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July 30, 2024

The Honorable Jon Tester
Chairman
The Honorable Jerry Moran
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Mike Bost
Chairman
The Honorable Mark Takano
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Veterans Affairs: VA Should Develop and Report an Estimate of Needed Equal Employment Opportunity Counselors

Equal employment opportunity (EEO) counselors play a vital role in agencies' EEO programs. They serve as neutral parties to provide employees with important information on their rights and obligations under EEO laws, gather basic information from aggrieved employees, and attempt to informally resolve issues. Counselors also advise employees on their rights to file a formal complaint and help to ensure prompt and efficient processing of complaints. Within the Department of Veterans Affairs (VA), the Office of Resolution Management, Diversity & Inclusion is responsible for managing the department's EEO complaint processing. VA officials told us that EEO counselors are the first line of defense in complaint resolution.

The Consolidated Appropriations Act, 2023 requires the Secretary of VA to make available to the public an annual report on several aspects of its employment discrimination complaint resolution system.¹ Among other things, VA is to report an estimate of the required ratio of VA employees whose duties include EEO counseling functions relative to the number of full-time equivalent VA employees (FTEE).

The Act also includes a provision for GAO to submit an independent assessment of the required ratio reported by the Secretary.² This report examines VA's reporting on the ratio of EEO counselors.

To address this objective, we reviewed the Consolidated Appropriations Act, 2023. We also reviewed and assessed VA's Consolidated Appropriations Act, 2023 Annual Report when it was

¹Pub. L. No. 117-328, div. U, tit. IV, § 408(c), 136 Stat. 4459, 5497. The first such annual report from VA was due December 29, 2023.

²Pub. L. No. 117-328, div. U, tit. IV, § 408(d), 136 Stat. 4459, 5497.

posted in December 2023 as well as VA's subsequent update. We interviewed VA officials who were knowledgeable about the report and obtained information from the Equal Employment Opportunity Commission (EEOC).³

On April 25, 2024, we briefed your staff on the limitations of our ability to assess VA's reporting. We told staff we were not in a position to assess "the [required] ratio reported by the Secretary" as outlined in the Act because VA did not develop one. This report formally conveys the information provided during that briefing.

We conducted this performance audit from December 2023 to July 2024 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.

In December 2023, VA posted its Consolidated Appropriations Act, 2023 Annual Report to its website.⁴ In response to the Act's requirement to include an estimate of the required ratio of VA employees whose duties include EEO counseling functions relative to the number of VA FTEE, VA reported, "The EEOC has not published a recommended ratio of counselors to FTEE" and officials stated such information would help guide them in determining their own ratio.⁵ VA did not report an estimate of the required ratio.

EEOC officials told us agencies are required to provide sufficient resources for their EEO programs to ensure efficient and successful operation. VA officials said that determining the number of needed counselors is challenging because it will fluctuate based on several factors including changes in employee complaint activity. VA officials also said that an EEO counselor cap imposed by the Consolidated Appropriations Act, 2023 may hinder its ability to resolve EEO complaints as required by EEOC Management Directive 110.⁶ However, the Act also directs VA to notify Congress if the number is insufficient for VA to meet its required obligations under the law.

In March 2024, VA reiterated that EEOC has not published a ratio for how many counselors agencies should have per the number of employees. VA also updated the report on its website to include its current ratio of the number of employees whose duties include EEO counseling functions relative to the total number of FTEEs in the department, which is 1:7,043. While VA

³EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy and related conditions, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.

⁴[Consolidated Appropriations Act Data - Office of Resolution Management, Diversity & Inclusion \(ORMDI\) \(va.gov\)](#) (accessed 12/22/23).

⁵EEOC officials told us it recommends that agencies base staffing decisions on agency size and annual pre-complaint activity.

⁶The Consolidated Appropriations Act, 2023 imposes a cap on the number of VA employees whose duties include equal employment opportunity counseling functions. Management Directive 110 provides federal agencies with policies, procedures, and guidance on the processing of employment discrimination complaints governed by EEOC regulations. EEOC, *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)* (Washington, D.C.: Aug. 5, 2015).

has updated its report to include the current ratio of employees whose duties include counseling functions relative to FTEEs, it did not report an estimated ratio of VA employees needed to carry out its EEO counseling functions relative to the number of VA FTEEs as the law requires.

Without developing and using a sound methodology to estimate how many EEO counselors VA needs to effectively manage its program and reporting to Congress the department's needs, VA may not be well positioned to respond to employees' EEO complaints.

Conclusions

EEO counselors play a critical role to help ensure that agencies' EEO programs operate as intended. Not having enough counselors to timely address employees' complaints can put an agency's EEO program in jeopardy of not meeting EEOC requirements and harm employees. Without developing and communicating to Congress an estimate of counselors needed, VA is not best positioned to effectively manage its EEO program and assist employees.

Recommendation for Executive Action

We are making one recommendation to VA.

The Secretary of VA should ensure that the Office of Resolution Management, Diversity & Inclusion develops and uses a sound methodology to estimate how many EEO counselors it needs to manage its EEO program efficiently and successfully and report this information to Congress. As part of this process, VA could work with EEOC to determine the best method for developing such an estimate. (Recommendation 1).

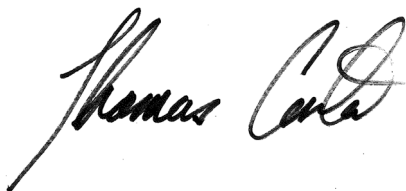
Agency Comments

We sent a copy of this report to VA for review and comment. VA did not provide comments on the draft report.

We are sending copies of this report to the relevant congressional committees. In addition, the report is 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) 512-4769 or costat@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are Nyree Ryder Tee (Assistant Director), Mary Edgerton, Alex Galuten, and Dana Hopings.

Sincerely yours,



Thomas Costa
Director, Education, Workforce, and Income Security

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