

GAO Highlights

Highlights of [GAO-15-112](#), a report to the Chairman, Committee on the Judiciary, U.S. Senate.

Why GAO Did This Study

Whistleblowers help safeguard the federal government against waste, fraud, and abuse—however, they also risk retaliation by their employers. For example, in 2002, a former FBI agent alleged she suffered retaliation after disclosing that colleagues had stolen items from Ground Zero following the September 11, 2001, terrorist attacks. DOJ found in her favor over 10 years after she reported the retaliation. GAO was asked to review DOJ's process for handling such complaints.

GAO examined (1) the time DOJ took to resolve FBI whistleblower retaliation complaints, (2) the extent to which DOJ took steps to resolve complaints more quickly, and (3) the extent to which DOJ complied with certain regulatory reporting requirements.

GAO reviewed all DOJ case files for FBI whistleblower retaliation complaints DOJ closed from 2009 to 2013, and interviewed whistleblower attorneys, advocates, and government officials about the complaint process. The interview results are not generalizable.

What GAO Recommends

Congress may wish to consider whether FBI whistleblowers should have means to seek corrective action if retaliated against for disclosures to supervisors, among others. Further, GAO recommends that DOJ clarify guidance to clearly convey to whom employees can make protected disclosures, provide complainants with estimated complaint decision timeframes, and develop an oversight mechanism to monitor regulatory compliance. DOJ and the Office of the Inspector General concurred with GAO's recommendations.

View [GAO-15-112](#). For more information, contact David Maurer at (202) 512-8777 or maurerd@gao.gov.

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WHISTLEBLOWER PROTECTION

Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints

What GAO Found

The Department of Justice (DOJ) closed 44 of the 62 (71 percent) Federal Bureau of Investigation (FBI) whistleblower retaliation complaints we reviewed within 1 year, took up to 4 years to close 15 complaints, and took up to 10.6 years to close the remaining 3. DOJ terminated 55 of the 62 complaints (89 percent) and awarded corrective action for 3. (Complainants withdrew 4.) We found that DOJ terminated many (48 of 62) complaints we reviewed because they did not meet certain regulatory requirements. For example, DOJ terminated at least 17 complaints in part because a disclosure was made to someone in the employee's chain of command or management, such as a supervisor, who was not one of the nine high-level FBI or DOJ entities designated under DOJ regulations to receive such disclosures. Unlike employees of other executive branch agencies, FBI employees do not have a process to seek corrective action if they experience retaliation based on a disclosure of wrongdoing to their supervisors or others in their chain of command who are not designated officials. This difference is due, in part, to DOJ's decisions about how to implement the statute governing FBI whistleblowers. In 2014, DOJ reviewed its regulations and, in an effort to balance competing priorities, recommended adding more senior officials in FBI field offices to the list of designated entities, but did not recommend adding all supervisors. DOJ cited a number of reasons for this, including concerns about the additional resources and time needed to handle a possible increase in complaints if DOJ added supervisors. However, DOJ is already taking other steps to improve the efficiency of the complaint process. More importantly, dismissing retaliation complaints made to an employee's supervisor or someone in that person's chain of command leaves some FBI whistleblowers—such as the 17 complainants we identified—without protection from retaliation. By dismissing potentially legitimate complaints in this way, DOJ could deny some whistleblowers access to recourse, permit retaliatory activity to go uninvestigated, and create a chilling effect for future whistleblowers.

We also found that DOJ and FBI guidance is not always clear that FBI employees reporting alleged wrongdoing to a supervisor or someone in their chain of command may not be a protected disclosure. Ensuring that guidance always clearly explains to whom an FBI employee can report wrongdoing will help FBI whistleblowers ensure that they are fully protected from retaliation.

DOJ took from 2 to 10.6 years to resolve the 4 complaints we reviewed that DOJ adjudicated, and DOJ did not provide complainants with estimates of when to expect DOJ decisions throughout the complaint process. Providing such estimates would enhance accountability to complainants and provide additional assurance about DOJ management's commitment to improve efficiency.

Further, DOJ offices responsible for investigating whistleblower retaliation complaints have not consistently complied with certain regulatory requirements, such as obtaining complainants' approvals for extensions of time. One investigating office does not track investigators' compliance with specific regulatory requirements and does not have a formal oversight mechanism to do so. Effectively monitoring investigators' compliance with such requirements could help assure complainants that their cases are making progress and that they have the information they need to determine next steps for their complaints.