will not be mandatory.

liaison are options for reporting allegations of sexual harassment.⁶⁹ In addition, of the eight additional trainings we reviewed, only one discussed HPP. This training is only provided to EEO Program Managers/HPP facility liaisons, facility directors, and managers at VBA, so most VA employees do not receive any training that includes information on HPP.

Moreover, although 10 of 29 of the EEO staff, HPP staff, and HPP facility liaisons we interviewed said that VA employees are generally unfamiliar with the specific components of filing an EEO complaint, 16 of 29 said that available training classes and information are sufficient to provide VA employees a general understanding of the EEO process.⁷⁰ However, 20 of 29 VA staff we interviewed said, based on their conversations with complainants and other employees, that generally, VA employees are unfamiliar with HPP or are not clear on the difference between the EEO process and HPP with respect to filing a sexual harassment complaint. As a result, employees may assume that the EEO process is the only avenue for reporting a complaint beyond their management.

According to VA's 2019 Functional Organization Manual, ORM is responsible for developing programs to improve the overall management of EEO complaint processing at VA, including training on harassment. Federal internal control standards state that management should internally communicate the necessary quality information to achieve objectives.⁷¹ This includes providing information through quality training on available avenues for reporting sexual harassment. With VA's Chief Learning Officer's support, mandatory training focused on sexual harassment that includes clear and consistent information on HPP could substantially improve employee knowledge of VA policies and procedures to prevent and address sexual harassment, and could help to prevent

⁶⁹The VA-wide mandatory harassment training was most recently updated in January 2019, according to ORM officials. The mandatory training for managers was most recently updated in March 2014, according to ORM officials.

⁷⁰In addition, according to our analysis of MSPB's 2016 survey data, an estimated 96 percent (from 94 to 98 percent) of VA employees said they knew that VA has a policy prohibiting sexual harassment, and an estimated 83 percent (from 79 to 87 percent) said they were familiar with VA's formal complaint channels for people who have experienced discrimination. The MSPB survey did not differentiate between knowledge of the EEO process and HPP, and the survey was administered during HPP's first year of operation, so it is unclear whether VA employees' familiarity with formal complaint channels included familiarity with HPP.

⁷¹[GAO-14-704G](#), principle 14.

sexual harassment or ensure that it is properly handled when it does occur.

Conclusions

An agency's ability to prevent and address sexual harassment is important to ensuring that employees are healthy and productive. A wide range of challenges hamper VA's ability to prevent and address sexual harassment. Absent additional action, some VA employees may continue to distrust VA's handling of sexual harassment allegations. 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.

While VA and its administrations have policies and procedures to prevent and address sexual harassment, they are not always aligned with one another or EEOC requirements, and some lack key or accurate information. Without appropriate reporting structures for EEO staff and clear and formal policies and procedures for reporting and responding to sexual harassment that are distributed to and understood by all employees, VA's sexual harassment programs may not function as intended. In particular, VA's continued delays in finalizing the directive and handbook for HPP has wide-ranging implications that may contribute to continued inconsistency of policies, procedures, and program operation; limited data for VA to better understand and address sexual harassment; and inconsistent information being provided to employees so they know what to do when sexual harassment occurs. As a result, VA's efforts to successfully prevent and address sexual harassment is limited.

VA's efforts may be further hindered because the agency does not compile information on all sexual harassment complaints, such as those made directly to a manager and not through the EEO process or HPP. Without this information, VA misses an opportunity to better understand the extent and types of sexual harassment behaviors occurring in the agency and to develop targeted strategies for addressing them. Further, while VA has processes for addressing sexual harassment when it is found, the agency does not comprehensively collect information to ensure that corrective actions have been taken, when appropriate. Such information is important to ensure that managers take appropriate actions to stop the harassment and prevent its recurrence, and to instill trust in the process in employees.

Finally, VA offers some training on sexual harassment and said it is exploring mandatory, sexual harassment-focused training for all employees. However, VA did not provide additional information on

implementation time frames and what the training would entail. Specific, targeted training on sexual harassment is critical to ensuring that all employees know what sexual harassment is, the processes for reporting it, and their EEO rights. Without such training, employees may be unaware of VA's sexual harassment policies and confused about available methods for addressing sexual harassment. This limits VA's ability to stop harassing behavior when it occurs and risks fostering an environment where employees feel unsafe.

Recommendations for Executive Action

We are making the following seven recommendations to VA:

- VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness should realign VA's EEO Director position to adhere to the applicable EEOC directive by ensuring the position is not responsible for personnel functions. (Recommendation 1)
- VA's Deputy Assistant Secretary for Resolution Management should complete VA's EEO Program Manager realignment initiative at VBA and VHA in accordance with VA policy. (Recommendation 2)
- 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)
- VA's Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness, in consultation with ORM, should finalize the HPP directive and handbook to formalize HPP. (Recommendation 4)
- 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)
- 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)

-
- 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)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Veterans Affairs for review and comment. VA provided written comments, which are reproduced in appendix IV. In those comments, VA concurred with recommendations 2 through 7 and did not concur with recommendation 1. Regarding recommendation 1, VA stated that its EEO Director position is properly aligned and that VA is following EEOC regulations. VA further stated that its EEO Director is not involved in the daily management, advising, or oversight of the EEO complaint process referenced in EEOC's Management Directive 110, nor is the EEO Director the agency official responsible for executing and advising on personnel actions.

We noted in our report that VA considers its current structure in compliance for these reasons. Nevertheless, in April 2020, EEOC officials told us that VA's EEO Director position remains out of compliance with EEOC's Management Directive 110. According to the directive, the EEO program's processes often scrutinize and challenge the motivations and impacts of personnel decisions, and separation of these functions is warranted in order to maintain the integrity of the EEO investigative and decision-making processes. 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 further erode employees' trust that sexual harassment complaints will be handled appropriately. In light of EEOC's view that VA is out of compliance with Management Directive 110, we continue to believe that VA should realign its EEO Director position to ensure that it adheres to the directive.

In its comments, VA also shared its plans for addressing recommendations 2 through 7. Regarding recommendation 2, VA stated it will complete VBA's EEO Program Manager realignment in fiscal year 2022, pending budget approval, and that after completing VBA's realignment, it will develop a realignment plan for VHA's EEO Program Managers, projected to start in fiscal year 2024. As noted in our report, VA has stated for several years its intent to realign all administrations' EEO Program Managers. We believe that VA can begin to make plans

now for VHA's realignment and such actions could help inform future budget proposals for VHA realignment. By taking such actions in the near term, VA could avoid further delays moving forward.

Regarding recommendation 3, VA stated that by the end of December 2020, it will develop a plan to ensure consistency of sexual harassment policies throughout VA, and it will begin implementing this plan by the end of March 2021. Regarding recommendation 4, VA stated that it expects to finalize and distribute the HPP directive and handbook by December 2020 and, in the meantime, the HPP office will issue an interim HPP policy by the end of August 2020. Regarding recommendation 5, VA stated that it will develop a system for managers to report sexual harassment allegations to HPP, with implementation planned by the end of September 2021. If VA requires these allegations to be reported through the system, and uses these reports and other available data about sexual harassment prevalence at VA to assess and improve its efforts, this will satisfy our recommendation. Regarding recommendation 6, VA stated that the HPP directive and handbook will require managers to upload evidence of corrective actions to the new system described for recommendation 5 by the end of September 2021. Regarding recommendation 7, VA stated that by the end of September 2021, it will restructure the agency's sexual harassment prevention training for all employees to make it more impactful, and that such training will be assigned to every employee based on their role.

We also provided the Equal Employment Opportunity Commission and the Merit Systems Protection Board segments of a draft of this report for technical comments. EEOC provided us written technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Veterans Affairs, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or brownbarnesc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on

the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

Cindy S. Barnes

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

List of Requesters

The Honorable Mark Takano
Chairman
Committee on Veterans' Affairs
House of Representatives

The Honorable Chris Pappas
Chairman
The Honorable Jack Bergman
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
House of Representatives

The Honorable Joni K. Ernst
United States Senate

The Honorable Ann McLane Kuster
House of Representatives

Appendix I: Additional Information on Selected Methodologies

This appendix provides additional information about selected methodologies, including our semi-structured interviews with Department of Veterans Affairs (VA) officials, our analysis of VA's equal employment opportunity (EEO) and Harassment Prevention Program (HPP) data and case files, and our analysis of Merit Systems Protection Board (MSPB) survey data.

Semi-Structured Interviews with VA Officials

To conduct semi-structured interviews with VA staff who implement the EEO and HPP programs, we selected 29 VA staff who had been in their positions for at least 1 year, and interviewed them individually.¹ This included eight EEO Counselors, eight EEO Investigators, six HPP staff, and seven HPP facility liaisons.² We made our selections to ensure a range of perspectives from across VA's three administrations and key staff positions that manage and implement VA's programs and policies to address sexual harassment. We randomly selected six EEO Counselors and six EEO Investigators representing each of the six Office of Resolution Management (ORM) districts to ensure representation across VA facilities. Because of the pre-test interviews, two additional EEO Counselors (from VA's central office and one ORM district) and two additional EEO Investigators (from one ORM district) were not selected randomly. Of ORM's eight HPP staff, we interviewed one as part of our pre-test, who was selected by VA officials, and randomly selected five additional HPP staff to interview.³ We selected HPP facility liaisons to include at least one from each VA administration and additional individuals, depending on the administration's size. We randomly selected three Veterans Health Administration (VHA) HPP facility liaisons and interviewed one additional VHA HPP facility liaison during our pre-test. We randomly selected two Veterans Benefits Administration (VBA) HPP

¹We conducted pre-tests of our interview instrument in order to ensure that our questions were understandable and focused on the relevant issues. Interviewees for our pre-tests were selected by VA officials to provide knowledgeable perspectives, instead of being chosen randomly. The EEO Counselor and EEO Investigator pre-test interviews were also conducted in pairs and not individually.

²We selected eight EEO Counselors out of 36; eight EEO Investigators out of 52; six HPP staff out of eight; and seven HPP facility liaisons out of 205. The numbers of staff in these positions are based on lists of staff provided to us by VA in June and July 2019 for the purposes of making these selections.

³HPP staff are not assigned cases based on ORM district or geography, so location was not a consideration in selecting these interviewees.

facility liaisons. We also selected the National Cemetery Administration's (NCA) one HPP facility liaison to interview.

Analysis of VA's EEO and HPP Data and Case Files

We analyzed VA's internal data on complaints of sexual harassment of its employees, including the number of complaints of sexual harassment filed through both HPP and the EEO process in fiscal years 2014 through 2019. We analyzed EEO data from VA's Complaints Automated Tracking System for all 915 cases where the complainant initially contacted ORM between fiscal years 2014 through 2019 and that included a claim of sexual harassment. These cases included those that were closed during the informal stage and those that proceeded to formal EEO complaints.⁴ We also analyzed data from all 94 sexual harassment cases filed through HPP from mid-fiscal year 2016 through fiscal year 2019.⁵ To assess the reliability of VA's EEO and HPP data, we reviewed technical documentation, conducted electronic testing for obvious errors in accuracy and completeness, and interviewed VA officials. We only assessed for reliability the data fields included in this report and did not evaluate other data fields for reliability. We determined that the data we present in this report were sufficiently reliable for the purposes of our reporting objectives.

We also reviewed (1) the case files for the 19 EEO cases that included sexual harassment allegations and that were closed in fiscal years 2014 through 2018 with a finding of discrimination (i.e., after an investigation, the Equal Employment Opportunity Commission [EEOC] or VA determined that unlawful discrimination did occur), and (2) the case files for the 40 closed HPP cases that were filed in fiscal year 2018 and that included sexual harassment allegations, including both cases that did and did not result in a finding of harassment.⁶ We reviewed the 19 EEO case

⁴The majority of these 915 EEO complaints were closed at the time of our review. The EEO complaint process consists of two stages: informal (the pre-complaint processing stage) and formal. The goal of the informal stage is to resolve disputes through EEO counseling or alternative dispute resolution. If no resolution is reached during the informal stage, the complainant may decide to proceed to the formal stage by filing a formal complaint.

⁵Ninety of these 94 HPP complaints were closed at the time of our review, according to VA's data. HPP began collecting and maintaining data on complaints in 2016. The first complaint of sexual harassment in the HPP data is from February 2016.

⁶Although HPP is not designed to determine whether unlawful discrimination occurred, HPP data include a field that indicates whether there was a "finding of harassment." For purposes of this report, we refer to findings from the EEO process as "findings of discrimination." By contrast, we refer to findings from the management/HPP process as "findings of harassment," consistent with the HPP data.

files to assess whether they contained evidence that required corrective actions were carried out. We reviewed the 40 HPP case files to identify whether they were uploaded in the HPP case-tracking system; of those, we also reviewed the 20 HPP case files where the case-tracking system showed that a manager had decided upon a corrective action, to determine whether the case file included a record or other evidence that those corrective actions were taken.

Analysis of MSPB Data

Key Variables Analyzed

MSPB administers a periodic Merit Principles Survey of federal employees that covers a variety of workforce issues, prohibited personnel practices, and selected aspects of employee work experiences and work environments. Specifically, this survey includes several questions on the incidence of sexual harassment in the workplace, actions employees take to address sexual harassment, and employee perceptions of federal agency policies and practices related to sexual harassment. The survey was most recently administered in 2016 and asked whether respondents experienced or observed various sexual harassment behaviors in the preceding 2 years.⁷

MSPB developed a sampling strategy, using a stratified random sample, to provide a reliable measure of government-wide opinion among permanent, full-time, civilian federal employees. The sample was stratified by federal agency (and agency bureau or component for selected agencies) and supervisory status (non-supervisor, supervisor, or executive). Agency participation in the survey was mandatory, but individual response to the survey was voluntary.⁸ The survey was

⁷According to MSPB survey documentation, the behaviors asked about in the survey were intended to provide survey respondents with concrete examples of behaviors that are potentially indicative of sexual harassment; the behaviors in the survey were neither exhaustive nor legally definitive. MSPB noted that the determination of whether a particular behavior constitutes sexual harassment within the meaning of antidiscrimination law depends upon the behavior's circumstances and the context; therefore, their selected behaviors should not be construed as necessarily meeting the legal criteria for sexual harassment or sex discrimination.

⁸MSPB drew the sample for this survey in summer 2015. The sample included nearly 126,000 employees from 25 federal agencies, representing all major departments and independent agencies. However, according to MSPB documentation, ultimately the Department of Health and Human Services could not be surveyed, for technical reasons, reducing the sample to 24 agencies.

launched in July 2016 and closed in September 2016. MSPB's reported response rate for the survey was 38.8 percent.

We analyzed a number of key variables to better understand the nature and extent of sexual harassment at VA, as reported by sampled employees in MSPB's survey. We analyzed the data using survey software that accounts for the sample design and survey weights. Because MSPB followed a probability procedure based on random selections, its sample is only one of a large number of samples that might have been drawn using the same sampling procedure. Since each sample could have provided different estimates, we express our confidence in the precision of this particular sample's results as a 95 percent confidence interval (e.g., from "X" to "Y" percent). This is the interval that would contain the actual population value for 95 percent of the samples that could have been drawn.

MSPB Reliability and Nonresponse Bias Analysis

To assess the reliability of MSPB data, we reviewed technical documentation, conducted electronic testing for obvious errors in accuracy and completeness, and interviewed MSPB officials. MSPB officials provided the agency's nonresponse bias analysis for select features, but noted that they were unable to link other characteristics to the survey respondents, and therefore did not carry out a traditional nonresponse bias analysis.⁹ While MSPB did not find evidence of nonresponse bias, its analysis was limited to the data on supervisory status, sex, and minority status, so the potential for bias based on other factors, including agency, age, or federal tenure, is unknown. We therefore conducted our own nonresponse bias analysis to examine additional demographics as well as some demographics analyzed by MSPB.

We analyzed data from the Office of Personnel Management's Enterprise Human Resources Integration-Statistical Data Mart, which was used to form the MSPB 2016 sample frame, to compare the weighted distribution of MSPB respondents to that for the federal workforce at the time the survey was carried out. We did the same for the VA subpopulation of respondents. To the extent that the distributions differ, there is the potential for bias. If those who did not respond to the survey differ from those who did respond on the outcomes measured in the survey, relying on survey respondents to represent the relevant population could be

⁹A traditional nonresponse bias analysis matches sampled employee demographic and other characteristics to their response status and examines whether respondents and non-respondents differ on those characteristics.

Appendix I: Additional Information on Selected Methodologies

misleading. The distributions were similar based on five of the characteristics: supervisory status, eligibility to retire, minority status, sex, and agency.

There were potential differences based on three of the characteristics: annual salary (lower earning employees were underrepresented in the MSPB survey data), age (employees under 40 are underrepresented in the MSPB survey data), and federal tenure (employees with 3 years or less are underrepresented in the MSPB survey data). However, these three characteristics are generally associated with a higher likelihood of experiencing sexual harassment in the workplace; thus, if bias exists in the sample responses it likely underestimates the prevalence of sexual harassment. We concluded that the MSPB survey was the best available data and sufficiently reliable for the purpose of providing a general description of the self-reported prevalence of sexual harassment that included as much of the population of VA employees as possible.

Selected 2016 MSPB Survey Questions

For the MSPB analyses presented in our report, table 1 shows the survey question or prompt for each set of responses we analyzed, along with the available response options for each question.

Table 1: Selected 2016 MSPB Survey Questions and Response Options for Federal Agency Employees

Survey Question/Prompt	Response Options
In the past two years in your workplace, have you observed anyone being subjected to any of the following behaviors? ^a	Unwelcome communications (e.g., emails, phone calls, notes, text messages, social media contacts) of a sexual nature
	Unwelcome invasion of personal space (e.g., touching, crowding, leaning over)
	Unwelcome sexually suggestive looks or gestures
	Pressure for sexual favors
	Pressure for dates
	Unwelcome sexual teasing, jokes, comments or questions
	The presence of sexually oriented material in any format (e.g., photos, videos, written material)
	People having sexually oriented conversations in front of others
	Someone offering preferential treatment in the workplace in exchange for sexual favors
	Different treatment based on sex/gender (e.g., quality or nature of assignments)
	Use of derogatory or unprofessional terms related to a person's sex/gender
	Stalking (e.g., unwanted intrusion, physically or electronically, into your personal life)
	Rape or sexual assault or attempted rape or sexual assault

Appendix I: Additional Information on Selected Methodologies

Survey Question/Prompt	Response Options
In the past two years in your workplace, have any of the following behaviors been directed at you? ^a	Unwelcome communications (e.g., emails, phone calls, notes, text messages, social media contacts) of a sexual nature
	Unwelcome invasion of personal space (e.g., touching, crowding, leaning over)
	Unwelcome sexually suggestive looks or gestures
	Pressure for sexual favors
	Pressure for dates
	Unwelcome sexual teasing, jokes, comments or questions
	The presence of sexually oriented material in any format (e.g., photos, videos, written material)
	People having sexually oriented conversations in front of others
	Someone offering preferential treatment in the workplace in exchange for sexual favors
	Different treatment based on sex/gender (e.g., quality or nature of assignments)
	Use of derogatory or unprofessional terms related to a person's sex/gender
	Stalking (e.g., unwanted intrusion, physically or electronically, into your personal life)
	Rape or sexual assault or attempted rape or sexual assault
	If you have been sexually harassed within the past two years in the federal government, select one experience that had the greatest impact on you and answer the remaining questions in the sexual harassment section in terms of that experience:
Your immediate supervisor	
Other higher level supervisors	
Your coworkers	
Your subordinates	
Other employees	
Contractors	
Customers/members of the public (including clients, patients, inmates, or any others for whom your agency provides services)	
Someone with a personal relationship with an employee (e.g., an abusive spouse or domestic partner)	
Criminal who had no other connection with the workplace, but enters to commit a crime	
Other	

Appendix I: Additional Information on Selected Methodologies

Survey Question/Prompt	Response Options
Indicate whether you took a specific action in response to experiencing sexual harassment.	I avoided the person(s)
	I asked/told the person to stop
	I threatened to tell or told others
	I reported the behavior to the supervisor or other officials, such as an EEO counselor
	I filed a formal complaint, such as an EEO complaint or grievance
	I made of joke of the behavior
	I went along with the behavior
	I changed jobs/locations
	I ignored the behavior or did nothing
Other	
My agency takes sufficient steps to prevent sexual harassment.	Strongly Agree
	Agree
	Neither agree nor disagree
	Disagree
	Strongly disagree
	Don't know/NA
I am familiar with the formal complaint channels that are available to people who have experienced discrimination.	Strongly Agree
	Agree
	Neither agree nor disagree
	Disagree
	Strongly disagree
	Don't know/NA
If I filed an action charging sexual harassment, I am confident that it would be resolved in a fair and just manner by my organization.	Strongly Agree
	Agree
	Neither agree nor disagree
	Disagree
	Strongly disagree
	Don't know/NA

Appendix I: Additional Information on Selected Methodologies

Survey Question/Prompt	Response Options
If a supervisor or manager in my organization was found to have committed sexual harassment, management would take appropriate action against that person.	Strongly Agree
	Agree
	Neither agree nor disagree
	Disagree
	Strongly disagree
	Don't know/NA

Source: GAO analysis of Merit Systems Protection Board (MSPB) information. | GAO-20-387

^aThe response options provided for these questions were intended to provide survey respondents with concrete examples of behaviors that are potentially indicative of sexual harassment, according to MSPB; these behaviors are neither exhaustive nor legally definitive. MSPB notes in its survey documentation that the determination of whether a particular behavior constitutes sexual harassment within the meaning of antidiscrimination law depends upon the behavior's circumstances and the context; therefore, these behaviors should not be construed as necessarily meeting the legal criteria for sexual harassment or sex discrimination.

Appendix II: Analysis of Merit Systems Protection Board Survey Data

The Merit Systems Protection Board (MSPB) administers a periodic Merit Principles Survey of federal employees that covers a variety of workforce issues, prohibited personnel practices, and selected aspects of employee work experiences and work environments. This survey includes several questions on the incidence of sexual harassment in the workplace, actions employees take to address sexual harassment, and employee perceptions of federal agency policies and practices related to sexual harassment. The survey was most recently administered in 2016 and asked whether respondents experienced or observed various sexual harassment behaviors in the preceding 2 years. In this report, we characterize employees as having experienced sexual harassment if they responded in the MSPB survey that they experienced any of the sexual harassment behaviors included in the survey.¹ Such behaviors may or may not be unlawful, depending on the circumstances.² GAO's analysis of selected data for Department of Veterans Affairs (VA) respondents,

¹Survey respondents were asked whether they experienced at least one of the following sexual harassment behaviors included in the MSPB survey: exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; exposure to sexually-oriented material; unwelcome invasion of personal space; unwelcome sexually-suggestive looks or gestures; unwelcome communications of a sexual nature; pressure for dates; stalking; offer of preferential treatment for sexual favors; pressure for sexual favors; and sexual assault or attempted sexual assault. MSPB's survey also asked whether respondents experienced "different treatment based on sex/gender." MSPB did not include responses for that specified behavior in their composite variable of whether respondents experienced one or more behaviors that constituted sexual harassment because, according to MSPB survey documentation, it describes a form of sex discrimination that is distinct from sexual harassment. Our analysis treats this variable in the same manner as MSPB and does not include it as one of the 12 sexual harassment behaviors.

²According to MSPB survey documentation, the behaviors asked about in the survey were intended to provide survey respondents with concrete examples of behaviors that are potentially indicative of sexual harassment; the behaviors in the survey were neither exhaustive nor legally definitive. MSPB noted that the determination of whether a particular behavior constitutes sexual harassment within the meaning of antidiscrimination law depends upon the behavior's circumstances and the context; therefore their selected behaviors should not be construed as necessarily meeting the legal criteria for sexual harassment or sex discrimination.

and a comparison to other selected federal agencies, is presented below.³

Characteristics of Sexual Harassment Experiences at VA

Information on Types of Sexual Harassment Behaviors

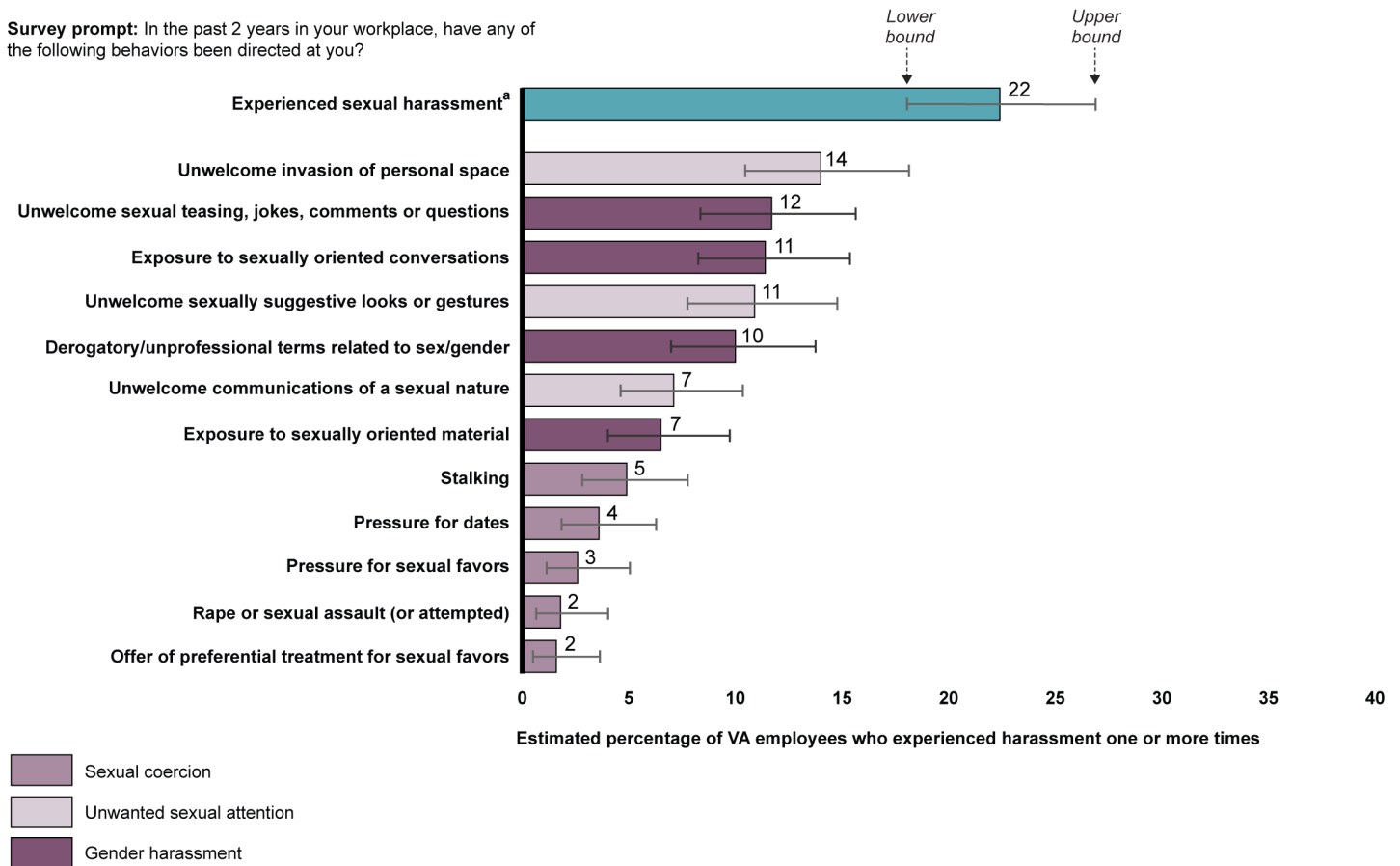
As shown in figures 5 and 6, an estimated 22 percent of VA employees experienced sexual harassment and an estimated 33 percent observed sexual harassment in the 2 years preceding the survey, according to our analysis of MSPB's survey data. The estimated percentages of VA employees who experienced or observed specific sexual harassment behaviors are also detailed in figures 5 and 6.

³MSPB's survey data also included strata for responses from Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA) employees; we analyzed these VHA and VBA data in addition to VA responses overall. However, the estimated percentages of VHA and VBA employees who experienced sexual harassment were not statistically different from estimates for VA employees overall when considering the confidence intervals around each estimate. Therefore, this appendix focuses on presenting estimates for all VA employees.

Appendix II: Analysis of Merit Systems Protection Board Survey Data

Figure 5: Estimated Percentage of Department of Veterans Affairs (VA) Employees Who Experienced Sexual Harassment One or More Times in 2-Year Period, by Type of Harassing Behavior

Survey prompt: In the past 2 years in your workplace, have any of the following behaviors been directed at you?



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

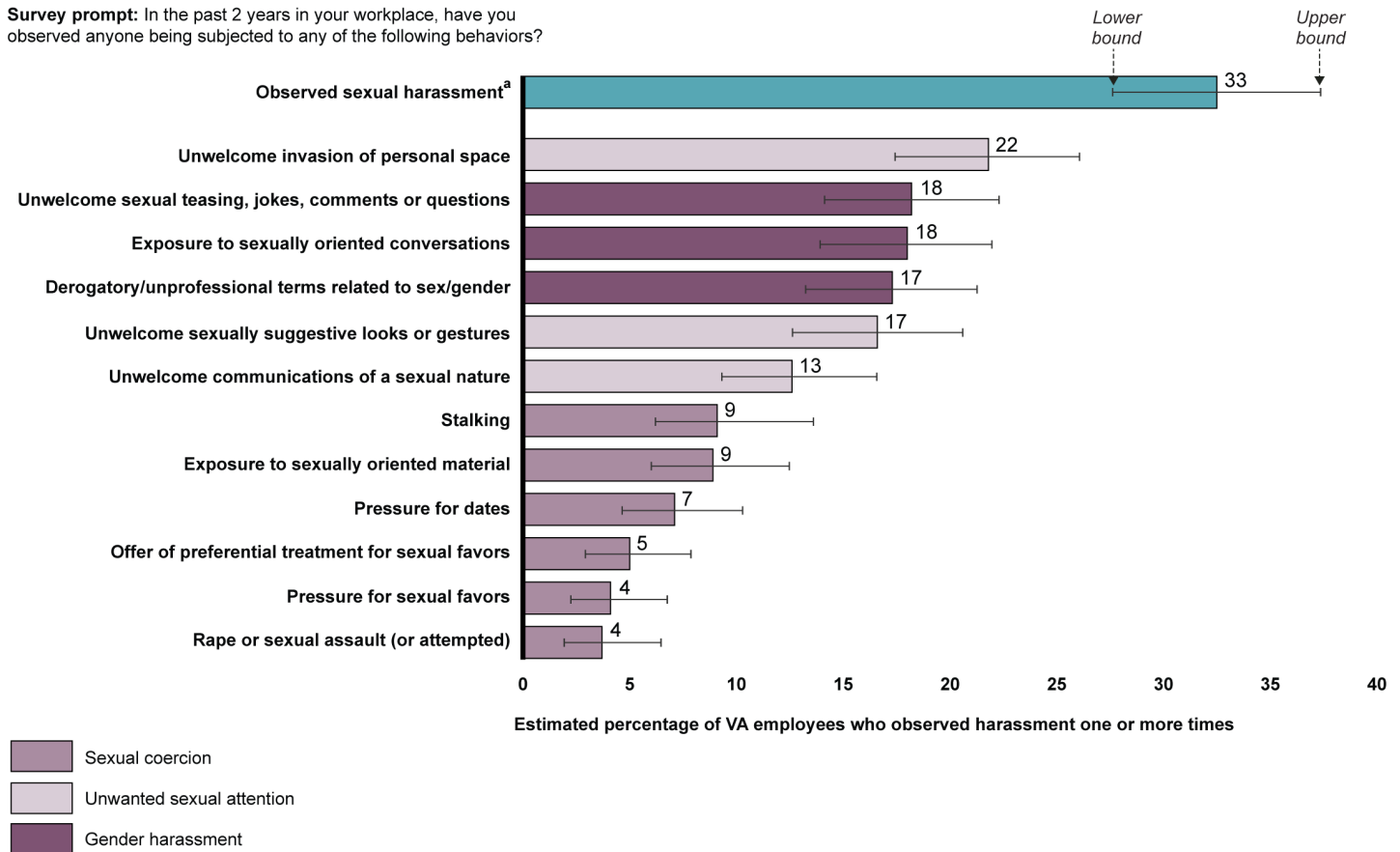
Note: The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. VA's sexual harassment policy prohibits the same behaviors that are included in the MSPB survey, and MSPB and VA group them into three broad categories. The first is sexual coercion, which includes pressure for dates, stalking, offer of preferential treatment for sexual favors, pressure for sexual favors, and sexual assault or attempted sexual assault. The second is unwanted sexual attention, which includes unwelcome invasion of personal space, unwelcome sexually-suggestive looks or gestures, and unwelcome communications of a sexual nature. The third is gender harassment, which includes exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; and exposure to sexually-oriented material. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar.

^aThe estimate of employees who "experienced sexual harassment" is the estimated percentage of employees who experienced at least one of the behaviors listed in this figure. Respondents could indicate that they experienced multiple behaviors, therefore, this estimate is not equal to the total of the individual behavior estimates.

Appendix II: Analysis of Merit Systems
Protection Board Survey Data

Figure 6: Estimated Percentage of Department of Veterans Affairs (VA) Employees Who Observed Sexual Harassment One or More Times in 2-Year Period, by Type of Harassing Behavior

Survey prompt: In the past 2 years in your workplace, have you observed anyone being subjected to any of the following behaviors?



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

Note: The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. VA's sexual harassment policy prohibits the same behaviors that are included in the MSPB survey, and MSPB and VA group them into three broad categories. The first is sexual coercion, which includes pressure for dates, stalking, offer of preferential treatment for sexual favors, pressure for sexual favors, and sexual assault or attempted sexual assault. The second is unwanted sexual attention, which includes unwelcome invasion of personal space, unwelcome sexually-suggestive looks or gestures, and unwelcome communications of a sexual nature. The third is gender harassment, which includes exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; and exposure to sexually-oriented material. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar.

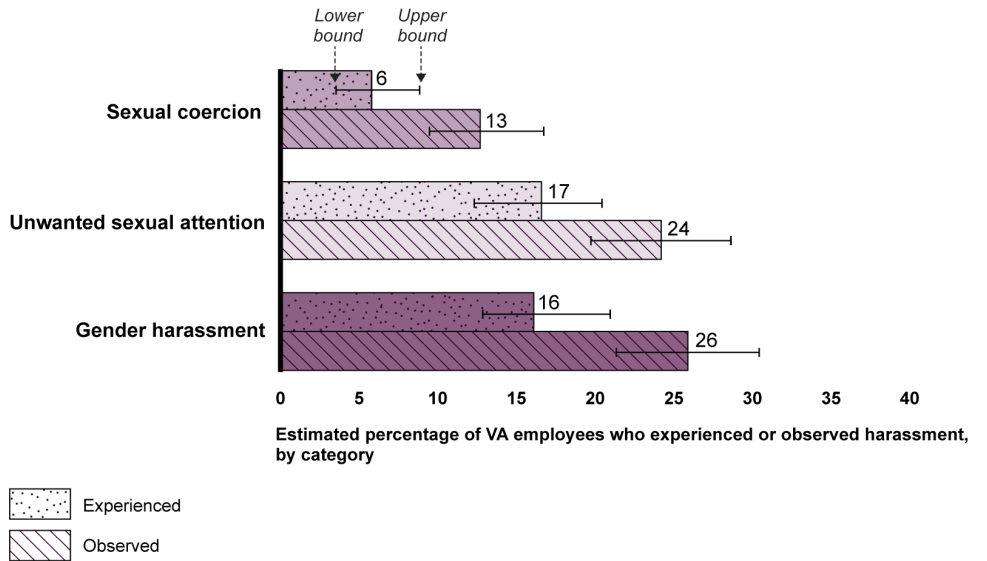
^aThe estimate of employees who "observed sexual harassment" is the estimated percentage of employees who observed at least one of the behaviors listed in this figure. Respondents could indicate that they observed multiple behaviors, therefore, this estimate is not equal to the total of the individual behavior estimates.

Researchers commonly group sexual harassment behaviors into three broad categories—gender harassment, unwanted sexual attention, and sexual coercion.⁴ Behaviors considered gender harassment or unwanted sexual attention were the most common type of sexual harassment behavior observed or experienced by VA employees. MSPB’s report on these data suggest that these two categories of behaviors are associated with a hostile work environment and their higher prevalence—compared to sexual coercion—may be due in part to greater agreement among employees that sexual coercion is an egregious form of sexual harassment and is therefore likely to be punished.⁵ Therefore, employees may be less likely to engage in sexual coercion. As shown in figure 7, an estimated 16 percent and 17 percent experienced gender harassment or unwanted sexual attention, respectively, compared to 6 percent who experienced sexual coercion. Similarly, an estimated 26 percent and 24 percent of VA employees observed gender harassment or unwanted sexual attention, respectively, compared to 13 percent who observed sexual coercion.

⁴Gender harassment includes exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; and exposure to sexually-oriented material. Unwanted sexual attention includes unwelcome invasion of personal space, unwelcome sexually-suggestive looks or gestures, and unwelcome communications of a sexual nature. Sexual coercion includes pressure for dates, stalking, offer of preferential treatment for sexual favors, pressure for sexual favors, and sexual assault or attempted sexual assault.

⁵Merit Systems Protection Board, Office of Policy and Evaluation, *Update on Sexual Harassment in the Federal Workplace* (Washington, D.C.: March 2018).

Figure 7: Estimated Percentage of Department of Veterans Affairs (VA) Employees Who Experienced or Observed Specific Categories of Sexual Harassment in 2-Year Period



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

Note: The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. VA's sexual harassment policy prohibits the same behaviors that are included in the MSPB survey, and MSPB and VA group them into three broad categories. The first is sexual coercion, which includes pressure for dates, stalking, offer of preferential treatment for sexual favors, pressure for sexual favors, and sexual assault or attempted sexual assault. The second is unwanted sexual attention, which includes unwelcome invasion of personal space, unwelcome sexually-suggestive looks or gestures, and unwelcome communications of a sexual nature. The third is gender harassment, which includes exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; and exposure to sexually-oriented material. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar.

Information on Alleged Harassers

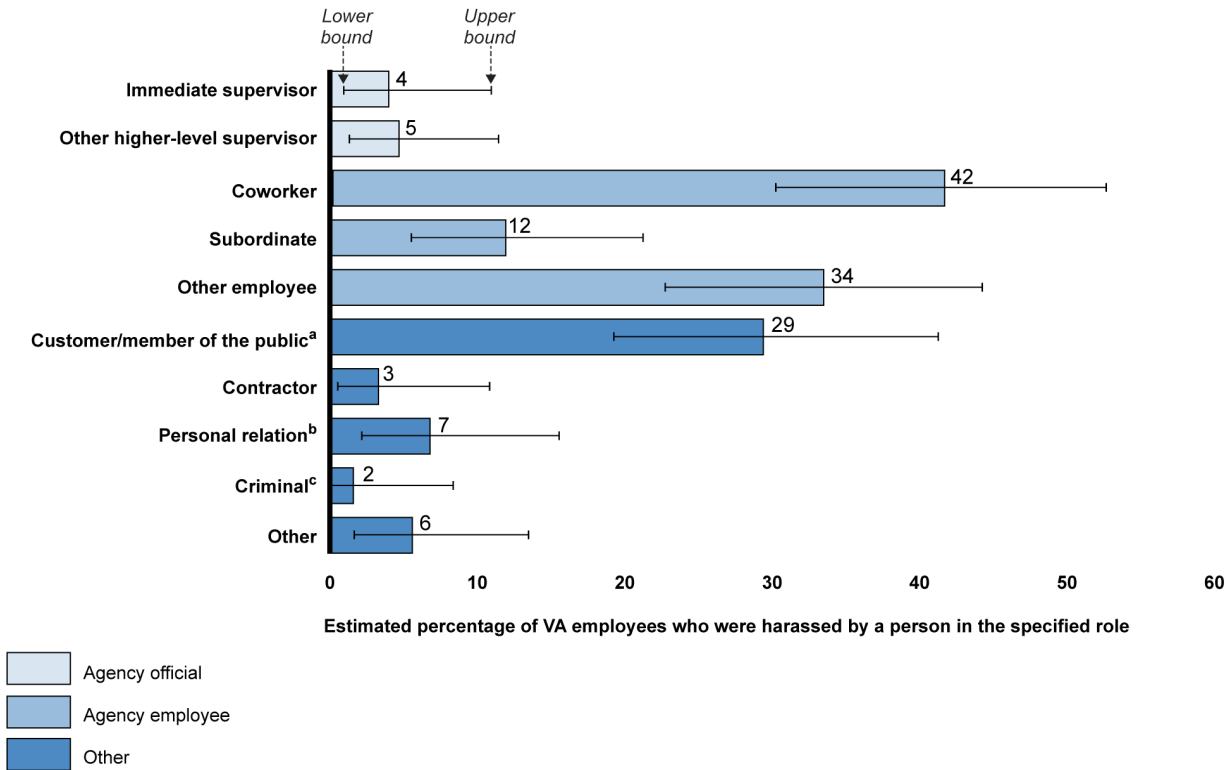
As shown in figure 8, VA employees most frequently said that the person harassing them was another agency employee—such as a coworker—or a customer/member of the public. An estimated 7 percent of employees⁶ who said they were sexually harassed said they were harassed by their immediate supervisor or other higher-level supervisor at VA.

⁶The 95 percent confidence interval for this estimate is 3 to 14 percent.

Appendix II: Analysis of Merit Systems
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Figure 8: Estimated Percentage of Department of Veterans Affairs (VA) Employees Who Experienced Sexual Harassment by Person in Specified Role in 2-year Period, among Those Sexually Harassed

Survey prompt: Who harassed you? Mark all that apply.



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

Note: We characterize employees as having “experienced sexual harassment” if they responded in the MSPB survey that they experienced any of the sexual harassment behaviors included in the survey. The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. VA’s sexual harassment policy prohibits the same behaviors that are included in the MSPB survey. The MSPB survey did not provide definitions of the types of alleged harassers (e.g., the definition of “Other employee”), but we present them in the order they were presented in the survey, which provided some context for the respondent in determining what each subsequent category represents. MSPB’s report grouped the types of alleged harassers into the categories of Agency official, Agency employee, and Other, which we include in this figure as well. Of the estimated 22 percent of VA employees who experienced sexual harassment, according to the MSPB survey, this figure shows the estimated percentages who experienced sexual harassment by a person in specified roles. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar. Respondents could select more than one type of harasser in response to this question.

^aThe MSPB survey instrument shows this response option as: Customers/members of the public (including clients, patients, inmates, or any others for whom your agency provides services).

^bThe MSPB survey instrument shows this response option as: Someone with a personal relationship with an employee (e.g., an abusive spouse or domestic partner).

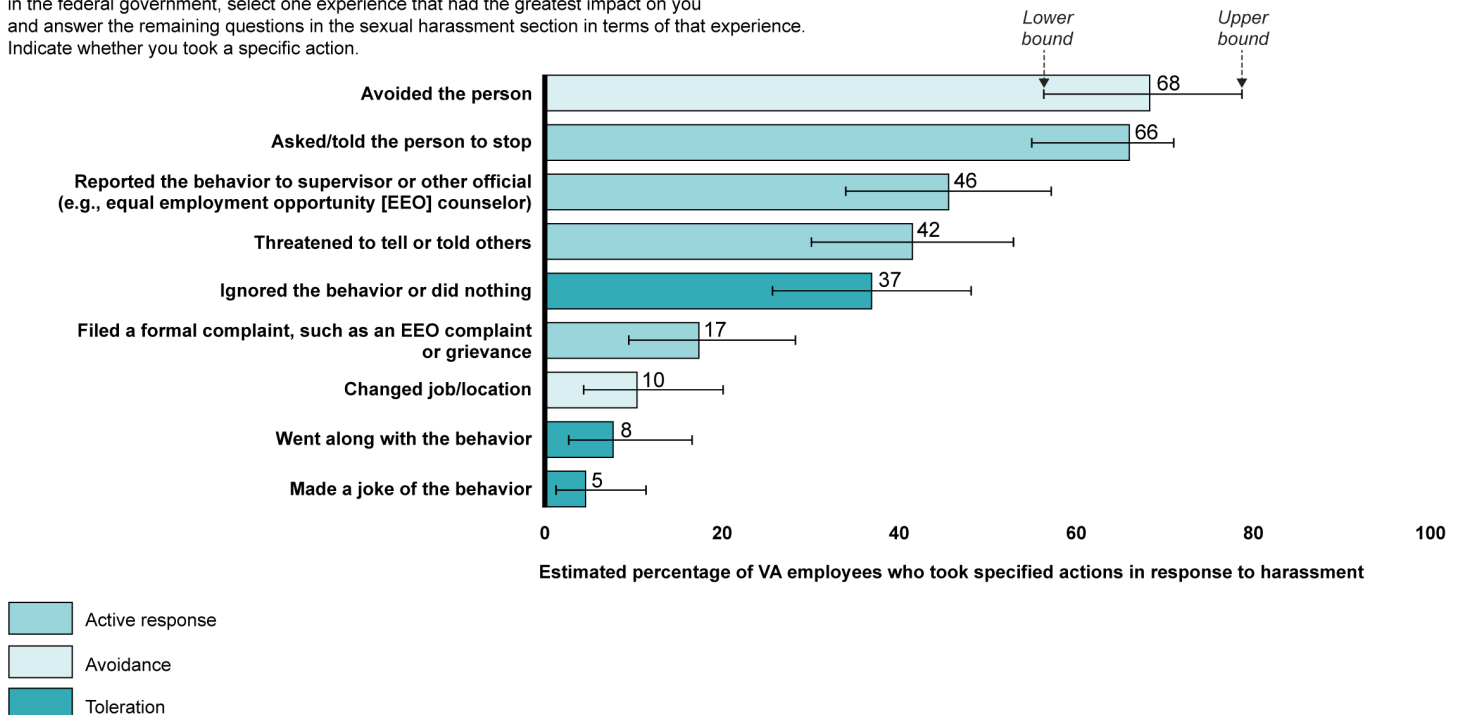
^cThe MSPB survey instrument shows this response option as: Criminal who had no other connection with the workplace, but enters to commit a crime.

Actions Taken by Those Who Experienced Sexual Harassment

An estimated 47 percent⁷ of VA employees who experienced sexual harassment, according to the MSPB survey, reported it to an official, such as a supervisor or equal employment opportunity (EEO) counselor, or filed a complaint. Specifically, as shown in figure 9, of VA employees who experienced sexual harassment, an estimated 46 percent reported the behavior to a supervisor or official such as an EEO counselor, and an estimated 17 percent filed a formal complaint, such as an EEO complaint or grievance. An estimated 48 percent⁸ of employees reported the behavior or filed a formal complaint while also taking at least one other action in response to experiencing sexual harassment. Actions taken in response to experiencing sexual harassment can generally be grouped into three categories—active response, avoidance, and toleration.

Figure 9: Estimated Percentage of Department of Veterans Affairs (VA) Employees Who Took Specified Actions in Response to Sexual Harassment in 2-year Period, Among Those Sexually Harassed

Survey prompt: If you have been sexually harassed within the past 2 years in the federal government, select one experience that had the greatest impact on you and answer the remaining questions in the sexual harassment section in terms of that experience. Indicate whether you took a specific action.



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

⁷The 95 percent confidence interval for this estimate is 36 to 59 percent.

⁸The 95 percent confidence interval for this estimate is 36 to 60 percent.

**Appendix II: Analysis of Merit Systems
Protection Board Survey Data**

Note: We characterize employees as having “experienced sexual harassment” if they responded in the MSPB survey that they experienced any of the sexual harassment behaviors included in the survey. The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. VA’s sexual harassment policy prohibits the same behaviors that are included in the MSPB survey: exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; exposure to sexually-oriented material; unwelcome invasion of personal space; unwelcome sexually-suggestive looks or gestures; unwelcome communications of a sexual nature; pressure for dates; stalking; offer of preferential treatment for sexual favors; pressure for sexual favors; and sexual assault or attempted sexual assault. Of the estimated 22 percent of VA employees who experienced sexual harassment, according to the MSPB survey, this figure shows the estimated percentages who took specified actions. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar. Respondents could select more than one action taken in response to this question.

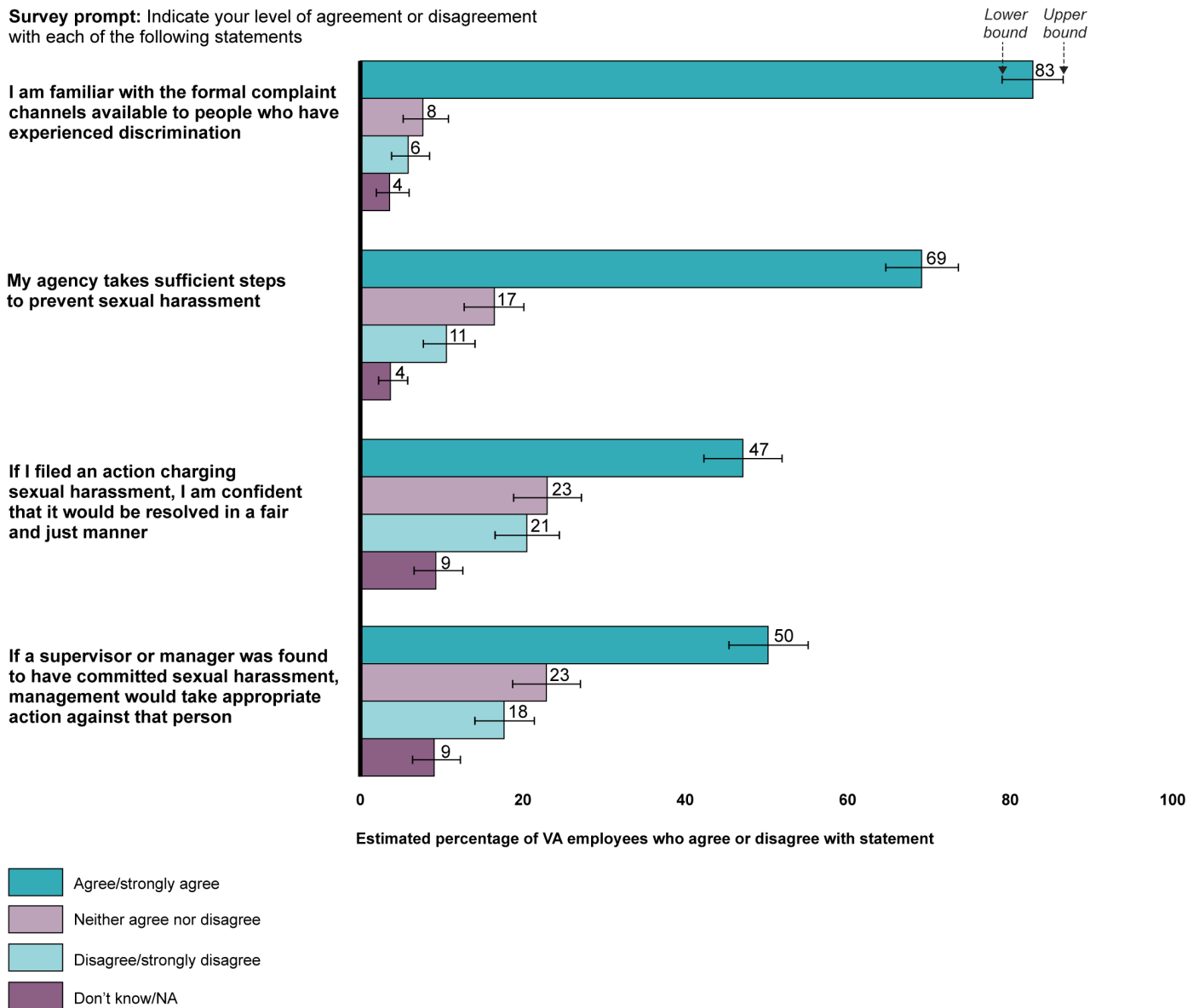
**Employee Perceptions of
Sexual Harassment at VA**

As shown in figure 10, a majority of VA employees were familiar with the formal discrimination complaint channels and thought that VA takes sufficient steps to prevent sexual harassment. However, a lower percentage—approximately half—were confident that sexual harassment would be resolved fairly or that supervisors would be held accountable if they engaged in sexual harassment.

Appendix II: Analysis of Merit Systems
Protection Board Survey Data

Figure 10: Estimated Percentage of Department of Veterans Affairs (VA) Employees Who Agreed or Disagreed with Statements about Employee Perceptions of VA's Sexual Harassment Prevention Efforts

Survey prompt: Indicate your level of agreement or disagreement with each of the following statements



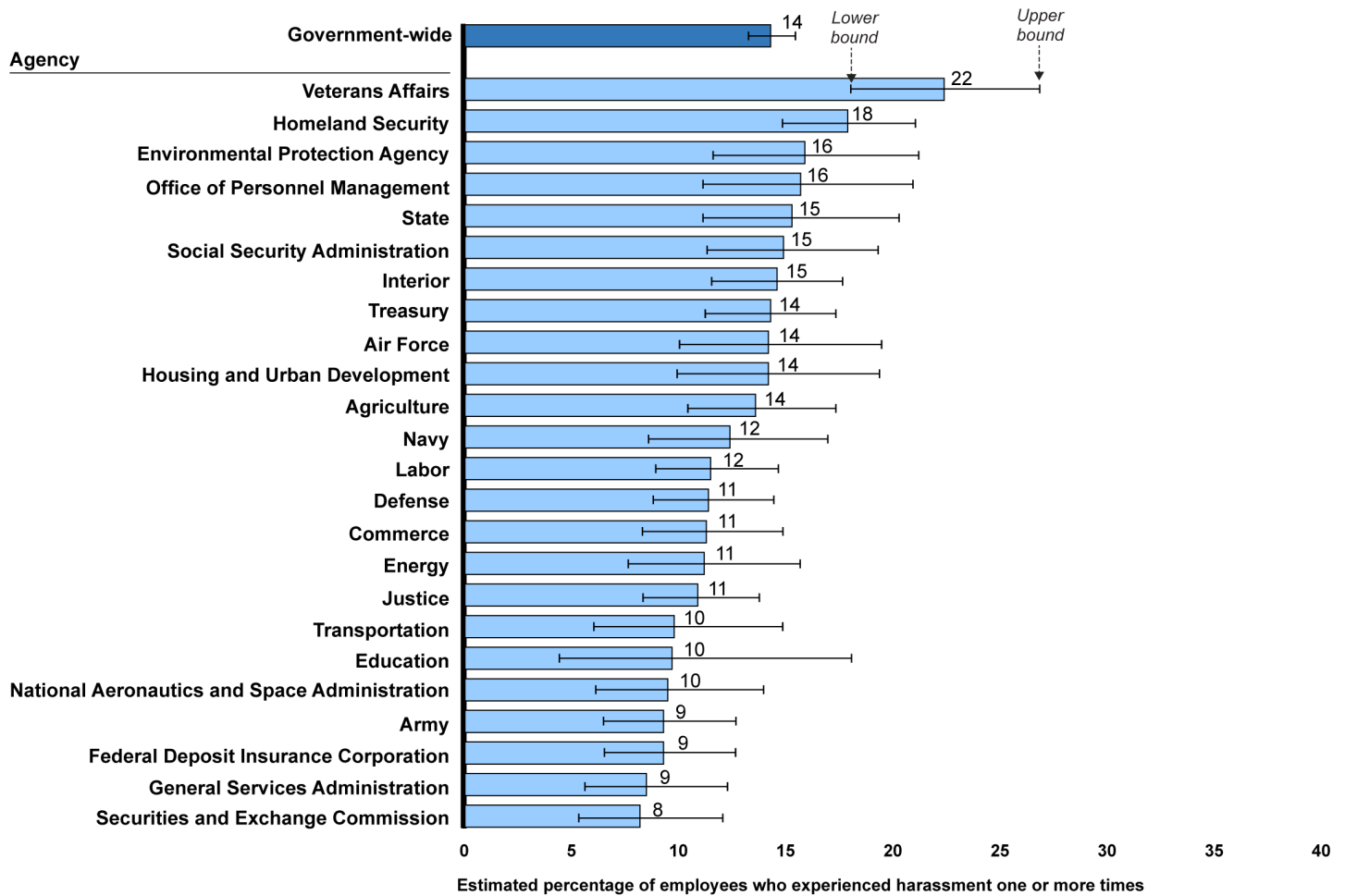
Source: GAO analysis of Merit Systems Protection Board's 2016 Merit Principles Survey data. | GAO-20-387

Note: Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar.

Comparison of Sexual Harassment across Federal Agencies

In addition to VA, MSPB also surveyed employees from 23 other major federal departments and independent agencies. As shown in figure 11, 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. The estimated percentage of employees experiencing sexual harassment at VA was higher than the overall percentage for the federal government by a statistically significant amount. However, VA's estimate was not significantly different from eight other agencies given the confidence intervals around the estimates.

Figure 11: Estimated Percentage of Federal Employees Who Experienced Sexual Harassment in 2-Year Period, by Agency



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

Note: The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such

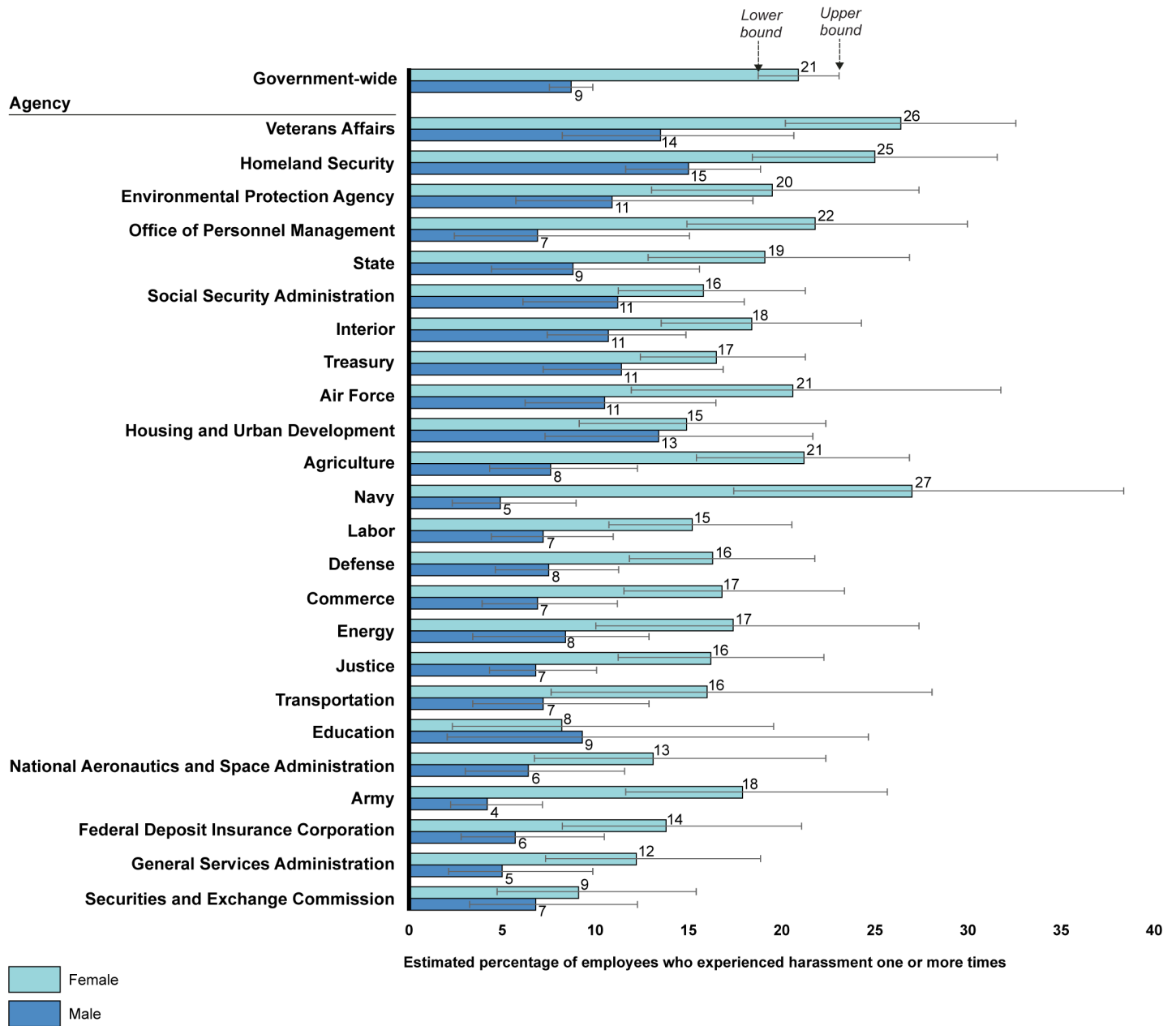
**Appendix II: Analysis of Merit Systems
Protection Board Survey Data**

behaviors may or may not be unlawful, depending on the circumstances. This figure represents the estimated percentage of employees who experienced at least one of the following sexual harassment behaviors included in the MSPB survey: exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; exposure to sexually-oriented material; unwelcome invasion of personal space; unwelcome sexually-suggestive looks or gestures; unwelcome communications of a sexual nature; pressure for dates; stalking; offer of preferential treatment for sexual favors; pressure for sexual favors; and sexual assault or attempted sexual assault. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar. VA's confidence interval overlaps with the following agencies in this figure: Air Force, Education, Environmental Protection Agency, Homeland Security, Housing and Urban Development, Office of Personnel Management, State, and Social Security Administration, indicating that VA's estimated percentage of employees who experienced sexual harassment is not statistically different than that of these agencies.

As shown in figure 12, in general, a higher estimated percentage of female employees experienced sexual harassment than estimated percentage of male employees within most federal agencies. At VA, for example, an estimated 26 percent of female employees experienced sexual harassment compared to an estimated 14 percent of male employees.

Appendix II: Analysis of Merit Systems
Protection Board Survey Data

Figure 12: Estimated Percentage of Federal Employees Who Experienced Sexual Harassment in 2-Year Period, by Agency and Sex



Source: GAO analysis of Merit Systems Protection Board's (MSPB) 2016 Merit Principles Survey data. | GAO-20-387

Note: The MSPB survey was most recently administered in 2016 and asked whether respondents had experienced or observed various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not be unlawful, depending on the circumstances. This figure represents the

**Appendix II: Analysis of Merit Systems
Protection Board Survey Data**

estimated percentage of employees who experienced at least one of the following sexual harassment behaviors included in the MSPB survey: exposure to sexually-oriented conversations; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender; exposure to sexually-oriented material; unwelcome invasion of personal space; unwelcome sexually-suggestive looks or gestures; unwelcome communications of a sexual nature; pressure for dates; stalking; offer of preferential treatment for sexual favors; pressure for sexual favors; and sexual assault or attempted sexual assault. Estimates shown in this figure have margins of error at the 95 percent confidence level, as shown by bracketed lines on each bar.

Appendix III: VA Data on Equal Employment Opportunity Program and Harassment Prevention Program Cases

Equal Employment Opportunity (EEO) Program Data

The Department of Veterans Affairs' (VA) Office of Resolution Management (ORM) manages cases filed through VA's EEO program using an automated case management system that tracks all of the steps involved in completing the complaint process and compiles reports on EEO activity, among other things. In fiscal years 2014 through 2019, 915 EEO sexual harassment cases were filed by VA employees (see table 2) among over 30,000 total EEO cases.¹

Table 2: Number of Equal Employment Opportunity (EEO) Sexual Harassment Cases at VA by Administration, Filed in Fiscal Years 2014 through 2019

VA administration/office	Fiscal year case initially filed						Grand total
	2014	2015	2016	2017	2018	2019	
Veterans Health Administration	112	130	133	136	159	138	808
Veterans Benefits Administration	10	6	8	10	10	4	48
National Cemetery Administration	2	1	0	0	3	3	9
Other/null ^a	10	7	7	11	13	2	50
Grand total	134	144	148	157	185	147	915

Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: This table shows cases filed through VA's EEO process during this time period that included a claim of sexual harassment. These data do not indicate whether the EEO process resulted in a finding of discrimination. An increase or decrease in the number of cases filed each year does not necessarily indicate that incidents of sexual harassment are increasing or decreasing; it could be that employees are more or less comfortable filing cases that otherwise would have gone unreported, among other things.

^aThe Other/null category includes VA Central Office, the Veterans Canteen Service, and cases with a "null" value for the administration/office in VA's data.

For EEO sexual harassment cases filed during fiscal years 2014 through 2019, 62 percent proceeded to the formal complaint stage (see table 3).

Table 3: Number of Equal Employment Opportunity (EEO) Sexual Harassment Cases at VA by Complaint Status, Filed in Fiscal Years 2014 through 2019

Complaint status	Fiscal year case initially filed						Grand total
	2014	2015	2016	2017	2018	2019	
Formal complaint filed	83	94	86	114	112	77	566
No formal complaint filed	51	50	62	43	73	70	349
Grand total	134	144	148	157	185	147	915

Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

¹We analyzed data from VA's Complaints Automated Tracking System for all cases where the complainant initially contacted ORM between fiscal years 2014 through 2019 and that included a claim of sexual harassment. These cases include those that were closed during the pre-complaint processing stage and those that proceeded to formal EEO complaints.

Appendix III: VA Data on Equal Employment Opportunity Program and Harassment Prevention Program Cases

Note: This table shows cases filed through VA's EEO process that included a claim of sexual harassment, and whether a formal complaint was filed. All EEO cases include a pre-complaint processing (or "informal") stage; if the case is not resolved at that stage the employee may choose to file a formal EEO complaint. These data do not indicate whether the EEO process resulted in a finding of discrimination.

When filing an EEO complaint, complainants may claim one or more bases of discrimination among the classes protected by applicable anti-discrimination laws (such as sex or race), or they may file a claim for retaliation or reprisal for participating in the EEO process, among others. For example, complainants alleging that they have experienced sexual harassment might claim that the harassment was based on their race, sex, or age. As shown in table 4, our analysis of VA's EEO data show that 49 percent of sexual harassment complaints included multiple bases of discrimination and nearly one-third included "reprisal" as a basis for discrimination.

Table 4: Number of Equal Employment Opportunity (EEO) Sexual Harassment Cases at VA by Alleged EEO Basis, Filed in Fiscal Years 2014 through 2019

Alleged EEO basis	Number of cases	Percent of total cases
Age	81	8.9%
Color	15	1.6%
Disability	158	17.3%
Genetic information	2	0.2%
National origin	39	4.3%
Race	156	17.0%
Religion	20	2.2%
Reprisal	267	29.2%
Sex	831	90.8%
Other	31	3.4%
Basis missing in data	6	0.7%
Multiple bases ^a	445	48.6%

Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: "EEO basis" refers to the classes of persons protected by applicable federal civil rights laws. Between fiscal year 2014 and fiscal year 2019, 915 EEO cases were filed at VA that included a claim of sexual harassment. Of these cases, six did not have an EEO basis included in the data provided to us by VA. EEO cases can have more than one associated basis, thus the number of cases in this table exceeds the 915 EEO sexual harassment cases filed in this time period. These data do not indicate whether the EEO process resulted in a finding of discrimination.

^aEEO cases can have more than one associated EEO basis. This is the number of cases that includes more than one of the alleged EEO bases listed above.

**Appendix III: VA Data on Equal Employment
Opportunity Program and Harassment
Prevention Program Cases**

Overall, EEO cases that include sexual harassment claims represent a small proportion of VA’s total number of EEO cases and a small proportion of VA’s EEO cases that include harassment claims. In fiscal years 2014 through 2019, over 30,000 EEO cases were filed at VA, with slightly more than half (55 percent) being cases that included claims of workplace harassment—both sexual and non-sexual (see table 5).

Table 5: Number of Equal Employment Opportunity (EEO) Harassment Cases at VA by Type, Filed in Fiscal Years 2014 through 2019

Type of EEO case	Fiscal year case initially filed						Grand total
	2014	2015	2016	2017	2018	2019	
<i>Sexual harassment</i>	134	144	148	157	185	147	915
<i>Non-sexual harassment</i>	2,170	2,666	2,604	2,667	3,042	2,956	16,105
Total EEO harassment cases	2,304	2,810	2,752	2,824	3,227	3,103	17,020
Total EEO cases	4,611	5,171	4,968	4,839	5,699	5,451	30,739

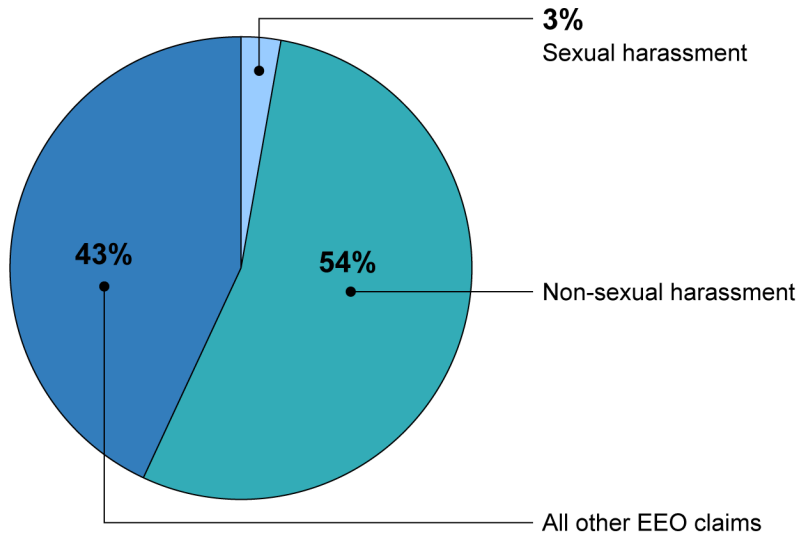
Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: This table shows cases filed through VA’s EEO process during this time period that included a claim of harassment, and the total number of EEO cases. “Non-sexual harassment” includes all types of harassment other than sexual. These data do not indicate whether the EEO process resulted in a finding of discrimination.

As shown in figure 13, in fiscal year 2019, EEO cases that included a claim of sexual harassment made up 3 percent of all EEO cases filed at VA during this time period, and 5 percent of all EEO cases that included a claim of harassment.

Appendix III: VA Data on Equal Employment Opportunity Program and Harassment Prevention Program Cases

Figure 13: Equal Employment Opportunity (EEO) Cases at VA by Type, Filed in Fiscal Year 2019



Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: This figure shows cases filed through VA's EEO process during this time period. These data do not indicate whether the EEO process resulted in a finding of discrimination.

Harassment Prevention Program (HPP) Data

ORM uses an online Microsoft SharePoint site as a case-tracking system to track and monitor HPP cases. Since the program began recording data in February 2016, 94 HPP cases were filed that included allegations of sexual harassment through the end of fiscal year 2019, with nearly one-third of employees concurrently filing an EEO case (see table 6).

Table 6: Harassment Prevention Program (HPP) Sexual Harassment Cases Filed at VA and Whether an Equal Employment Opportunity (EEO) Complaint Was Also Filed, Fiscal Years 2016 through 2019

	Fiscal year case initially filed				Grand total
	2016	2017	2018	2019	
Filed an HPP case only	7	6	26	29	68
Filed an EEO complaint in addition to HPP case	3	5	14	4	26
Grand total	10	11	40	33	94

Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: These data do not indicate whether the HPP process resulted in a finding of harassment. For those cases where an EEO case was also filed, these data also do not indicate whether the EEO process resulted in a finding of discrimination.

**Appendix III: VA Data on Equal Employment
Opportunity Program and Harassment
Prevention Program Cases**

VA data show that in fiscal years 2016 through 2019, less than half of the HPP cases resulted in a finding of harassment (see table 7).

Table 7: Harassment Prevention Program (HPP) Sexual Harassment Cases Filed at VA and Whether There Was a Finding of Harassment, Fiscal Years 2016 through 2019

Was there a finding of harassment?	Fiscal year case initially filed				Grand total
	2016	2017	2018	2019	
Yes	3	5	15	13	36
No	7	6	25	15	53
Data not available ^a	-	-	-	5	5
Grand total	10	11	40	33	94

Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: After conducting an informal investigation of an HPP complaint, VA managers determine whether harassment occurred. No determination is made as to whether the harassment was unlawful.

^aFour of the HPP cases filed in fiscal year 2019 were still open at the time of our review, so they did not include data on whether there was a finding of harassment. One additional case did not have a value for whether there was a finding of harassment.

Most HPP cases are filed by employees of VHA, who make up about 90 percent of the agency (see table 8).

Table 8: Harassment Prevention Program (HPP) Sexual Harassment Cases, by VA Administration, Filed in Fiscal Years 2016 through 2019

VA administration/office	Fiscal year case initially filed				Grand total
	2016	2017	2018	2019	
Veterans Health Administration	10	11	29	27	77
Veterans Benefits Administration	0	0	8	3	11
National Cemetery Administration	0	0	0	0	0
Other VA offices	0	0	3	3	6
Grand total	10	11	40	33	94

Source: GAO analysis of Department of Veterans Affairs (VA) data. | GAO-20-387

Note: These data do not indicate whether the HPP process resulted in a finding of harassment.

Appendix IV: Comments from the Department of Veterans Affairs



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON

May 21, 2020

Ms. Cindy S. Brown Barnes
Director
Education, Workforce, and
Income Security
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Brown Barnes:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office (GAO) draft report: ***SEXUAL HARASSMENT: Inconsistent and Incomplete Policies and Information Hinder VA's Efforts to Protect Employees*** (GAO-20-387).

The enclosure contains the actions to be taken to address the draft report recommendations. VA appreciates the opportunity to comment on your draft report.

Sincerely,

A handwritten signature in blue ink that reads "Brooks D. Tucker".

Brooks D. Tucker
Acting Chief of Staff

Enclosure

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
***“SEXUAL HARASSMENT: Inconsistent and Incomplete Policies and Information
Hinder VA’s Efforts to Protect Employees”***
(GAO-20-387)

Recommendation 1: VA’s Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness should realign VA’s EEO Director position to adhere to the applicable EEOC directive by ensuring the position is not responsible for personnel functions.

VA Response: Non-Concur. VA believes the Equal Employment Opportunity (EEO) Director is aligned properly and that VA is following the Equal Employment Opportunity Commission (EEOC) regulations.

The Assistant Secretary of Human Resources and Administration/Operations, Security and Preparedness (HRA/OSP) serves as the EEO Director, one of many roles within an extensive portfolio. In the capacity of the EEO Director, the Assistant Secretary HRA/OSP maintains general oversight and accountability for the EEO process in VA and reports directly to the VA Secretary. The daily operations of VA’s EEO work are managed by the Deputy Assistant Secretary for the Office of Resolution Management, Diversity and Inclusion (ORMDI) who reports to the Principal Deputy Assistant Secretary for HRA/OSP, who, in turn, reports to the Assistant Secretary HRA/OSP.

The Assistant Secretary of HRA/OSP is not involved in the daily management, advising, nor oversight of the EEO complaint process referenced in EEOC Management Directive MD-110 Chapter 1(IV)(A). Nor is the Assistant Secretary the agency official responsible for executing and advising on personnel actions. VA’s Chief Human Capital Officer, a position established in July 2019, is primarily focused on matters of VA policy and oversight, and operational personnel matters are handled primarily by the three Administration field Human Resources (HR) offices. Both the EEO complaint process and personnel complaints are handled by senior leaders at the operational level and not personally by the Assistant Secretary of HRA/OSP.

Recommendation 2: VA’s Deputy Assistant Secretary for Resolution Management should complete VA’s EEO Program Manager realignment initiative at VBA and VHA in accordance with VA policy.

VA Response: Concur. In January 2016, the Deputy Assistant Secretary ORMDI began executing an implementation plan to realign the National Cemetery Administration (NCA) and Veterans Benefits Administration (VBA) EEO Managers under ORMDI’s organizational structure, in accordance with 29 C.F.R. §1614.102(b)(4) and EEOC provisions, Management Directive (MD)-110 Chapter 1 (111) (A), and the essentials elements of a “Model EEO Program” stated in MD-715. In 2017, the EEO programs from NCA and VBA, two of the three VA Administrations, were realigned. Additionally,

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
***“SEXUAL HARASSMENT: Inconsistent and Incomplete Policies and Information
Hinder VA’s Efforts to Protect Employees”***
(GAO-20-387)

the EEO program from the Office of Information and Technology (OIT) was realigned in 2017.

Subsequent to VBA’s realignment in 2017, EEOC issued an assessment of VBA’s EEO program in March 2018, which required the additional realignment of 15 EEO Managers who service VBA regional offices with more than 600 employees. In compliance with EEOC’s assessment, ORMDI’s fiscal year (FY) 2021 budget includes 13 full time employees (FTE), and the FY 2022 budget request includes the remaining two FTEs. There will be a total of 21 VBA EEO Managers realigned under ORMDI by the projected date of October 2021. Documentation was submitted on March 3, 2020, to GAO substantiating the inclusion of the 13 FTEs within ORMDI’s budget for FY 2021. The remaining two FTEs, as previously stated, have been included in ORMDI’s FY 2022 budget, which is pending approval from the Office of Management and Budget and Congress. The FY 2022 budget request is expected to be finalized and printed in February 2021.

After completion of VBA’s realignment, a plan will be developed for the realignment of the EEO Managers from the Veterans Health Administration (VHA) that is contingent upon the availability of funds. This realignment is estimated to take longer in view of VHA’s organizational complexity and size. The projected time for the realignment is from FY 2024 and beyond.

Recommendation 3: VA’s Deputy Assistant Secretary for Resolution Management should ensure that ORM reviews all existing VA and administration policies and information to make sure they are current, complete and aligned with VA’s sexual harassment policy.

VA Response: Concur. The Deputy Assistant Secretary ORMDI recognizes the need to ensure all policies throughout the Department are current, complete and aligned with the Department’s sexual harassment policy. ORMDI will develop a plan of action to implement a review process to ensure consistency throughout the Administrations and Staff Offices by the end of first quarter, FY 2021; implementation will begin no later than the second quarter of FY 2021.

Recommendation 4: VA’s Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness, in consultation with ORM should finalize the HPP Directive and handbook to formalize HPP.

VA Response: Concur. VA’s Assistant Secretary for HRA/OSP, in consultation with the Deputy Assistant Secretary ORMDI agrees to finalize these documents. The Harassment Prevention Program (HPP) directive and handbook is currently in the

Enclosure

Department of Veterans Affairs (VA) Comments to
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***“SEXUAL HARASSMENT: Inconsistent and Incomplete Policies and Information
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(GAO-20-387)

official review process and expected to be finalized and distributed by December 2020. Based on guidance found in GAO-14-704G, principle 12, the HPP Office will issue a management-approved interim policy by August 30, 2020, which will be in effect until the final document is issued.

Recommendation 5: 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.

VA Response: Concur. ORMDI will partner with the VA Administrations and Staff Offices to develop a system that will share allegations of sexual harassment, reported through the management process, with the HPP Office. This new system will allow managers to report allegations, outcomes and corrective actions, and has a targeted implementation date of the end of FY 2021.

Recommendation 6: 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 these actions occurred to ORM.

VA Response: Concur. ORMDI will work with the same group identified in Response to Recommendation 5 and require managers and supervisors to upload these actions into a system by the end of FY 2021. This requirement will be outlined in the HPP directive and handbook.

Recommendation 7: 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.

VA Response: Concur. The Deputy Assistant Secretary ORMDI is partnering with the VA Chief Learning Officer to restructure sexual harassment prevention training no later than the end of FY 2021 to make it more impactful and to include modules that would be assigned to every employee based on his or her role or job function. New employees will receive training on VA standards of conduct, culture of a harassment-free

**Appendix IV: Comments from the Department
of Veterans Affairs**

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workplace, duty to identify and to report, and programs of support in the event of harassment. New supervisors will receive additional training on how to address instances of harassment, their duty to create and ensure a harassment free workplace and culture, the duty to report, and programs to support supervisors’ needs regarding harassment. Senior Leaders will receive training like supervisors regarding establishing of the “no-tolerance” culture, applicable policies and duty to report.

Department of Veterans Affairs
May 2020

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Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Cindy S. Brown Barnes, (202) 512-7215 or brownbarnesc@gao.gov

Staff Acknowledgments

In addition to the contact named above, Nyree Ryder Tee (Assistant Director), Rebecca Kuhlmann Taylor (Analyst-in-Charge), Connor L. Kincaid, and Matthew W. Rowen made significant contributions to the report. Also contributing to this report were Susan Aschoff, Edward F. Bodine, Breanne Cave, Sarah Cornetto, Edda Emmanuelli Perez, Katherine Lenane, Amanda K. Miller, Mimi Nguyen, David M. Reed, Linda L. Siegel, Almeta Spencer, and Sonya Vartivarian.

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