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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

December 4, 2017

The Honorable David J. Shulkin  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Ave., NW  
Washington, D.C. 20420

Dear Mr. Secretary:

I am writing to request information from the Department of Veterans Affairs (VA) regarding VA's ongoing efforts to improve the treatment and protection of whistleblowers. I am troubled by recent reports that, despite being given more tools and guidance, VA is failing to treat claims of retaliation appropriately.<sup>1</sup>

On April 27, 2017, President Trump signed Executive Order 13793, which created the VA Office of Accountability and Whistleblower Protection (OAWP).<sup>2</sup> Congress subsequently made OAWP permanent by enacting the Department of Veterans Affairs Accountability Protection Act of 2017.<sup>3</sup> Under this legislation, VA is required to develop criteria to promote supervisory protection of whistleblowers and provide supervisors with related training. The law also created precise time periods for review of adverse actions and revised VA's authority to remove certain senior employees or executives for reasons of misconduct, including permitting whistleblowers to be demoted or suspended.<sup>4</sup>

In late October, the *Washington Post* reported that despite rhetoric and legislation to improve VA's handling of whistleblower issues, "retaliation remains active [and] growing."<sup>5</sup> In

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<sup>1</sup> *Victims Say VA Whistleblower Retaliation is Growing Under Trump, Despite Rhetoric*, Washington Post (Oct. 30, 2017) ([washingtonpost.com/news/powerpost/wp/2017/10/30/victims-say-va-whistleblower-retaliation-is-growing-under-trump-despite-rhetoric/?utm\\_term=.1e5b6c18b20f](https://www.washingtonpost.com/news/powerpost/wp/2017/10/30/victims-say-va-whistleblower-retaliation-is-growing-under-trump-despite-rhetoric/?utm_term=.1e5b6c18b20f)).

<sup>2</sup> Exec. Order No. 13793, Fed. Reg. 20539 (Apr. 27, 2017).

<sup>3</sup> Pub. L. No. 115-41 (2017).

<sup>4</sup> Department of Veterans Affairs Accountability Protection Act of 2017, Pub. L. No. 115-41.

<sup>5</sup> *Victims Say VA Whistleblower Retaliation is Growing Under Trump, Despite Rhetoric* (Oct. 30, 2017) ([washingtonpost.com/news/powerpost/wp/2017/10/30/victims-say-va-whistleblower-retaliation-is-growing-under-trump-despite-rhetoric/?utm\\_term=.1e5b6c18b20f](https://www.washingtonpost.com/news/powerpost/wp/2017/10/30/victims-say-va-whistleblower-retaliation-is-growing-under-trump-despite-rhetoric/?utm_term=.1e5b6c18b20f)).

the article, VA whistleblowers also expressed concerns about continuing, overt retaliation from the Veterans Affairs Central Office (VACO) and delays in resolving complaints.<sup>6</sup>

In order to better understand VA's efforts to address ongoing concerns regarding whistleblower protections and retaliation, I request that VA provide written answers to the following questions prior to the briefing we anticipate on this matter but no later than December 22, 2017:

1. What policy or regulatory changes has VA made, including timeliness of complaint review, in order to implement the Department of Veterans Affairs Accountability Protection Act of 2017?
2. What other steps has VA taken to address ongoing concerns that whistleblower protections are not effective, despite recent rhetoric and legislation?
3. Has the VA identified resources or other root causes for employees' lack of confidence in VA's handling of whistleblower complaints?
4. What policies does VA and OAWP have in place to protect the confidentiality of whistleblowers?
5. Please explain VA OAWP's organizational structure, the number of employees assigned to OAWP, and their roles and responsibilities.
6. Please explain the OAWP intake process for whistleblower complaints.
7. What policies or procedures does OAWP have in place to maintain its independence, including whether OAWP has its own legal counsel?
8. Has OAWP established an official working relationship with the VA Office of Inspector General or the Office of Special Counsel? If so, please describe and if not, please explain.
9. From the establishment of OAWP on April 7, 2017, to the present, please provide information on the following:
  - a. The number of whistleblower complaints OAWP has received;
  - b. The number of whistleblower complaints investigated;

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<sup>6</sup> *Victims Say VA Whistleblower Retaliation is Growing Under Trump, Despite Rhetoric*, Washington Post (Oct. 30, 2017) ([washingtonpost.com/news/powerpost/wp/2017/10/30/victims-say-va-whistleblower-retaliation-is-growing-under-trump-despite-rhetoric/?utm\\_term=.1e5b6c18b20f](https://www.washingtonpost.com/news/powerpost/wp/2017/10/30/victims-say-va-whistleblower-retaliation-is-growing-under-trump-despite-rhetoric/?utm_term=.1e5b6c18b20f)).

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- c. The number of whistleblower complaints substantiated, unsubstantiated, and dismissed without investigation;
- d. The number of complaints in which the complainant was interviewed;
- e. The number of complaints referred for investigation at another agency, including the agency to which the complaint was referred;
- f. Median case processing times for each stage of complaint handling; and,
- g. Whether any disciplinary action have been taken where a complaint was substantiated.

Thank you for your assistance with this matter. If you have any questions please contact Saundra Shropshire with my Committee staff at (202) 224-2630 or [Saundra\\_Shropshire@hsgac.senate.gov](mailto:Saundra_Shropshire@hsgac.senate.gov). Please send any official correspondence related to this request to Lucy Balcezak at [Lucy\\_Balcezak@hsgac.senate.gov](mailto:Lucy_Balcezak@hsgac.senate.gov).

Sincerely,



Claire McCaskill  
Ranking Member

cc: Ron Johnson  
Chairman