

GAO Highlights

Highlights of [GAO-17-110](#), a report to congressional committees

Why GAO Did This Study

Federal employee whistleblowers—individuals who report violations of law or certain agency mismanagement—may risk reprisals from their agencies. WPEA seeks to strengthen the rights of and protections for federal whistleblowers.

WPEA includes a provision for GAO to report on the law's implementation. This report (1) describes changes in the number of whistleblower reprisal appeals filed with MSPB, as well as the outcome of appeals, since WPEA's effective date; (2) provides subject matter specialists' views about granting MSPB summary judgment authority for whistleblower cases; and (3) provides subject matter specialists' views about granting jurisdiction for a subset of whistleblower appeals to be decided by a district court of the United States.

GAO obtained data from MSPB on whistleblower appeals received and closed from fiscal years 2011 through 2015. This period begins approximately 2 years prior to WPEA's effective date of December 27, 2012, and continues through the end of fiscal year 2015. GAO also conducted six focus groups with subject matter specialists that include whistleblower advocates and agency labor relations officials.

What GAO Recommends

GAO recommends that MSPB help ensure the accuracy of its reporting on whistleblower appeals received and closed by (1) updating its data entry user guide to include additional guidance and procedures, and (2) adding a quality check in its data analysis and reporting process to better identify discrepancies. MSPB agreed with these recommendations.

View [GAO-17-110](#). For more information, contact Yvonne D. Jones at (202) 512-2717 or jonesy@gao.gov.

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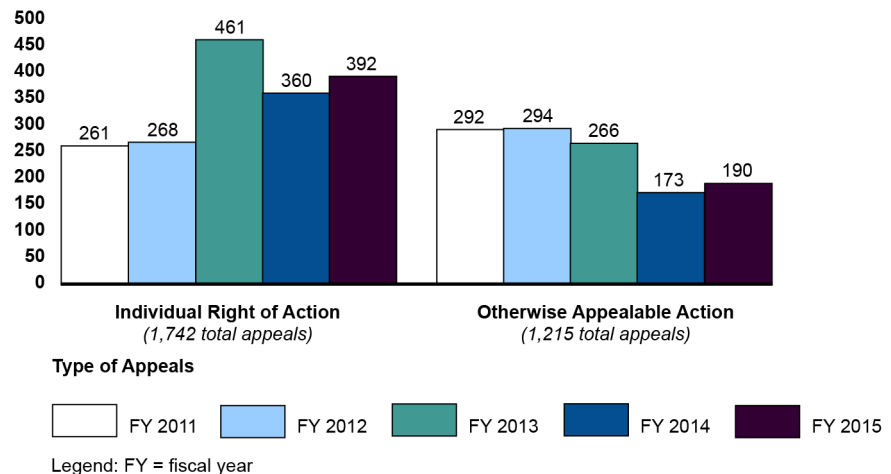
WHISTLEBLOWER PROTECTION

Additional Actions Would Improve Recording and Reporting of Appeals Data

What GAO Found

Of the two types of whistleblower appeals—individual right of action (IRA) and otherwise appealable action (OAA)—Merit Systems Protection Board (MSPB) data show higher numbers of IRA appeals received by MSPB after enactment of the Whistleblower Protection Enhancement Act of 2012 (WPEA). In an IRA appeal, an individual has been subject to a personnel action, such as a reassignment, and claims the action was reprisal for whistleblowing. In contrast, the number of OAA appeals decreased after WPEA. In an OAA appeal, an individual has been subject to an action directly appealable to MSPB, such as a demotion, and claims that the action was taken because of whistleblowing. WPEA, among other things, clarified the scope of protected disclosures which may have contributed to a higher number of IRA appeals. WPEA did not alter MSPB's jurisdiction over OAAs.

Annual Numbers of Two Kinds of Whistleblower Appeals Before and After Whistleblower Protection Enhancement Act's Enactment in 2012
Number of appeals



Source: GAO analysis of Merit Systems Protection Board data. | GAO-17-110

MSPB has taken steps to collect and report whistleblower appeals data. GAO identified a number of weaknesses in MSPB's data collection. Some were due to shortcomings in data coding that resulted in over reporting appeals closed. Further, MSPB has not updated its data entry user guides to reflect new reporting requirements nor has it instituted checks to ensure data accuracy, which are inconsistent with internal control standards.

Subject matter specialists varied in their opinions about the benefits of granting summary judgment authority—a procedural device used when there is no dispute as to the material facts of the case—to MSPB. Benefits cited included a more efficient process; but negatives included the loss of a whistleblower's right to a hearing. Similarly, the specialists provided a mix of opinions about granting jurisdiction for cases to U.S. District Courts. A benefit cited was access to a jury trial, while a negative cited was the increased workload of the courts.