



**Statement of
Melissa Wasser, Policy Counsel
Project On Government Oversight
before the House Committee on Veterans' Affairs
Subcommittee on Oversight and Investigations
Legislative Hearing on Whistleblower Reforms at the Department of Veterans Affairs
April 21, 2021**

Chairman Pappas, Ranking Member Mann, and members of the Subcommittee, thank you for the opportunity to submit a statement for the record regarding two discussion draft bills that include whistleblower reforms at the Department of Veterans Affairs (VA). I am Melissa Wasser, a policy counsel at the Project On Government Oversight (POGO). POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Whistleblowers at the Department of Veterans Affairs put their careers at risk every time they speak truth to power to ensure the best care possible for those who put their lives on the line to defend our country. VA whistleblowers are heroes serving heroes.

Disclosures by VA whistleblowers save patients' lives by bringing to light barriers to timely and effective medical care due to negligence or intentional misconduct, exposing officials who have perpetuated a culture of abuse for decades, and freeing up taxpayer dollars that are being misused and that instead could go toward providing resources and care.¹

Two discussion draft bills before this subcommittee today would make vast improvements in strengthening protections for VA whistleblowers and improving the functionality of the department's Office of Accountability and Whistleblower Protection (OAWP). In addition to discussing how these bills would improve the system meant to protect those who act to expose corruption or waste and fraud, POGO will also offer more reforms that are desperately needed to truly protect VA whistleblowers and increase oversight measures within the agency.

Strengthening VA Whistleblower Protection Act of 2021

The Strengthening VA Whistleblower Protection Act of 2021 would make great strides by implementing structural changes to give the OAWP greater independence from the agency and

¹ Donovan Slack, "Exclusive: 'The VA is two-faced.' Whistleblowers say managers are trying to silence them on veteran care," *USA Today*, June 22, 2019. <https://www.usatoday.com/story/news/politics/2019/06/22/va-health-care-workers-disciplined-reporting-veteran-problems/1480893001/>; Daniel Van Schooten, "VA Whistleblower Office Wasted \$300,000 on 'Useless' Training," Project On Government Oversight, October 24, 2019. <https://www.pogo.org/investigation/2019/10/va-whistleblower-office-wasted-300-000-on-useless-training/>

agency leadership. The bill would establish an OAWP-specific general counsel, and makes clear that OAWP employees cannot speak with the VA general counsel on ongoing cases. Additionally, employees of the VA Office of General Counsel would be banned from joining the OAWP general counsel's office for at least two years after working at the VA Office of General Counsel, closing a revolving door between the agency and OAWP. This would help the OAWP become more independent and would remove many conflicts it currently faces due to working with the VA Office of General Counsel. Even VA employees have reported improper coordination between OAWP and the VA Office of General Counsel.² OAWP's independence from the agency is of great importance because it would help ensure an unbiased view of allegations and would help to better protect whistleblowers and hold agency officials accountable for misconduct.³

The bill would also require OAWP to help whistleblowers through their cases, fulfilling the VA's "duty to assist."⁴ The bill would also strengthen whistleblower protections for Senior Executive Service employees, create an alternative dispute resolution program meant to help mediate resolutions, and make retaliatory licensure board referrals a prohibited personnel practice.

In addition to these essential reforms that would increase the OAWP's independence from agency leadership, broader reforms would also be critical to ensuring that VA whistleblowers can come forward without risking their careers or even their own medical care.⁵ Congress should consider further reforms to the Whistleblower Protection Act to address issues that plague not only VA whistleblowers, but all federal employees who can claim protection from retaliation under the law.⁶ While VA whistleblowers have protections against retaliatory investigations, a common form of retaliation, this protection currently has no enforcement mechanism to ensure relief. Including an enforcement mechanism would allow whistleblowers to benefit from this protection and exercise their ability to come forward to report waste, fraud, and abuse without fear of punishment for speaking truth to power.⁷

Amending Title 38 to Strengthen and Improve Whistleblower Protection Office

² Eric Katz, "VA Office Meant to Protect Whistleblowers Actually Helped Retaliate Against Them, IG Finds," *Government Executive*, October 24, 2019. <https://www.govexec.com/management/2019/10/va-office-meant-protect-whistleblowers-actually-retaliated-against-them-ig-finds/160847/>

³ Daniel Van Schooten, "'Terrified' of Retaliation Inside Veterans Affairs Whistleblower Office," Project On Government Oversight, March 5, 2020. <https://www.pogo.org/investigation/2020/03/terrified-of-retaliation-inside-veterans-affairs-whistleblower-office/>

⁴ 38 C.F.R. § 21.1032 (2021)

⁵ Jim Axelrod and Michael Kaplan, "Whistleblower: VA failed to properly assess hundreds of veterans for traumatic brain injuries," *CBS News*, November 12, 2020. <https://www.cbsnews.com/news/veterans-traumatic-brain-injuries-va-new-orleans-whistleblower/>

⁶ Liz Hempowicz, "The State of Whistleblower Protections and Ideas for Reform," Project On Government Oversight, January 28, 2020. <https://www.pogo.org/testimony/2020/01/the-state-of-whistleblower-protections-and-ideas-for-reform/>

⁷ Additional recommendations are available in a discussion draft of the Whistleblower Protection Improvement Act of 2021. That bill would give federal employees a right to jury trials; the right to petition Congress directly with a whistleblowing disclosure; and would ensure whistleblowers can seek a stay, or temporary relief, when they are retaliated against while their case is pending.

The discussion draft of the bill that amends Title 38 to make modifications to OAWP includes new reporting requirements meant to strengthen and improve the office. These reports would include full and substantive analysis of the activities of the office; the identification of any issues within the office; the identification of concerns around the office's size, staffing, and resources; and any potential recommendations from the head of OAWP on any legislative or administrative action. The bill also gives the secretary of the VA the authority to transfer funds to the Office of Special Counsel to help address whistleblower and retaliation claims.

While these reports would give Congress and the public access to crucial data around whistleblowing at the VA, what would help OAWP even more is implementing more robust, updated training for VA employees on their whistleblower rights and obligations, along with training for employees on how a whistleblower's information is shared between investigative entities.⁸

This draft bill is a good start on making improvements to OAWP, but POGO recommends that the subcommittee go further to transfer the office's investigative functions to the Office of Special Counsel, rather than make the authority to transfer this responsibility subject to the discretion of the VA secretary. This would eliminate the potential conflict between the agency and OAWP, and would allow OAWP to take on a more educational role within the agency, to help promote a culture where whistleblowers are celebrated rather than retaliated against.

VA whistleblowers blow the whistle because they believe it is their duty to speak up when they witness violations of the country's trust.⁹ These two bills would mark significant progress for implementing changes for VA whistleblowers, but can go so much further with the above recommendations. I look forward to working with the subcommittee to further explore how whistleblowers can be better protected at the VA.

POGO thanks the subcommittee for holding this important hearing, and we urge you to act to expeditiously fix this broken system for VA whistleblowers. If you have any questions or need additional information, please contact me at mwasser@pogo.org.

Sincerely,



Melissa Wasser
Policy Counsel

⁸ Rebecca Jones, "Whistleblower Retaliation at the Department of Veterans Affairs," Project On Government Oversight, June 25, 2019. <https://www.pogo.org/testimony/2019/06/whistleblower-retaliation-at-the-department-of-veterans-affairs/>

⁹ Rebecca Jones, "Whistleblower Retaliation at the Department of Veterans Affairs" [see note 8].