



February 2023

VETERANS HEALTH ADMINISTRATION

Action Needed to Address Persistent Control Weaknesses and Related Risks in Employee Screening Processes

GAO Highlights

Highlights of [GAO-23-104296](#), a report to Congressional Requesters

Why GAO Did This Study

The Department of Veterans Affairs (VA) operates one of the largest health care systems in the nation, with over 9 million veterans enrolled in the VHA health care program. VHA is responsible for ensuring that its more than 400,000 health care providers and support staff are qualified, competent, and suitable to provide safe care.

GAO was asked to review VHA's employment and suitability procedures. This report examines the extent to which (1) VHA responded to adverse information regarding employees' criminal history or DEA registrations and (2) vulnerabilities exist in VHA's processes for completing and documenting background investigations.

GAO analyzed a generalizable sample of 305 VHA employees employed as of January and June 2020 with indications of controlled substance-related criminal history. GAO examined court records and other documentation, reviewed regulations and policies, and interviewed officials from VHA, DEA, and other agencies.

What GAO Recommends

GAO is making 14 recommendations to VA, including that VHA establish a timeline for finalizing and implementing a policy regarding DEA employment waivers. Such a policy should include guidance for determining whether employees have access to controlled substances. GAO also recommends that VHA establish control procedures to ensure background investigations are completed and documented. VA agreed with GAO's recommendations.

View [GAO-23-104296](#). For more information, contact Seto Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov or Sharon Silas at (202) 512-7114 or silass@gao.gov.

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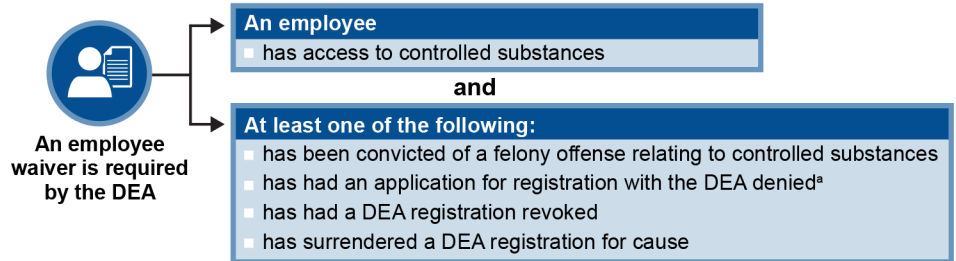
VETERANS HEALTH ADMINISTRATION

Action Needed to Address Persistent Control Weaknesses and Related Risks in Employee Screening Processes

What GAO Found

The Veterans Health Administration (VHA) received adverse information regarding some employees but lacked control procedures to ensure it responded as required. For example, VHA received information about some employees' controlled substance-related felony convictions and actions taken against certain employees by the Drug Enforcement Administration (DEA). VHA was required to obtain waivers from DEA for any of these employees whose job involved access to controlled substances.

Drug Enforcement Administration (DEA) Employment Waiver Requirements



Source: GAO analysis of DEA information and [sdecoret/stock.adobe.com](#) (icon). | GAO-23-104296

^aDEA registrations are required for certain health care practitioners licensed to dispense, administer, or prescribe controlled substances.

GAO identified 12,569 VHA employees with indications of controlled substance-related criminal history. Of these, GAO obtained further information about a generalizable sample of 305 employees and found 50 of them had one or more controlled substance-related felony convictions. However, VHA has no policy regarding DEA employment waivers, including guidance for determining whether an employee has access to controlled substances. VHA confirmed that it did not request waivers for 48 of the 50 employees GAO identified and did not confirm whether it requested waivers for the remaining two. VHA officials said they are developing an employment waiver policy. They did not provide a timeline for when the policy is to be approved and implemented. Without such a policy, including guidance for determining whether an employee has access to controlled substances, VHA cannot assess whether its employees, such as those identified by GAO, need waivers. Without a waiver policy, VHA risks a continued lack of assurance that its facilities are complying with DEA regulations that help control against theft and diversion of controlled substances.

GAO also identified vulnerabilities in VHA's process for completing employee background investigations. For example, GAO found that 13 of the 305 employees in the generalizable sample did not have background investigations as required by regulation and policy. Without adequate control procedures to ensure employee background investigations are completed as required, VHA lacks assurance that its personnel are properly vetted and suitable to provide care to veterans.

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Abbreviations

DCSA	Defense Counterintelligence and Security Agency
DEA	Drug Enforcement Administration
eOPF	electronic Official Personnel Folder
eQIP	electronic Questionnaires for Investigations Processing
FBI	Federal Bureau of Investigation
NPDB	National Practitioner Data Bank
NGI	Next Generation Identification
OIG	Office of Inspector General
OPM	Office of Personnel Management
PIPS	Personnel Investigations Processing System
PSAC	Personnel Security Adjudication Center
PAA	post-appointment arrest
UCN	universal control number
VA	Department of Veterans Affairs
VA-CABS	VA Centralized Adjudication and Background Investigation System
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network

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February 23, 2023

Congressional Requesters

The Department of Veterans Affairs' (VA) Veterans Health Administration (VHA) operates one of the largest health care systems in the nation. Currently, there are over 9 million veterans enrolled in the VA health care program. VHA employs more than 400,000 health care professionals and support staff.

VA is responsible for ensuring that employees who work in its medical facilities are qualified, competent, and suitable to provide safe care to veterans. As part of the federal hiring process, applicants to federal agencies, including VA, must report their criminal and drug-use histories and certify that the information provided is true, correct, complete, and made in good faith. VA must then perform a suitability review for its applicants based on character and conduct to determine whether employing an applicant may adversely affect the integrity or efficiency of the federal service.¹

In addition, the Controlled Substances Act requires persons and businesses that handle controlled substances to register with the Drug Enforcement Administration (DEA).² These "registrants" with the DEA include certain health care practitioners licensed to dispense, administer, or prescribe controlled substances and pharmacies authorized to fill prescriptions.³ VHA medical centers and other facilities are required to

¹5 C.F.R. § 731 establishes criteria and procedures for making suitability determinations for covered positions, which include (1) competitive service positions, (2) excepted service positions where the incumbent can be noncompetitively converted to the competitive service, and (3) career appointments to the Senior Executive Service. Although the OPM regulations do not directly cover contractors, some healthcare workers, and other personnel, VA implementing policies include these groups. VA uses equivalent criteria and procedures for making fitness determinations for positions not covered by 5 C.F.R. § 731. In this report, we use "suitability" to refer to determinations for both covered and non-covered positions.

²DEA enforces the controlled substances laws and regulations of the United States. As discussed later in this report, DEA requires that organizations obtain waivers before employing certain individuals in positions with access to controlled substances. The Controlled Substances Act defines substances as controlled based on the substance's medical use, potential for abuse, and safety or dependence liability.

³21 U.S.C. § 822.

register with the DEA. Further, DEA regulations implementing the Controlled Substances Act require that registrant employers apply for and receive an employment waiver for certain individuals in positions with access to controlled substances.⁴

Both GAO and the VA Office of Inspector General (OIG) have previously reported on VA's systemic oversight deficiencies in hiring personnel. For example, in 2018, the VA OIG reported on deficiencies in VA's management of the personnel suitability program.⁵ The OIG found that VA did not manage the personnel suitability program effectively and lacked the oversight necessary to ensure that employee background investigations were completed and documented as required. In 2019, we found that VHA did not have policies regarding DEA employment waivers, and that this may affect its ability to prevent the diversion of controlled substances in its medical facilities.⁶ That work also identified two providers for whom VHA should have had waivers to employ in positions with access to controlled substances. We recommended, among other things, that VHA develop a policy for DEA employment waivers. In July and October 2021, VHA officials told us they have established an interdisciplinary project team to identify an approach for VHA to take for managing and overseeing DEA employment waivers.⁷

In 2015, we added VA health care to GAO's High-Risk List because of (1) ambiguous policies and inconsistent processes and (2) inadequate

⁴21 C.F.R. § 1307.03 allows any person to "apply for an exception to the application of any provision of this chapter by filing a written request with the Office of Diversion Control, Drug Enforcement Administration, stating the reasons for such exception." For purposes of this report, we refer to applications for exception from application of 21 C.F.R. § 1301.76(a) as "DEA employment waivers." 21 C.F.R. § 1301.76(a) prohibits registrants from employing, in a position with access to controlled substances, a person who, at any time, has been convicted of a controlled substance-related felony, had an application for a DEA registration denied, or had a DEA registration revoked or surrendered for cause.

⁵VA OIG, *Veterans Health Administration: Audit of the Personnel Suitability Program*, 17-00753-78 (Washington, D.C.: Mar. 26, 2018).

⁶See GAO, *Veterans Health Administration: Greater Focus on Credentialing Needed to Prevent Disqualified Providers from Delivering Patient Care*, [GAO-19-6](#) (Washington, D.C.: Feb. 28, 2019). Drug diversion is the illegal acquisition of legally produced controlled pharmaceuticals for non-medical use.

⁷The Interdisciplinary Project Team is responsible for preparing a proposal for VHA leadership that identifies an approach to management and oversight of DEA waivers in response to our recommendation.

oversight and accountability, among other things.⁸ In addition, in March 2021, we added drug misuse to GAO's High-Risk List because national rates of drug misuse have increased and drug use represents a serious risk to public health.⁹ We previously identified preventing drug diversion as an opportunity to strengthen the federal government's efforts to address this persistent and increasing problem.¹⁰

You asked us to review VHA's employment and suitability procedures and its DEA waiver policies and processes. This report examines (1) the extent to which VHA responded to identified adverse information regarding employees' criminal history or DEA registrations before employees were hired or while they were employed and (2) the extent to which vulnerabilities exist in VHA's processes for completing and documenting employee background investigations.

For our first objective, we reviewed relevant statutes, regulations, and policies from the VA, VHA, DEA, Office of Personnel Management (OPM), and Defense Counterintelligence and Security Agency (DCSA) that outline requirements for identifying and responding to adverse employee information.¹¹ We interviewed relevant officials from these agencies and the Federal Bureau of Investigation (FBI) to determine how they identify this information and how VHA responded.

To identify adverse information, such as criminal history, active warrants, and adverse licensure actions related to controlled substances, we matched a list of VHA employees to the FBI's Next Generation Identification (NGI) system and the Department of Health and Human

⁸See GAO, *High-Risk Series: An Update*, [GAO-15-290](#) (Washington, D.C.: Feb. 11, 2015).

⁹See GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: Mar. 2, 2021).

¹⁰See GAO, *Drug Misuse: Sustained National Efforts Are Necessary for Prevention, Response, and Recovery*, [GAO-20-474](#) (Washington, D.C.: Mar. 26, 2020).

¹¹OPM is responsible for developing regulations and providing guidance to federal agencies about investigative requirements and oversees suitability adjudications and the federal government's suitability program. OPM also oversees agency compliance with suitability program requirements. DCSA is the primary investigative service provider for the federal government. The agency conducts over two million background investigations per year on civilian and military applicants, federal employees, employees of government contractors, and consultants to federal programs.

Services' National Practitioner Data Bank (NPDB) data.¹² To obtain a comprehensive list of VHA employees, we obtained data from VA's HR Smart and VHA's VetPro systems, which showed 400,339 federally and nonfederally appointed VHA employees employed as of January and June 2020, the most recent data available at the time of our review.¹³ From this total number of VHA employees, our NGI and NPDB analyses identified a population of 12,569 employees who had indications of criminal history related to controlled substances.¹⁴ From this population, we selected a generalizable, stratified random sample of 305 employees for further review and verification.¹⁵ We weighted the employees in the generalizable sample to reflect differences between strata in their

¹²The NGI System provides an electronic repository of biometric and criminal history record information voluntarily submitted by all states and territories, as well as federal and some foreign criminal justice agencies. NGI provides the criminal history record information on file for an individual identified via a fingerprint check, plus any record indexed in the national system that is maintained by a state that supports the purpose of the request. NGI is one of the systems used by DCSA to identify criminal history as part of the federal background investigation process. Because law enforcement entities send criminal history information to the FBI on a voluntary basis, criminal history records may not contain a given individual's full criminal history. NPDB is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health-care practitioners, providers, and suppliers. Created by Congress, the NPDB is a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance.

¹³HR Smart is VA's human resources information system, which contains data on all federally appointed employees. VetPro is VHA's credentialing system, which contains data on VHA employees, contractors, and other types of non-federally appointed employees. We obtained two separate extracts of HR Smart data on VHA employees who were employed as of January and June 2020 and VetPro data on VHA employees, contractors, and others as of May 2020. We analyzed this population of employees because the DEA employment waiver regulation does not specify types of positions that have access to controlled substances and VHA did not have a process for determining this access at the time of our review. Nonfederally appointed VHA employees include contractors, fee-basis providers, and other personnel who do not hold federal appointments.

¹⁴We described our matches as employees who had indications of criminal history because (1) law enforcement entities send criminal history information on a voluntary basis and NGI records may not contain a given individual's full criminal history; (2) biographic information reported to NGI may not always be complete or accurate and (3) NGI data do not readily distinguish controlled substance related criminal offenses. Accordingly, we relied on keyword searches to identify possible offenses related to controlled substances. As described below, we took additional steps to verify the identities and criminal histories of employees in our generalizable sample.

¹⁵A stratified random sample is a design that first classifies the population into two or more mutually exclusive subdivisions of a population defined in such a way that each sampling unit can belong to only one subdivision or stratum and then selects a random sample from each stratum.

proportions of the population of 12,569 employees. Thus, the estimated percentages of the population we project throughout the report differ from the actual percentages we found in the sample of 305 employees. All estimates derived from this sample have a margin of error, at the 95 percent confidence level, of plus or minus 7 percentage points or fewer. See appendix I for more information on the matching and sample.

In addition to our sample of 305 employees, we reviewed information for 11 employees we identified with actions taken against their DEA registrations as reported in NPDB and for 13 employees with indications of drug-related warrants, thus totaling 329 employees for review.¹⁶ However, only the results from the generalizable sample of 305 employees are projectable to the population of 12,569 with indications of controlled substance-related criminal history. We verified the accuracy of the information obtained from these data sources using state licensing and regulatory board actions, law enforcement and courthouse records, and DEA information.

For all 329 employees in our review, we compared the criminal history and DEA action information we obtained from the employees' background investigation files (such as FBI NGI Identity History Summaries, which include criminal history records) and OPM's electronic Official Personnel Folder (eOPF) system to determine the extent to which VHA responded.¹⁷ We also asked VHA to identify which of the 329 employees had access to controlled substances, its method for determining access, and whether it requested DEA employment waivers for the employees with certain adverse information.

We compared VHA's processes and responses to identified adverse information to relevant principles in the *Standards for Internal Control in the Federal Government*. Specifically, we compared the processes and

¹⁶See appendix I for additional information on how we identified the employees with indications of drug-related warrants and employees with actions taken against their DEA registrations.

¹⁷eOPF contains documentation of the employment history of individuals employed by the federal government. The FBI NGI Identity History Summaries include criminal history records.

responses to those principles related to designing control activities and evaluating deficiencies.¹⁸

For our second objective, we analyzed documents maintained in eOPF, DCSA's Personnel Investigations Processing System (PIPS), and VA's Centralized Adjudication and Background Investigation System (VA-CABS) for the 329 employees in our review to determine the extent to which background investigations were completed and documented.¹⁹ We compared VHA's processes and responses to relevant principles in the *Standards for Internal Control in the Federal Government*. Specifically, we compared VHA's processes and responses to those principles related to designing and implementing control activities and developing monitoring mechanisms.²⁰

We conducted this performance audit from October 2019 to February 2023 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.

Background

VA Structure, Roles, and Responsibilities

The Secretary of Veterans Affairs is responsible for the proper execution of all laws by VA, and for the control, direction, and management of the agency.²¹ The Under Secretary for Health is responsible for the

¹⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014). *Standards for Internal Control in the Federal Government* sets internal control standards for federal entities. It provides the overall framework for establishing and maintaining an effective internal control system, a key factor in improving accountability in achieving an entity's mission. For additional information on the principles reviewed as part of this work, see appendix I.

¹⁹PIPS is the system DCSA uses to process and complete background investigations and contains a repository of background investigation records. VA-CABS was launched in 2018 as VA's case management system for background investigations and suitability adjudications. According to VA officials, it became VA's system of record for background investigations in August 2022.

²⁰[GAO-14-704G](#). For additional information on the principles reviewed as part of this work, see appendix I.

²¹VA has three major administrations: VHA, the Veterans Benefits Administration, and the National Cemetery Administration. Our work focuses on VHA.

leadership and direction of VHA, and is responsible for maintaining and operating a national health-care delivery system for eligible veterans.

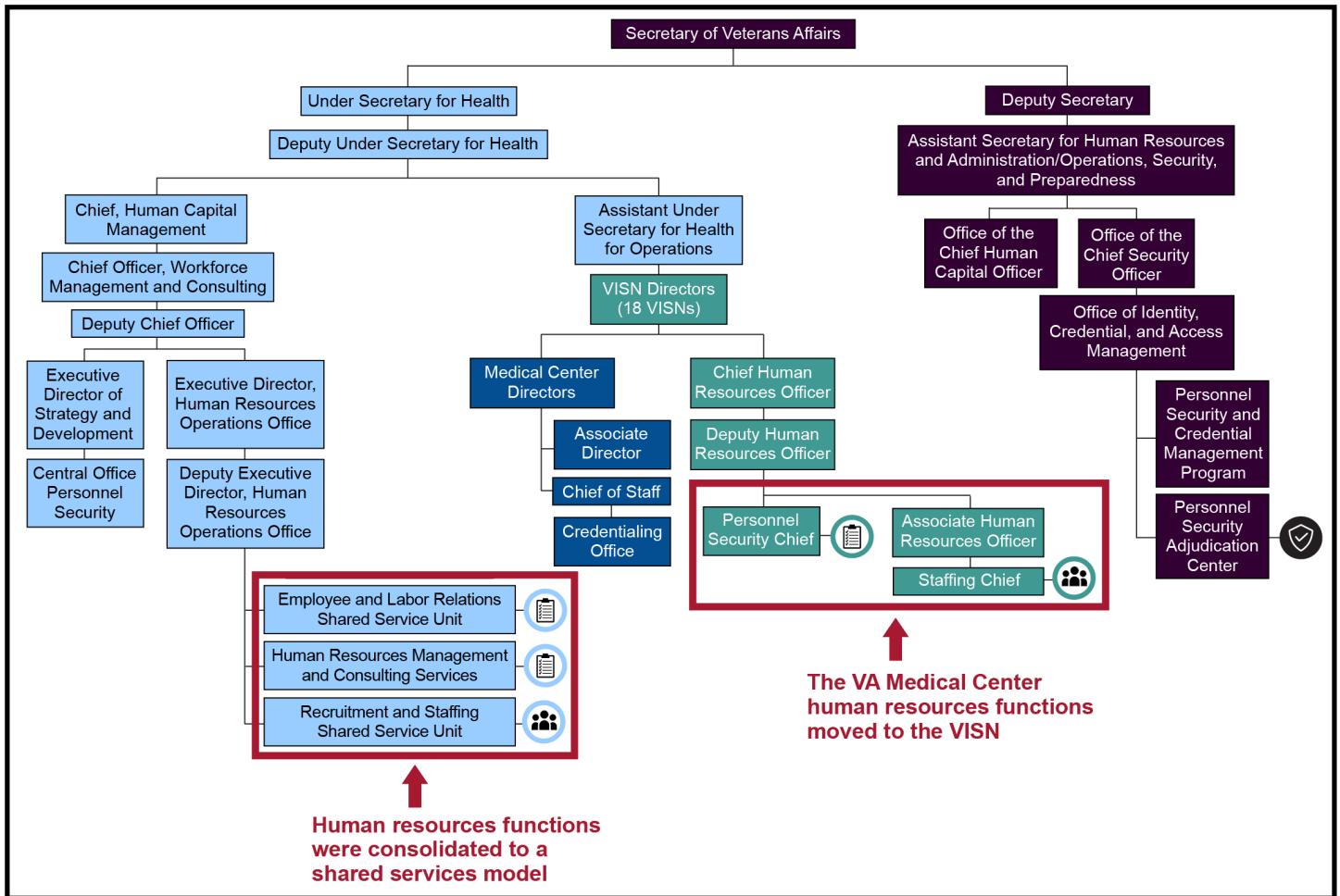
Oversight for VA's medical centers is the responsibility of 18 regional networks, referred to as Veterans Integrated Service Networks (VISN). Each VISN is responsible for managing and overseeing VA medical centers within a defined geographic area. Across the 18 VISNs, there are 171 VA medical centers.

According to VA officials, numerous offices within the agency perform various functions related to human resources and employee screening. We discuss the employee screening process in the section below. The office responsible for these functions for any particular individual depends on multiple factors, including where that individual works within VA, whether they have a security clearance, and whether they are a federal employee or a contractor. VHA policy provides each medical center with broad discretion over hiring decisions.

In 2020, VHA reorganized its human resources and security functions to modernize these functions across the agency. The employees included in our sample were hired before the reorganization was complete.

Figure 1 illustrates key aspects of VHA's organizational structure for employee screening after the May 2020 reorganization effort. See appendix II for information regarding VHA's organizational structure prior to the reorganization effort.

Figure 1: Key Aspects of VHA's Organizational Structure After May 2020



Organization

- Department of Veterans Affairs (VA)
- Veterans Health Administration
- Veterans Integrated Service Network (VISN)
- VA Medical Center

Function related to employee screening

Human resources
 Makes initial hiring decisions, extends conditional offers, and/or collects applicant screening forms.

Adjudicator
 Reviews applicant screening forms and the results of any previous background investigations to make an interim suitability determination. Initiates investigation with Defense Counterintelligence Security Agency. Makes final suitability determinations and, if favorable, uploads Certificate of Investigation to the electronic Official Personnel Folder.

Adjudicator for national security positions and contractors
 Processes and adjudicates the background investigations for all federal VA employees in national security positions, as well as all levels of investigation for contractors performing jobs and functions for VA. When VA receives notification that an employee has been arrested, officials send the notice to the individual's last known Servicing Human Resources Office for that individual.

Source: GAO analysis of VA information and sdecretet/stock.adobe.com (icons). | GAO-23-104296

VHA maintains responsibility for implementing the VA suitability program within its own administration. The VHA Central Office Personnel Security Program Office provides personnel security-related guidance to VHA facilities and oversees the suitability program in coordination with VA's Personnel Security and Credential Management Office.²² VISN officials are responsible for ensuring that facilities within their VISN perform suitability processes in compliance with VA and VHA requirements.

According to VHA officials, the Human Resources Operations Office provides human resources and personnel security functions for personnel, including federal employees and contractors, in VHA's central office. The Human Resources Operations Office also handles some contractors working in medical centers.

VHA officials told us that the 2020 reorganization consolidated the six independent offices that were performing the full range of human resource and security functions within VHA's central office. The Human Resources Operations Office now provides these functions under a shared services model to all of VHA's central office.

According to VHA officials, following this reorganization effort, human resources and suitability adjudication functions for VA medical centers moved from the 171 individual medical centers to the 18 VISNs. Currently, staffing and security personnel at the VISN level perform human resource functions and suitability adjudications for individuals working at the VA medical center level, including background investigations for most employees.

The Personnel Security Adjudication Center (PSAC), known prior to 2020 as the Security and Investigations Center, processes and adjudicates the background investigations for all federal VA employees (including those within VHA) who require security clearances. PSAC also adjudicates all investigations for contractors performing jobs and functions for VA.

Employee Screening

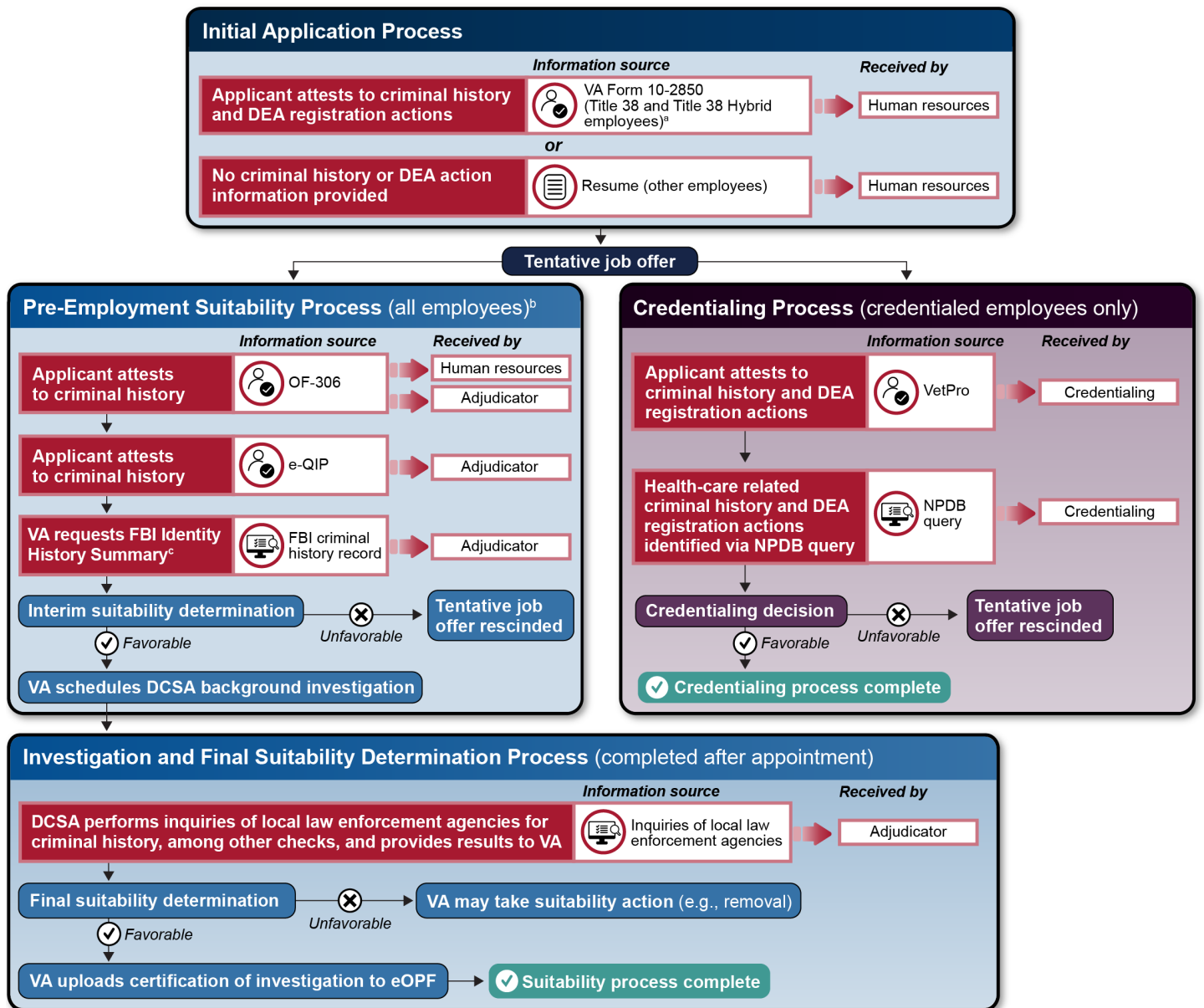
Federal regulations and VA policies require that employees undergo a broad screening process, which includes evaluating individuals' qualifications to perform their jobs and determining their suitability for employment. Further, VHA conducts additional evaluation of licensure

²²Personnel Security and Credential Management establishes and supports VA-wide personnel security and suitability program policy, implementation, oversight, and training to ensure the safety and security of veterans, visitors, employees and facilities.

and of other information related to health care providers' qualifications, which VHA refers to as the credentialing process.²³ VHA's screening process includes examining individuals' histories for criminal activity, as well as other adverse information, such as actions against a professional license or their DEA registration, which is discussed in greater detail below. Figure 2 outlines VHA's employee screening process for identifying criminal and other adverse information.

²³Credentialing refers to the process of screening and evaluating qualifications and other credentials to determine whether the provider has appropriate clinical abilities and qualifications to provide care and medical services.

Figure 2: VHA Employee Screening Processes for Criminal and Adverse Information



Information identified by

- Employee attestation
- Independent check
- Resume

Abbreviations

- VA - Department of Veterans Affairs
- DEA - Drug Enforcement Administration
- FBI - Federal Bureau of Investigation
- NPDB - National Practitioner Data Bank
- e-QIP - electronic Questionnaires for Investigations Processing
- DCSA - Defense Counterintelligence and Security Agency
- eOPF - electronic Official Personnel Folder

Source: GAO analysis of VA, DCSA, Office of Personnel Management, and Department of Justice information and stas111/stock.adobe.com (icons). | GAO-23-104296

^aVHA employees are covered by three types of personnel systems, each referred to by the applicable codification in the United States Code, which authorizes the personnel system. Title 38 covers medical staff including, among others, physicians, dentists, and registered nurses.

^bAll personnel complete the OF-306: Declaration for Federal Employment. Most VHA medical center employees hold low risk positions. Before November 2022 only the e-QIP forms used for moderate- and high-risk positions required disclosure of criminal history information. Because the employees in our review were hired before November 2022, most of them did not attest to criminal history through e-QIP. All personnel except volunteers who are under the age of 18 undergo FBI criminal history record checks.

^cVA requests FBI Identity History Summaries, which include criminal history records through a fingerprint submission.

VHA Initial Application Process

VHA's initial application process for applicants to health-related occupations differs from the process for other occupations. Applicants for health-related occupations complete Form 10-2850, which requires applicants to provide licensure and registration information and describe their educational and professional history. There are separate versions of the Form 10-2850 for different occupations. For example, nursing positions use Form 10-2850a (Application for Nurses and Nurse Anesthetists) and pharmacists use Form 10-2850c (Application for Associated Health Occupations).

Some versions of the Form 10-2850, including those used for physicians, dentists, nurses, and pharmacists, require applicants to indicate whether they have been convicted, imprisoned, on probation or parole, or have forfeited collateral in relation to a criminal charge within the last seven years. The version used for physicians and dentists also requires applicants to indicate whether they have ever voluntarily relinquished a DEA registration or had one revoked, suspended, limited, or restricted. Applicants must certify that their statements are true, correct, complete, and made in good faith. (See appendix V, fig. 11, VA Form 10-2850.) Applicants for occupations that do not require completion of the Form 10-2850, such as accountants, submit resumes instead. VHA does not ask these applicants to provide information about their criminal history during the initial application process.²⁴

VHA Suitability Process

If VHA selects an applicant based on its review of the application, it tentatively offers the position to the applicant and begins the suitability

²⁴The Fair Chance Act (Pub. L. 116–92, div. A, title XI, § 1122(a), Dec. 20, 2019, 133 Stat. 1605), codified at 5 U.S.C. §§ 9201-9206, and its implementing regulations issued by OPM, prohibits a federal agency from requiring “that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant.”

process. Depending on the type of position, VISN personnel security staff or contracting officers then determine whether the individual needs a background investigation.²⁵ OPM regulation requires that individuals appointed to positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and positions in the Senior Executive Service undergo background investigations to establish their suitability for federal employment.²⁶ VA policy requires that certain employees not covered by the OPM regulation also undergo background investigations.²⁷ While some positions do not require background investigations, all personnel except volunteers who are under the age of 18 undergo FBI criminal history checks.

Depending on whether the applicant requires a background investigation, the applicant will then submit certain screening forms. Specifically:

²⁵A new investigation is not required if an individual meets certain thresholds. Specifically, that threshold is reached when the individual has a prior, favorably adjudicated investigation and the existing investigation is current, is equal or higher to the investigation required for the new position, revealed no issues incompatible with the core duties of the new position, and the individual did not have a break in federal service of 24 months or more since the last investigation.

²⁶5 C.F.R. §§ 731.101, 731.104. A new investigation is not required if an individual meets certain thresholds. Specifically, that threshold is reached when the individual has a prior, favorably adjudicated investigation and the existing investigation is current, is equal or higher to the investigation required for the new position, revealed no issues incompatible with the core duties of the new position, and the individual did not have a break in federal service of 24 months or more since the last investigation. Separate from the background investigation requirement for suitability determinations, Federal Information Processing Standards require background investigations for individuals who require personal identity verification cards. However, because this report does not address personal identity verification card issuance, we did not determine whether individuals in our review who did not require investigations for suitability purposes obtained personal identity verification cards and therefore still required background investigations.

²⁷For example, VA Handbook 0710 requires background investigations for employees in the Title 38-Hybrid Excepted Service, employees appointed under Title 38 chapters 3, 71, and 78, and contractors (in accordance with the terms of the contract), among others. On the other hand, OPM regulation and VHA policy exempt certain employees from the background investigation requirement, such as some employees who have previously undergone investigations for past federal employment, among other personnel. VHA employees are covered by three types of personnel systems, each referred to by the applicable codification in the United States Code, which authorizes the personnel system. Title 5 covers positions such as police officers, accountants, and HR management. Title 38 covers medical staff including physicians, dentists, and registered nurses. Title 38-Hybrid covers positions such as respiratory, occupational, or physical therapists, social workers, and pharmacists.

-
- **The Declaration for Federal Employment (OF-306)** is required for all applicants, including those who do not require background investigations. It requires that applicants disclose, among other criminal history information, felony and misdemeanor convictions that occurred during the preceding seven or ten years, depending on the version of the form.²⁸ Applicants sign and certify that their responses to the questions on the Declaration for Federal Employment are true, correct, complete, and made in good faith at the time they receive a tentative offer and again at the time of appointment. The form advises applicants that making a false statement may be grounds for not hiring them, firing them after they began work, or fine or imprisonment under 18 U.S.C § 1001.²⁹
 - **The electronic Questionnaires for Investigations Processing form** is required for all applicants who require background investigations. It is a web-based, automated system designed to facilitate the processing of standard investigative forms used by DCSA when conducting background investigations for federal security and suitability purposes and personal identity verification card eligibility.

VA officials then review the applicant's applications, the position description, Declaration for Federal Employment, electronic Questionnaires for Investigations Processing form (if applicable), and the results of a fingerprint Special Agreement Check.³⁰ To initiate a Special Agreement Check, VA collects applicants' electronic fingerprints and provides them to DCSA, which then queries the FBI's NGI system to obtain reported criminal history information. This review allows VA officials to pre-screen applicants who require background investigations to identify and resolve suitability issues early in the application process, before initiating full investigations. Based on this information, the adjudicator makes an interim suitability determination, pending a full

²⁸The current version of the Declaration for Federal Employment, dated October 2019, asks about convictions during the preceding 7 years. Previous versions of the form asked about convictions during the preceding 10 years.

²⁹See appendix V for various forms on which the applicant discloses criminal history information and certifies the responses as true, correct, complete, and made in good faith.

³⁰Special Agreement Checks are investigation components, such as fingerprint checks, that provide additional coverage to a background investigation and are either triggered by information present in the investigation or ordered by the agency requesting the background investigation to aid in prescreening an applicant.

investigation. If the determination is favorable, then the person is hired and may begin working for VHA.

DCSA then completes the background investigation.³¹ This includes compiling criminal history information from local law enforcement agencies as well as the FBI. Next, DCSA provides the completed investigation to the VISN personnel security office that requested the information or PSAC. Lastly, the VA adjudicator uses the information in the file to make a final suitability determination.

OPM regulation and guidance establish procedures for how VA officials should adjudicate criminal history information.³² Specifically, upon receiving a report of criminal history for an applicant, adjudicators are to consider the nature of the criminal conduct and whether it resulted in an arrest, charge, or conviction. They are also to consider the details and reasons for dismissal of charges, where applicable. In making a suitability determination, an official may also consider, among other things, the nature of the position for which the person is applying or in which the person is employed, the recency of the conduct, the age of the person at the time of the conduct, and the absence or presence of rehabilitation or efforts toward rehabilitation.³³

OPM regulation and VA policy also require that adjudicators consider whether individuals have made material, intentional false statements as part of the hiring process in assessing their suitability for employment. They also require that adjudicators refer cases involving such statements

³¹Prior to 2019, OPM conducted background investigations for federal employees, including VA employees, through its National Background Investigations Bureau. In 2019, OPM transferred the National Background Investigations Bureau and its background investigation function to the DCSA.

³²VHA VISN adjudicators adjudicate most employees working in VA medical centers. However, as previously discussed, VA PSAC adjudicates some personnel.

³³5 C.F.R. § 731.202(c).

to OPM if the individual is applying to a covered position.³⁴ Further, OPM officials told us that they instruct agencies to refer to OPM cases involving material false statements where there is evidence that the individual knew, or should have known, that the statement was false. In such cases, OPM will then assess whether it is more likely than not that the individual made the false statement intentionally.

OPM regulation states that a material false statement is one that is capable of influencing, affects, or has a natural tendency to affect an official decision, such as whether an individual meets suitability requirements for federal employment. Further, the OPM *Suitability Processing Handbook* contains guidance for evaluating the materiality of false statements.³⁵ It also lists intentional omission of information clearly related to the position, such as a conviction for drug use for someone applying to a position in the medical field, as one example of a material false statement.

OPM guidance and VHA policy also establish procedures on how adjudicators address applicants with active warrants.³⁶ An arrest warrant may be issued in connection with pending criminal charges. OPM's *Suitability Processing Handbook* states that pending charges of a nature that are potentially disqualifying under suitability, cannot be adjudicated until the case is disposed. The *Handbook* also includes the process agencies can follow to refer applicants with admitted pending charges for suitability review. For example, if the applicant is under indictment or has pending charges that are potentially disqualifying, or there is a likelihood

³⁴5 C.F.R. Part 731 and VA Handbook 0710. As previously mentioned, 5 C.F.R. Part 731 establishes criteria and procedures for making suitability determinations for covered positions, which include (1) competitive service positions, (2) excepted service positions where the incumbent can be noncompetitively converted to the competitive service, and (3) career appointments to the Senior Executive Service. VA uses equivalent criteria and procedures for making fitness determinations for positions not covered by 5 C.F.R. Part 731. Some VHA positions are hired pursuant to authorities other than Title 5 of the U.S. Code. Such positions are not under the authority of OPM, and therefore VHA would not make referrals to OPM in such cases. For example, medical staff, including physicians, dentists, and registered nurses, are hired pursuant to Title 38 of the U.S. Code. VHA would not make referrals to OPM for employees in such positions, but would consider whether these employees made material, intentional false statements as part of the suitability determination process.

³⁵OPM, *Suitability Processing Handbook* (Sept. 2008).

³⁶A warrant is an order of a court which directs a law enforcement officer to arrest and bring a person before the judge, such as a person who is charged with a crime, convicted of a crime but failed to appear for sentencing, owes a fine, or is in contempt of court.

the applicant will be incarcerated if convicted, the agency will notify the applicant that consideration for employment cannot occur until a disposition is made of the pending charge.

VHA's Advisory 19-02, dated October 11, 2018, states that applicants under current charges for any violation of the law should always be referred to the appropriate VISN suitability coordinator if mitigation is being considered.³⁷ This includes applicants who are on probation, on parole, awaiting a court date to resolve an arrest, or who have an active warrant. The purpose of the advisory is to ensure that a second level review occurs to determine if mitigation and favorable adjudication of certain significant issues negatively affects the reputation of the agency or is harmful to VHA's mission to "honor America's Veterans by providing exceptional health care that improves their health and well-being."³⁸

If the adjudicator determines that the individual's suitability is favorable, a signed certification of investigation is to be filed in the employee's eOPF and the suitability process is complete. If the determination is unfavorable, VHA may take a suitability action against the employee, such as removing the individual from the position and debaring the individual from VA employment for a specific period of time.

VHA's Credentialing Process

According to VHA policies, all licensed health care providers must complete the credentialing process before beginning to work. Positions that require credentialing include physicians, dentists, and registered nurses.

Applicants complete an electronic credentialing application within VetPro, VHA's credentialing system. As part of the application, applicants indicate whether they have been, during the last 7 years, convicted, imprisoned, been on probation, or been on parole for any crime.³⁹ Applicants attest to the accuracy and completeness before submission of information for credentialing purposes.

³⁷VHA, *Significant Issue Referral Criteria*, 19-02 (Oct. 11, 2018).

³⁸On July 7, 2022, VHA revised its advisory requiring VISNs to notify VHA of significant issue cases on a quarterly basis. VA officials noted that the advisory was updated to quarterly notifications because adjudicators have gained more experience in dealing with significant issue cases, and therefore there was no need to refer each case right away.

³⁹See appendix V, figure 12 for the Supplemental Attestation questions. According to VA, this question previously asked whether the applicant had ever been convicted of a felony and was changed to its present form about two years ago.

VHA policies require hiring officials to query NPDB and to examine information derived from the provider’s application, state licensing boards, and professional references before appointing a health care provider. NPDB is an electronic repository that includes information on health care providers who have been disciplined by a state licensing board, professional society, or health care entity (such as a hospital); have been named in a health care-related judgment or criminal conviction; or have been identified in some other adverse action. We refer to these actions collectively as “adverse actions.” The Health Resources and Services Administration, an agency within the Department of Health and Human Services, maintains the NPDB. The NPDB includes information from state licensing boards, as well as hospitals, health plans, and federal and state agencies, among other entities.

During the credentialing process, VHA officials also review information about individuals in VetPro. Information contained in VetPro includes prior NPDB reports, licensure data uploaded by providers, and notes made by hiring officials. VA medical centers generally have committees responsible for reviewing provider credentials.

Post-Appointment Arrests (PAA)

If an existing employee is arrested, VA is notified of the arrest through a PAA notification so it can respond appropriately. Recent changes to government-wide screening processes have changed the way VHA responds to the arrest of an existing employee. The process described below was in place during our review and discontinued in July 2021.

PAA Notification Process Prior to July 2021

Before July 2021, the FBI would send a hard copy PAA notification to DCSA via the mail following the arrest of a federal employee.⁴⁰ This step occurred only if the individual previously had a criminal record on file with the FBI. If the individual did not previously have a criminal record with the FBI, a PAA notification would not be generated. According to OPM, this was a limitation in the process which does not exist in the new PAA process. DCSA then determined the agency for which that individual worked and notified that agency via the mail. Within VA, PSAC received all PAA notifications and digitized the records received via mail.⁴¹ If the employee was in non-probationary status, PSAC notified the last known

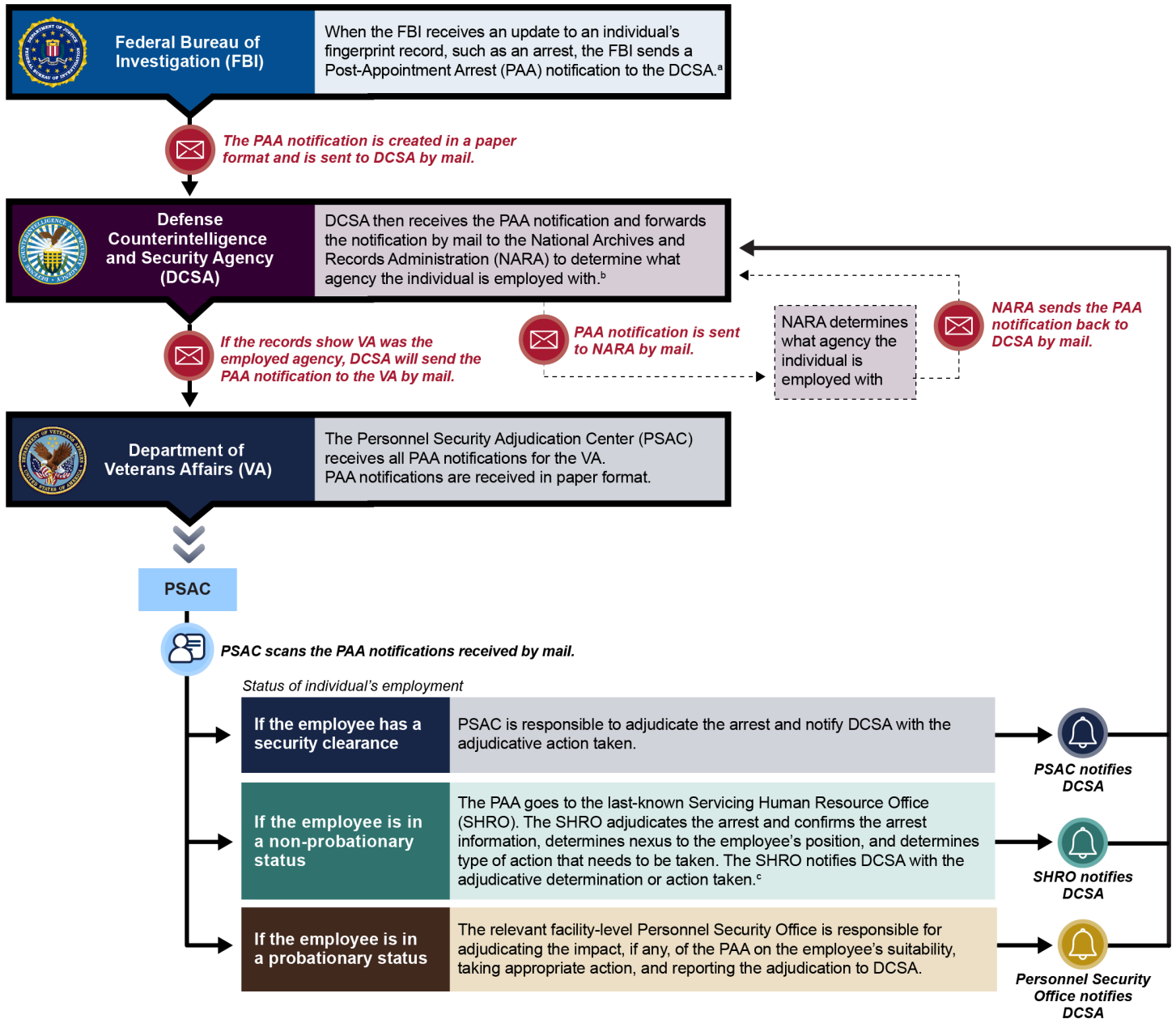
⁴⁰In 2019, OPM transferred the background investigation function to DCSA, including processing PAA notifications.

⁴¹Prior to 2020, PSAC was known as the Security and Investigations Center. PSAC has been responsible for receiving and disseminating PAA notifications since about 2014.

Servicing Human Resource Office (i.e., the human resources office assigned to an employee), which considered information about the arrest and determined what, if any, action needed to be taken.⁴² See figure 3 below for the overview of the PAA process prior to 2021.

⁴²Under statute, an appointment to the federal competitive service is not final until after the probationary period is complete. The probationary period provides the government with an opportunity to evaluate an individual's conduct and performance to determine whether an appointment should become final. 5 U.S.C. § 3321.

Figure 3: The Post-Appointment Arrest (PAA) Process, Prior to 2021



Source: GAO analysis of VA and DCSA information; FBI, DCSA, VA (agency seal); and FMF Design/stock.adobe.com (icons). | GAO-23-104296

^aIn 2019, the Office of Personnel Management (OPM) transferred the background investigation function to the Defense Counterintelligence and Security Agency (DCSA). Post-appointment arrest (PAA) notifications were previously sent to OPM.

^bAgencies may, but are not required to, inform DCSA of adjudicative actions taken based on PAA notifications.

⁹In 2020, the Human Resource Office functions were moved to the Veterans Integrated Service Network.

Updated Process for PAA Notifications

According to DCSA, it stopped sending PAA notifications to VA after discontinuing the process in July 2021. After that date, DCSA worked through a backlog of PAA notifications to be sent to agencies, including VA. DCSA sent the last backlogged PAA notification in November 2021.

At the time of our review, DCSA was implementing a new, government-wide process for PAAs. Specifically, as part of its continuous evaluation services, DCSA offers agencies, including VA, subscriptions to FBI's Rap Back Program. Rap Back allows an ongoing ability to gather real-time information about an individual's behavior, including PAA notifications.

According to VA, as of August 2022, it is working on enrolling employees who require security clearances in Rap Back. Further, VA noted that it plans to enroll the remainder of its employees in Rap Back in fiscal year 2024. Once VA enrolls all of its employees, it will receive electronic notifications of PAAs as part of this automated vetting process.

Drug Diversion and DEA Employment Waivers

Drug diversion remains a challenge for health care organizations, including VHA.⁴³ Cases of drug diversion have occurred at some VHA facilities. Studies show there are vulnerabilities to drug diversion in all stages of the hospital medication-use process.⁴⁴ These vulnerabilities may be exploited, and consequently, private and public health professions and clinical units are at risk.

According to DEA data, registrants reported more than 20,000 incidents of theft or loss of controlled substances in 2021. Over 4,500 of the 20,000 total reports involved employee theft of controlled substances, of which

⁴³Drug diversion is the illegal obtainment of legally produced controlled substances for non-medical use.

⁴⁴The process includes the procurement, storage, preparation, prescription, dispensing, administration, waste, return, and removal of medications. Mark Fan, Dorothy Tscheng, Michael Hamilton, Bridgett Hyland, Rachel Reding, and Patricia Trbovich, "Diversion of Controlled Drugs in Hospitals: A Scoping Review of Contributors and Safeguards," *Journal of Hospital Medicine*, vol. 14, Issue 7 (July 2019), <https://doi.org/10.12788/jhm.3228>; Maaïke de Vries, Mark Fan, Dorothy Tscheng, Michael Hamilton, and Patricia Trbovich, "Vulnerabilities for Drug Diversion in the Handling, Data Entry, and Verification Tasks of 2 Inpatient Hospital Pharmacies: Clinical Observations and Healthcare Failure Mode and Effect Analysis," *Journal of Patient Safety*, e227-e235 (Jan. 2022), <https://doi.org/10.1097%2FPTS.0000000000000744>.

50 were reported by VHA.⁴⁵ Previous examples of cases of drug diversion at VHA include:

- In 2016, a former VA nurse pleaded guilty to stealing controlled substances. While working at a VA facility, the nurse abused his access to a locked receptacle and inappropriately removed syringes containing a controlled substance.⁴⁶
- In 2018, another former VA nurse pleaded guilty to stealing controlled substances, which he obtained by abusing his access to the automated system that dispensed controlled substances.

VHA considers the necessity of providers holding DEA registrations on a case-by-case basis. Specifically, although VA medical centers hold DEA registrations, VHA policy requires that providers also hold individual DEA registrations if their positions require them to prescribe controlled substances.⁴⁷

DEA requires registrants, such as VA medical centers, to obtain waivers to employ some individuals in certain positions to ensure that registrants maintain adequate safeguards against the diversion of controlled substances. Specifically, DEA regulations require registrants to apply for and receive a waiver before employing any person in a position with access to controlled substances who, at any time:

- has been convicted of a felony related to controlled substances or
- has had an application for a DEA registration denied or had a DEA registration revoked or surrendered for cause.⁴⁸

⁴⁵VHA reported more than 1,400, or about seven percent, of the 20,000 total incidents of theft or loss of controlled substances reported to DEA in 2021.

⁴⁶To avoid revealing the identities of the individuals mentioned in this report, we removed names and used “he” and “him” throughout the report regardless of the gender of the individual.

⁴⁷Some states also require a state-level registration to prescribe controlled substances. VHA policy requires providers licensed in states that require a state-level registration and who prescribe controlled substances to obtain a state-level registration.

⁴⁸21 C.F.R. § 1301.76(a).

DEA employment waivers are not required if an applicant holds an active DEA registration, because DEA has already determined that the person is suitable to handle controlled substances.⁴⁹

DEA defines “access to controlled substances” broadly, but not all employees in a pharmacy or health care facility are considered to have access for purposes of the waiver requirement. The DEA *Pharmacist’s Manual* states that access is not limited to only physical access, but also includes any influence over the handling of controlled substances.⁵⁰

Further, DEA officials told us that access is not limited to prescribers, but includes anyone who could come into contact with a controlled substance before it is administered to a patient as part of authorized job duties.⁵¹ For example, a DEA registrant from a private, non-VHA facility that we spoke to applied for and received a waiver for an employee who worked in a clerical role. The employee had access to controlled substances because his duties involved receiving and inventorying controlled substances. This employee had previously served time in prison for a controlled substance-related conviction.

DEA officials also said that individuals whose job duties do not authorize contact with controlled substances are not subject to the employee waiver requirement because such individuals are not within the “closed system of distribution” and registrants should have controls in place to prevent them from coming into contact with controlled substances.

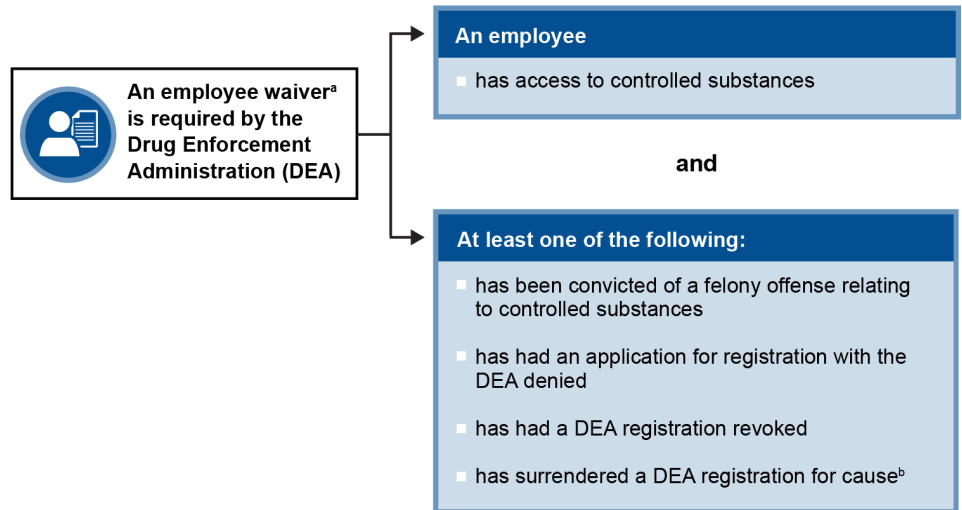
Figure 4 shows the situations in which employers require a DEA employment waiver to employ an individual.

⁴⁹A DEA registrant may possess more than one registration. According to DEA officials, if DEA took action against only one of an individual’s multiple registrations, the individual would not require an employment waiver if he possessed another active registration.

⁵⁰The DEA *Pharmacist’s Manual* summarizes and explains the Controlled Substances Act and its implementing regulations and provides guidance for complying with these provisions. DEA, *Pharmacist’s Manual*, EO-DEA154 (2020).

⁵¹According to DEA officials, the waiver requirement applies to anyone who could come into contact with controlled substances within the “closed system of distribution” established by the Controlled Substances Act. This “closed system” allows the lawful distribution of controlled substances among registrants and helps to ensure that a particular controlled substance is always accounted for, from its creation until it is dispensed to a patient or is destroyed.

Figure 4: Drug Enforcement Administration (DEA) Employment Waiver Requirements



Source: GAO analysis of DEA information and sdecoret/stock.adobe.com (icon). | GAO-23-104296

^aAn employment waiver, if granted, provides the registrant with an exception to the requirements contained in 21 C.F.R. § 1301.76(a)

^b“For cause” means a surrender in lieu of, or as a consequence of, any federal or state administrative, civil, or criminal action resulting from an investigation of the individual’s handling of controlled substances.

Between 2018 and 2021, DEA took action on 45 employment waiver requests from registrants nationwide. Most of these involved health care providers and pharmacists. Specifically, DEA approved 31 of these applications and denied one. The requesting registrants withdrew the remaining 13 applications.

VHA Received
Adverse Information
Regarding Some
Employees but Did
Not Have Control
Procedures to Ensure
It Responded As
Required

VHA Did Not Have Control
Procedures for
Determining Whether
Employees Had Access to
Controlled Substances or
Required DEA Waivers

VHA received information about some employees' controlled substance-related felony convictions and actions taken against employees' DEA registrations. However, we found that VHA did not have control procedures for determining whether the employees had access to controlled substances or required DEA employment waivers. As a result, VHA may lack assurance that its facilities comply with DEA regulations that help control against theft and diversion of controlled substances.

Based on our analyses, we found that VHA received information about some employees' controlled substance-related felony convictions. Specifically, of the 305 VHA employees in our generalizable sample, 50 employees had one or more controlled substance-related felony convictions, indicating they may need DEA waivers if they held positions with access to controlled substances and did not possess active DEA registrations.⁵² These employees held a range of positions at VHA, including physician, pharmacy technician, nursing assistant, housekeeping aide, and food service worker. Of these 50 employees, VHA received information about at least one controlled substance-related

⁵²We were unable to obtain court documentation for 42 employees in the sample. Thus, it is possible that additional employees had controlled substance-related felony convictions.

felony conviction for 49 employees via criminal history records or employee attestations on screening forms.⁵³ For example:

- **Case 1.** The employee was convicted of felony distribution of cocaine in November 1997. VHA received information about this conviction via a criminal history record in August 2018 and hired the employee as a nursing assistant in September 2018. As of September 2022, the employee continues to work at VHA as a nursing assistant.
- **Case 2.** The employee was convicted of felony possession of cocaine four times between October 1996 and September 2001. VHA received information about at least three of these convictions via a criminal history record in May 2010 and about the remaining conviction via employee attestation on a June 2010 Declaration for Federal Employment. VHA hired the employee as a student trainee (medical and health) in June 2010. As of January 2022, the employee continues to work at VHA as a health technician.
- **Case 3.** The employee was convicted of felony possession and sale of hydrocodone, an opioid used to treat pain, in February 1988. VHA received information about these convictions via a criminal history record in July 2006 and hired the employee as a pharmacy technician in October 2007. As of September 2022, the employee continues to work at VHA as a pharmacy technician.

In addition to the cases above, see appendix III for additional examples of employees with controlled substance-related felony convictions.

Based on our analysis of our generalizable sample, we estimate that:⁵⁴

⁵³We obtained copies of the criminal history records provided to VHA by DCSA and its predecessor agencies as part of the employees' suitability screening to determine whether they contained information about the convictions. Because DCSA removes investigative materials, including criminal history records, from its system of records after a specified retention period, the criminal history records we obtained were not inclusive of all reports VHA received for the employees under review. Thus, it is possible that VHA received criminal history records about these convictions before the dates listed in the cases below. Further, because law enforcement entities send criminal history information to the FBI on a voluntary basis, criminal history records may not contain a given individual's full criminal history. This may explain why we did not find evidence that VHA received information about one individual's controlled substance-related felony conviction.

⁵⁴Estimates are derived from our generalizable, stratified random sample of employees and have a margin of error of plus or minus 7 percentage points or fewer. VHA employs more than 400,000 health care professionals and support staff, of which we identified 12,569 employees with indications of controlled substance-related criminal history.

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- About 1,800 (14 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history had at least one controlled substance-related felony conviction.
 - VHA received information about at least one controlled substance-related felony conviction for nearly all—about 1,700—of the approximately 1,800 employees with controlled substance-related felony convictions.

The employees we identified as having controlled substance-related felony convictions required DEA employment waivers if they held positions with access to controlled substances and did not possess active DEA registrations, as previously discussed. We asked VHA whether the 50 employees with controlled substance-related felony convictions had access to controlled substances and if VHA had sought DEA employment waivers for these employees. VHA said that it did not request employment waivers for 48 of these employees. VHA further stated that these employees did not require waivers because their job duties did not involve dispensing controlled substances and did not require DEA registrations.

VHA did not confirm whether it sought or obtained employment waivers for the remaining two employees, a physician and a pharmacy technician. Rather, in its responses regarding these two employees, VHA stated that it reviewed providers with revoked or surrendered DEA registrations in response to our February 2019 report. It found no providers writing controlled substance prescriptions with a revoked or surrendered DEA registration. In March 2020 VA officials told us that their review identified one provider with a revoked or surrendered DEA registration. Because VHA did not disclose the identity of the provider, we were unable to determine whether this employee was among those we found with controlled substance-related felony convictions.

VHA's responses—stating that employees did not require DEA employment waivers because their job duties did not involve prescribing or dispensing controlled substances and did not require DEA registrations—do not align with DEA's definition of what constitutes "access." As previously discussed, DEA guidance states that access to controlled substances is not limited to physical access but includes any influence over the handling of controlled substances and is not limited to prescribers of controlled substances.

We also found that VHA received information about actions taken against providers' DEA registrations. Specifically, we identified five providers who were not in the generalizable sample and who required DEA employment waivers if they held positions with access to controlled substances because they surrendered their DEA registrations for cause and did not hold other active registrations.⁵⁵

VHA received information regarding all of these five providers' DEA registration actions via NPDB reports and employee attestations in the VetPro credentialing system. VHA officials confirmed that VHA did not request DEA employment waivers for these five providers.⁵⁶ Although all of these providers have since left VHA employment or obtained active DEA registrations, they worked for VHA without DEA registrations or employment waivers for periods of time ranging from less than a month to over three and a half years. Specifically:

- **Case 4.** The provider was a physician assistant who was hired in May 2018. The state medical board indefinitely suspended the provider's physician assistant license in April 2020 and the provider surrendered his DEA registration within nine days of the suspension. VHA received information about the license suspension via an NPDB report the same month. VHA received information about the DEA registration surrender via an NPDB report the following month. VHA told us it terminated the provider in response to the license suspension, in the month after the license suspension took place. Thus, the provider required a DEA employment waiver if he held a position with access to controlled substances at VHA for the less than a month between his surrender and his termination. When asked whether the provider had access, VHA stated that the provider never prescribed controlled substances at the VHA facility to which he was assigned.

⁵⁵While not all VHA employees were eligible to be included in NPDB, we submitted the entire list of all VHA employees because the VA data did not allow us to readily identify employees with positions that would be included in NPDB. Of the 400,339 employees we submitted, approximately 2,100 employees had at least one adverse action report in NPDB, including 11 employees with adverse action reports from DEA. Because VHA did not disclose the identity of the provider identified in its 2020 review we were unable to determine whether this provider was among those we found with actions taken against their DEA registrations.

⁵⁶We identified two of these five providers (cases 6 and 7) as having surrendered DEA registrations for cause in our February 2019 report. We include them here because, in the 2019 report, we assessed only whether the providers were qualified for employment under VHA policy, not whether they required DEA employment waivers.

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- **Case 5.** The provider was a physician who was hired in July 2017 and who surrendered his DEA registration in 2020. In the same month that the provider surrendered the registration, VHA received information about the surrender via an NPDB report and VetPro attestation. Four months later, the provider was indicted on charges of mail theft and diversion of controlled substances after an investigation by VA OIG. According to VHA officials, VHA placed the provider on summary suspension that month and indefinitely suspended the provider the following month. Thus, the provider required a DEA employment waiver if he held a position with access to controlled substances at VHA during the five months between the surrender of his DEA registration and his summary suspension. When asked whether the provider had access to controlled substances, VHA officials stated that the provider could not prescribe controlled substances after he surrendered his DEA registration.
 - **Case 6.** The provider was a physician who surrendered his DEA registration in 2012, prior to his employment with VHA. VHA received information about the surrender during the application process via a VetPro attestation and an NPDB report and hired the provider in August 2016. The provider resigned from VHA in 2020. Thus, the provider required a DEA employment waiver if he held a position with access to controlled substances at VHA during his approximately four years of employment. When asked whether the provider had access to controlled substances, VHA officials stated that the provider performed disability exams and did not have prescribing authority.
 - **Case 7.** The provider is a nurse who was hired in 2006 and surrendered his DEA registration in 2015. VHA received information about the surrender via an NPDB report two months after the registration had been surrendered and a VetPro attestation four months later. The provider obtained a new DEA registration in 2017 and retired in January 2022. Thus, the provider required a DEA employment waiver if he held a position with access to controlled substances at VHA from the surrender in 2015 to the new registration in 2017. When asked whether the provider had access to controlled substances, VHA officials stated that the provider did not prescribe controlled substances between surrendering his DEA registration and obtaining a new DEA registration.
 - **Case 8.** The provider is a physician who was hired in 2017 and surrendered his DEA registration in 2019. VHA received information about the surrender via an NPDB report two months after the provider surrendered the registration. The provider obtained a new registration in 2020, attested to the DEA action in VetPro the following month, and

is still employed by VHA. Thus, the provider required a DEA employment waiver if he held a position with access to controlled substances at VHA during the applicable months in 2019 to 2020. When asked whether the provider had access to controlled substances, VHA officials stated that the provider did not have access to the pharmacy, medication rooms, or medication cabinets.

Similar to the discussion above regarding felony convictions, VHA's responses—stating that the providers did not require DEA employment waivers because their job duties did not involve prescribing or physical access to controlled substances—do not align with DEA's definition of what constitutes "access."

VHA could not assess whether the employees we identified with controlled substance-related felony convictions or actions taken against their DEA registrations required DEA employment waivers. This is because VHA has not issued policies or guidance regarding the process for determining which employees have access to controlled substances and the circumstances in which employment waivers are required. In August 2022, VHA officials told us that the employment waiver policy it is developing in response to our February 2019 recommendation will include standards that VHA facilities will use to determine whether employees have access to controlled substances. However, the officials involved in the developing process did not provide a timeline for when VHA leadership would approve and implement the policy.

Standards for Internal Control in the Federal Government state that management should implement control activities through policies.⁵⁷ They further state that agencies are to ensure that the findings of audits and other reviews are promptly resolved. To that end, agencies are to complete and document corrective actions to remediate internal control deficiencies on a timely basis.

Without policies regarding DEA employment waivers, which include guidance for determining whether an employee has access to controlled substances and which specify the circumstances in which employment waivers are required, VHA cannot assess whether its applicants and employees need waivers. Further, without establishing a timeline for finalizing and implementing such policies, and reviewing current employees we identified with indications of controlled substance-related

⁵⁷[GAO-14-704G](#).

criminal history to determine whether they need waivers, VHA risks a continued lack of assurance that its facilities comply with DEA regulations that help control against theft and diversion of controlled substances.

VHA Did Not Have Control Procedures to Ensure that Undisclosed Information on Criminal History Was Used in Compliance with OPM Regulations and VA Policy

VHA received information about some criminal convictions that employees did not disclose, as required, on their Declarations for Federal Employment. However, we found that VHA did not have control procedures to ensure that suitability adjudicators used this information in compliance with OPM regulations and VA policy. Specifically, VHA has not issued policies requiring that suitability adjudicators document their assessments of the materiality and intent of undisclosed information and their rationale for not referring cases involving nondisclosure by employees appointed to positions covered by OPM regulation. As a result, VHA lacks assurance that employees with undisclosed criminal history or other adverse information are properly vetted.

We found that, of the 305 employees in our generalizable sample, nine did not disclose controlled substance-related convictions on their Declarations for Federal Employment when required. Specifically, we found five employees who did not disclose felony convictions, three employees who did not disclose misdemeanor convictions, and one employee who did not disclose both a felony conviction and a misdemeanor conviction. Six of the nine employees were appointed to covered positions. Based on our review of criminal history records provided to VHA as part of these employees' suitability screening, we found that VHA received information about these convictions for all but one of these employees.⁵⁸ For example:

- **Case 9.** The employee was hired as a prosthetic clerk in January 2018 and, as of January 2022, continues to work at VHA as a purchasing agent. The employee was convicted of felony possession of methamphetamine in January 2015, but did not disclose this conviction on his January 2018 Declaration for Federal Employment.

⁵⁸We used copies of the criminal history records provided to VHA by DCSA and its predecessor agencies as part of the employees' suitability screening to determine whether they contained information about the undisclosed convictions. Because DCSA removes investigative materials, including criminal history records, from its system of records after a specified retention period, the criminal history records we obtained were not inclusive of all reports VHA received for the employees under review. Thus, we were unable to determine whether VHA received information about one employee's undisclosed conviction because DCSA's system of records no longer maintained any of the criminal history records provided to VHA as part of the employee's suitability process.

VHA received a criminal history record containing information related to this conviction in November 2017.

- **Case 10.** The employee was hired as a health technician in April 1998 and, as of February 2022, continues to work at VHA as a health technician. The employee was convicted of felony possession of a controlled substance in the fourth degree in August 1990, but did not disclose this conviction on his April 1998 Declaration for Federal Employment. VHA received a criminal history record containing information related to this conviction in November 2009.⁵⁹

In addition to the cases above, we found additional instances of employees who did not disclose controlled substance-related felony or misdemeanor convictions on their Declarations for Federal Employment as required, as described in appendix IV.

Based on our analysis of our generalizable sample, we estimate that:

- About 400 (3 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history did not disclose at least one conviction on their Declarations for Federal Employment when required.⁶⁰
- VHA received information about at least one undisclosed conviction for approximately 300 employees (3 percent) of the 12,569 we initially identified as having indications of controlled substance-related criminal history.

Consistent with our findings, an August 2020 audit by OPM of one VA medical center's compliance with suitability program requirements found that the medical center did not refer to OPM cases where there was evidence of material, intentional false statements, as required.

We asked VHA if it took any actions in response to these nine employees in our generalizable sample who did not disclose convictions on their

⁵⁹Because of DCSA retention rules for investigative materials, including criminal history records, we cannot determine whether VHA received information about this conviction before this date.

⁶⁰We identified approximately 60,000 VHA employees with indications of criminal history. This includes both our study population of 12,569 employees with indications of controlled substance-related criminal history and those with indications of criminal history unrelated to controlled substances. Thus, it is possible that some employees outside our study population (i.e., among those with indications of criminal history unrelated to controlled substances) did not disclose criminal history when required.

Declarations for Federal Employment when required. VHA stated that suitability adjudicators assess undisclosed information for materiality and intent during the suitability adjudication process and that a favorable suitability adjudication indicates that the nondisclosure was not a material, intentional false statement. VHA stated that this might occur if

- the information was not serious enough to warrant an unfavorable suitability determination,
- the information was mitigated based on other suitability considerations established by OPM regulation, such as the recency of the underlying issue, or
- the applicant omitted the information accidentally.

VA officials told us that they have no policy requiring that suitability adjudicators document their determination that an omission was not material or intentional. As a result, VHA could not provide corroborating documentation showing that suitability adjudicators assessed the undisclosed information in the nine cases we identified for materiality and intent as required by OPM regulation and VA policy. Similarly, VHA could not provide documentation explaining adjudicators' rationale for not referring to OPM the six cases involving employees appointed to covered positions.

Standards for Internal Control in the Federal Government state that management should clearly document its internal control system and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.⁶¹ Without control procedures requiring that adjudicators document their assessments of undisclosed information and ensuring that they use this information in compliance with OPM regulations and VA policy, VHA lacks assurance that employees with undisclosed criminal history or other adverse information are properly vetted and risks hiring unsuitable individuals who may pose a risk to veterans.

VA Did Not Have Control Procedures to Ensure Follow-Ups and Referrals on Warrants

VHA received information about individuals that had active warrants at the time they were hired. However, we found that VHA did not have control procedures in place to ensure that adjudicators follow up on the warrants and refer the warrants to the appropriate VISN Suitability Coordinator for a second level of review prior to rendering a favorable

⁶¹[GAO-14-704G](#).

determination. As a result, VHA lacks assurance that its employees with active warrants are properly vetted.

Of the five VHA employees in our review whom we identified with active warrants, three had warrants issued prior to being hired.⁶² Specifically, at the time they were hired, two individuals had active bench warrants for failure to appear.⁶³ For the third employee, we were unable to confirm if the bench warrant for failure to appear was still active when VA hired the employee.

When asked, in June 2022, if it took any action on the three individuals who had warrants prior to being hired, VA was not able to confirm if it had followed up on the warrants prior to hiring them or if referrals were made as required by the OPM Suitability Processing Handbook and VHA's 2018 advisory.⁶⁴ Specifically:

- **Case 11.** The employee was hired as a housekeeping aide in August 2011. During the hiring process, VA received information about the warrant issued in 2004 for failure to appear for an original felony charge of possession of a controlled dangerous substance. In 2011, VA issued a favorable suitability determination. Because it has been over 10 years since the individual was hired, the VHA VISN was not able to confirm to us if any follow up was conducted on the warrant and if a referral was made as may have been required by the OPM *Suitability Processing Handbook*. VHA's Record Retention Schedule states that copies of investigative findings and follow-up reports

⁶²From our full population of 400,339 VHA employees, we identified 317 VHA employees (nonsample) that had indications of an active warrant reported in an FBI system linked to NGI by the UCN. We then selected 176 VHA employees with indications of active warrants dated January 2015 through November 2020 for further review. From this population of 176 employees, we selected the 13 VHA employees that had indications of drug-related warrants for further review and to verify their identity. In addition, from our generalizable sample of 305 VHA employees, we selected the two VHA employees that had active warrants. Of the 15 selected VHA employees, we were able to confirm the identities of seven employees. Of these seven VHA employees, two employees were out of the scope of our review because of their employment status provided by VA. Of the five remaining VHA employees, three employees had warrants before they were hired. For further information on how we identified the VHA employees and confirmed whether they had valid, active warrants at the time of our review, see appendix I.

⁶³A bench warrant is an order to appear issued by the court when a person does not appear for a hearing.

⁶⁴OPM, *Suitability Processing Handbook* (Sept. 2008); VHA, *Significant Issue Referral Criteria*, 19-02 (Oct. 11, 2018).

regarding employees are to be retained for 2 years.⁶⁵ If any follow-up was conducted on the warrant that resulted in a finding, VA would no longer have a record of it. The individual retired in early 2022.

- **Case 12.** The employee was hired as a food service worker in February 2019. During the hiring process, VA received information about the warrant issued in 2018 for failure to appear for an original charge of traffic violations. In 2019, VA issued a favorable suitability determination. Again, given the length of time since the individual was hired and VA's Record Retention Schedule, the VHA VISN has no record of any follow up conducted on the warrant prior to hiring the individual. Further, VA did not have information if a referral was made based on the VHA's Advisory 19-02 dated October 11, 2018. VA noted that the individual was terminated in early 2020 for failing to complete the background investigation by the due date.
- **Case 13.** The employee was hired as a nursing assistant in April 2018. During the hiring process, VA received information about the warrant issued in 2017 for failure to appear for an original charge of resisting arrest.⁶⁶ In 2018, VA issued a favorable suitability determination. This was again beyond VA's record retention schedule. The VHA VISN was not able to confirm to us if any follow up was conducted on the warrant. If any follow-up was conducted on the warrant that resulted in a finding, VA would no longer have a record of it. As of June 2022, the individual is working at VA.

Due to VHA's record retention schedules, VHA was unable to determine if the VISNs followed up on the warrants for these three individuals and if a referral was made to the VISN Suitability Coordinator prior to hiring the individual. VHA noted that there were no oversight or monitoring procedures that would help provide assurance that adjudicators are referring employees with active warrants to the VISN coordinators.

VHA officials noted that the VHA Central Office Personnel Security Program Office works closely with the adjudicators, allowing the resolution of issues when questions arise during the adjudication process. The VHA officials noted that the office has four staff who manage the suitability program for an organization that employs over 400,000 staff with an annual turnover rate of 10 percent. Thus, conducting oversight

⁶⁵VHA Records Control Schedule 10-1.

⁶⁶For this warrant, we were able to confirm that the warrant was active during the hiring process, but we were unable to confirm if the warrant was still active when VA hired the individual.

and monitoring activities to ensure warrants are being reviewed and referred can be a challenge, according to VHA officials.

OPM's *Suitability Processing Handbook* states that pending charges of a nature that are potentially disqualifying cannot be adjudicated until the case is disposed. Further, VHA's Advisory 19-02, dated October 11, 2018, states that applicants under current charges for any violation of the law, which would include those with active warrants, should always be referred to the appropriate VISN Suitability Coordinator if mitigation is being considered.⁶⁷

By not having control procedures to ensure that adjudicators check warrants and notify the appropriate VISN Suitability Coordinator about the warrants before hiring, VHA risks hiring individuals who pose a risk to the agency and to veterans receiving care.

VA Did Not Have Control Procedures to Ensure that PAAs Are Routed to the Appropriate Office and That Follow-Up Work on the PAA Is Documented

VA received post-appointment arrest (PAA) notifications on some of its employees. However, we found that VA did not have control procedures to ensure that the PAA notifications are routed and resolved appropriately and that follow-up work conducted on the PAA notification is documented in VA's systems. Without such procedures, once the new system for processing PAA notifications is fully implemented, VA will not have assurance that PAA notifications are fully investigated or that appropriate action is taken.

We identified four VHA employees with indications of criminal activity after their hired date among those in our generalizable sample and individuals with active warrants.⁶⁸ Specifically:

- **Case 14.** The employee was hired as a housekeeping aide in August 2011. DCSA records show that in March 2015 a PAA notification was sent to VA. The criminal history record included in the PAA notification shows that the individual was arrested and charged for driving with a license permanently revoked. The VISN confirmed to us that the PAA

⁶⁷As previously discussed, on July 7, 2022, VHA revised its advisory requiring VISNs to notify VHA on significant issue cases on a quarterly basis.

⁶⁸From the individuals in our sample of 305 VHA employees that had criminal activity after they were hired, we reviewed three employees to determine if a PAA notification was sent to VA. We also reviewed one additional employee who had a warrant issued after he was hired to determine if a PAA notification was sent to VA.

was received, but was not able to confirm if any follow up was conducted. The employee retired in January 2022.

- **Case 15.** The employee was hired as a nursing assistant in May 2014. DCSA records show that in December 2015 a PAA notification was sent to VA. However, VA informed us that it did not receive this PAA. The criminal history record included in the PAA notification shows that the individual was arrested and charged for maintaining a drug trafficking place. The employee resigned in April 2022.
- **Case 16.** The employee was hired as a supply technician in December 2016. This individual was charged with possession of drug paraphernalia after he was hired. VA told us that it did not receive a PAA notification. DCSA confirmed that no PAA was sent to VA for this individual. The FBI confirmed that PAA notification was not sent because the automated feature that generates the notification when criminal activity is received was removed on this individual's record at the request of OPM.⁶⁹ The employee was removed in May 2022 for failure to follow leave request procedures and for conduct unbecoming of a federal employee.
- **Case 17.** The employee was hired as a pharmacy technician in July 2008. DCSA records show that in January 2018 a PAA notification was sent to VA. The criminal history record included in the PAA notification shows that the individual was wanted by a foreign country for marijuana smuggling. The VISN told us that it had no record of receipt of the PAA. However, DCSA confirmed to us that a PAA notification was sent to VA. As of August 2022, the employee continues to be employed at VA.

Based on our analysis of our generalizable sample, we estimate that:

- VA received a PAA notification but cannot confirm whether it followed up on the notification for about 80 (less than 1 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history.
- DCSA sent a PAA notification to VA, but VA did not have a record of it for about 50 (less than 1 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history.

⁶⁹In 2019, OPM transferred the National Background Investigations Bureau and its background investigation function to the DCSA. Therefore, during this time, the PAA notification would have been sent to DCSA.

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- VA did not receive any PAA notification for about 50 (less than 1 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history.

When we provided VA the list of the four individuals with PAA notifications in our review, VA was not able to confirm or provide additional information if any follow-ups had been conducted for any of the four individuals.

VA does not have a system where it stores evidence or documentation of any follow-up conducted on the PAA notifications. According to VA officials, in October 2019 VA launched the Automated Labor and Employee Relations Tracker that serves as the centralized repository for evidence files. However, VA noted that not all offices are using it and some evidentiary files are maintained locally.⁷⁰ Any follow-up work conducted on a non-probationary employee that resulted in no action would be destroyed. VA-CABS does not contain information about the PAA notifications or how they were resolved.⁷¹

The PAA notification process was a manual process that involved a paper format document being handled by various agencies and offices within VA. According to VA, this process was discontinued in July 2021. This manual process resulted in PAAs sometimes not being properly routed to VA. When VA received a PAA notification, it was sometimes not properly routed to the appropriate office. Further, according to VA, it had no control procedures to ensure that the PAA notification was properly routed to the appropriate office.

Recent changes to government-wide screening processes have changed the way VA responds when an employee is arrested. According to VA, it is currently implementing the FBI's Rap Back Program, which allows continuous vetting and an ongoing ability to gather real-time information about an individual's criminal behavior, including PAA notifications. As of August 2022, not all VA employees have been enrolled in Rap Back; consequently, VA has not received PAA notifications through Rap Back for employees not yet enrolled. There are three staff responsible for enrolling all employees in the Rap Back Program at VA and working on

⁷⁰VA noted that the Automated Labor and Employee Relations Tracker was implemented in a phased approach and offices continue to work toward full implementation of the tracker. VA expects to achieve full implementation during fiscal year 2023.

⁷¹As previously mentioned, VA-CABS was launched in 2018 as VA's case management system for background investigations and suitability adjudications.

the associated updates. VA officials noted that they have requested additional staff but have not received any.

VA officials noted that once Rap Back is fully implemented the PAA notification would be sent via e-delivery to VA-CABS for review. Further, an electronic process will be created to ensure that when a PAA notification is received in VA-CABS it will include the individual's vetting record to help ensure the appropriate office receives the notifications. However, VA has not developed policies and procedures to ensure that PAA notifications received through Rap Back are routed and resolved appropriately. Further, VA has not developed policies and procedures for documenting, in a VA system such as VA-CABS, follow-up work conducted on a PAA notification received through Rap Back.

Standards for Internal Control in the Federal Government state that management should clearly document internal control systems and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.⁷² Without such policies and procedures, VA will not have assurance that the notifications are routed, investigated, and resolved appropriately.

Persistent Vulnerabilities Exist in VHA's Processes for Completing and Documenting Employee Background Investigations

Our review found vulnerabilities in VHA's processes for completing and documenting employee background investigations, which are critical for ensuring that VHA can identify and remove unsuitable individuals from the VHA workforce and mitigate the risk to veterans. Specifically, we found that some VHA employees did not have completed background investigations as required by OPM regulation and VA policy. Further, we found some employees for whom VHA did not upload background investigation documentation to the eOPF system as required by OPM guidance and VA policy. As a result, VHA lacks assurance that its personnel are properly vetted and suitable to provide care to veterans.

⁷²[GAO-14-704G](#).

VHA Did Not Always Ensure Employees Had Completed Background Investigations When Required

VHA did not always ensure that employees had completed and adjudicated background investigations when required. As previously discussed, OPM regulation and VA policy require that most VHA employees undergo background investigations.⁷³ Specifically, per regulation and policy, VHA should initiate an individual's background investigation before appointing the individual; if that is not possible, VHA must initiate the investigation within 14 days of the individual's appointment.

When we requested certifications of investigation or equivalent documentation of completed and adjudicated background investigations for the 305 employees in our generalizable sample, VHA confirmed that 13 of these employees did not have background investigations completed as required.⁷⁴ For example:

- **Case 18.** The employee was hired as a medical technician in October 2017 and was removed from employment in August 2020 for reasons unrelated to his lack of a background investigation. According to VHA, the background investigation process was initiated for the employee, but was found to be “unacceptable” and was never processed. Likewise, VA-CABS shows the employee’s investigation was unacceptable as of October 2017. The director of the VHA Central Office Personnel Security Program Office told us that DCSA designates investigations as “unacceptable” if there are too many mistakes or fields left blank on investigative questionnaires such that DCSA cannot initiate an investigation. He further said DCSA contacts the agency requesting the investigation before designating it as “unacceptable,” but DCSA cancels the investigation if the agency does not respond to its outreach or the employee being investigated does not fix the forms. Thus, this employee worked at VHA without a required background investigation between October 2017 and August 2020.
- **Case 19.** According to VA officials, the employee was hired as a contract medical technologist in January 2019 and voluntarily separated in October 2020. VA told us that the background investigation process was initiated for the employee in February 2019, but the employee did not complete the investigative questionnaires,

⁷³5 C.F.R. §§ 731.101, 731.104; VA Handbook 0710.

⁷⁴Certifications of investigation contain information showing the case was investigated, the level of the investigation, confirmation the case was adjudicated, and the date a suitability determination was made.

DCSA canceled the investigation later that month, and another investigation was never reinitiated. Thus, this employee worked at VHA without a required background investigation between January 2019 and October 2020.

- **Case 20.** The employee was hired as a foodservice worker in October 2010 and, as of May 2022, continues to work at VHA as a housekeeping aid. When we requested a certification of investigation for this employee, VHA stated that he did not have a completed background investigation. In February 2022, VHA told us that the facility was working to complete an investigation for the employee. Thus, this employee worked at VHA without a required background investigation from October 2010 until at least February 2022.

Based on our analysis of our generalizable sample, we estimate that about 400 (3 percent) of the approximately 12,569 employees with indications of controlled substance-related criminal history did not have completed background investigations.

In addition to the employees in the generalizable sample described above, we also examined whether the 24 employees we identified with actions taken against their DEA registrations and with active warrants had completed background investigations. Among these groups, VA confirmed that three employees among the 11 with actions taken against their DEA registrations did not have background investigations when required.

Consistent with our findings, in March 2018, VA OIG reported that VA did not ensure that background investigations were completed when required. Accordingly, VA OIG recommended that VA, among other things, improve oversight of the personnel suitability program at VA medical facilities and ensure that investigation data are fully evaluated and reliable for program tracking and oversight. VA OIG told us that VA implemented these recommendations by, among other actions,

- establishing a VHA personnel security program office,
- appointing VISN suitability coordinators,
- implementing a quarterly review process for delinquent adjudications, and
- conducting “100 percent audits” of suitability data for all VA personnel.

According to the director of the VHA Central Office Personnel Security Program Office, these “100 percent audits” consisted of verifying that employees’ background investigation closure dates were correctly recorded in HR Smart.⁷⁵

In light of VA’s efforts in response to the VA OIG recommendations, we asked why some employees did not have background investigations when required. VHA officials stated that VHA does not have an automated means for monitoring whether background investigations are completed. Instead, VHA relies on manual processes. The officials told us that they would have expected the “100 percent audits” of suitability data to identify employees who did not have required background investigations. They noted, however, that such manual monitoring is prone to human error and that the extent and frequency of such monitoring is limited due to resource constraints. Thus, according to the officials, VHA’s current control procedures are insufficient for identifying employees without required background investigations and for ensuring such instances are addressed.⁷⁶

The VHA officials stated that they expect future efforts to integrate background investigation data from various government-wide databases into VA-CABS will enable automated monitoring, such as reports identifying employees who do not have investigations when required. VA launched VA-CABS in 2018 as its case management system for background investigations and suitability adjudications. VA officials told us, however, that VA-CABS may not contain complete information for some employees, so VA cannot currently use it for automated monitoring of whether employees have completed background investigations. The officials stated that these efforts would be part of VA’s response to material weaknesses in its enterprise-level background investigation data identified in prior VA OIG audits assessing VA’s compliance with the

⁷⁵According to VA officials, HR Smart was VA’s system of record for background investigations until August 2022, at which time VA-CABS became VA’s system of record for background investigations. VHA officials told us that VHA conducted two “100 percent” audits of suitability data. The officials said that limited resources amid VHA’s efforts to respond to the coronavirus pandemic prevented VHA from taking corrective action based on the information obtained during the first audit, so VHA completed a second audit.

⁷⁶This insufficient oversight of VHA’s completion of background investigations is not unique to the 12,569 employees we identified with indications of controlled substance-related criminal history, but characterizes the background investigation process for all VHA employees who require investigations. Therefore, it is possible that some employees outside our study population also did not have background investigations as required.

Federal Information Security Modernization Act.⁷⁷ However, the officials did not provide a timeline for when efforts at integrating background investigation data into VA-CABS would be complete or when VHA would be able to automate the monitoring of employee background investigations.

Standards for Internal Control in the Federal Government state that management should establish and operate activities to monitor the internal control system and evaluate the results.⁷⁸ They also state that management should evaluate and document internal control deficiencies, determine appropriate corrective actions, and complete and document such corrective actions on a timely basis.

Without adequate control procedures to ensure employee background investigations are completed as required by OPM regulation and VA policy, VHA lacks assurance that its personnel, including those with indications of controlled substance-related criminal history, are properly vetted and suitable to provide care to veterans. Moreover, by not ensuring that background investigations are completed, as required, for the employees who we found did not have completed investigations, VHA cannot reliably attest to the suitability of these employees and will continue to expose veterans to individuals who have not been properly vetted.

VHA Did Not Always Document Employee Background Investigations as Required

VHA did not document background investigations for some employees as required by OPM guidance and VA policy. Specifically, our review of the eOPF system found that VHA did not always file its employees' certifications of investigation or Declarations for Federal Employment in eOPF.

OPM guidance states that a certification of investigation or similar agency form should be filed permanently in an employee's official personnel folder. OPM guidance also states that a Declaration for Federal Employment should be filed permanently in the employee's official personnel folder. VA policy states that a signed copy of the certification of investigation should be filed in the employee's eOPF upon a favorable

⁷⁷See VA OIG, *Federal Information Security Modernization Act Audit for Fiscal Year 2020*, 20-01927-04 (Washington, D.C.: Apr. 29, 2021).

⁷⁸[GAO-14-704G](#).

suitability determination.⁷⁹ However, VA policy does not address the filing of Declarations for Federal Employment, as discussed below.

Of the 305 employees in our generalizable sample, we found that eOPF did not contain certifications of investigation or equivalent forms for 54 employees when required. Upon our request, VHA was subsequently able to provide certifications of investigation or equivalent forms for 51 employees. However, the documents for 32 employees were signed and dated after our document request. VHA was unable to provide certifications of investigation or equivalent documents for three employees.⁸⁰

Similarly, of the 305 employees in our generalizable sample, we found that eOPF did not contain Declarations for Federal Employment for 26 employees. Upon our request, VHA was able to provide Declarations for Federal Employment for 24 of these employees. Six of these were signed after our request. VHA was unable to provide Declarations for Federal Employment for two employees.

Based on additional analysis of our generalizable sample, we estimate that:

- About 1,700 employees (14 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history do not have certifications of investigation in eOPF as required.
- About 1,100 (8 percent) of the 12,569 employees we initially identified as having indications of controlled substance-related criminal history

⁷⁹VHA policy states that, if a certification of investigation is unavailable, a certificate of reciprocity may be used as an analog to substantiate a prior favorable suitability determination. Similarly, the VHA Personnel Security director told us that VHA used certificates of eligibility to replace missing certifications of investigation. Thus, we considered certificates of reciprocity and certificates of eligibility to be equivalent to certifications of investigation.

⁸⁰These numbers do not include employees who were not present in the eOPF system, such as contractors, or those whose eOPF folders appeared to have been transferred to another agency or to the National Archives and Records Administration and no longer under VA's control. Further, the number of employees without the certification of investigation or equivalent documentation in eOPF does not include individuals who VA confirmed did not have completed background investigations. DCSA PIPS data for the three employees for whom VHA was unable to provide certifications of investigation or equivalent documentation upon request showed indications of completed background investigations, suggesting that certifications of investigation or equivalent documentation for these employees should have been in eOPF.

do not have Declarations for Federal Employment in eOPF as required.

In addition to the employees in the generalizable sample described above, we also examined whether background investigations were documented as required for the 24 employees we identified with actions taken against their DEA registrations and with active warrants. Among these groups, we found another five employees who did not have certifications of investigation or equivalent documents in eOPF as required and another five employees who did not have Declarations for Federal Employment in eOPF as required.

Consistent with our findings, in March 2018 VA OIG reported that VA did not ensure that certifications of investigation were filed in eOPF when required. Accordingly, VA OIG recommended that VA, among other things, improve oversight of the personnel suitability program at VA medical facilities and ensure that investigation data are fully evaluated and reliable for program tracking and oversight. VA OIG told us that VA implemented these recommendations by establishing a VHA personnel security program office, appointing VISN suitability coordinators, implementing a quarterly review process for delinquent adjudications, and conducting “100 percent audits” of suitability data for all VA personnel.⁸¹

Although VA took these actions, VA policy does not assign responsibility for filing certifications of investigation and Declarations for Federal Employment in eOPF. Specifically, although VA policy states that a copy of the signed certification of investigation should be filed in an employee’s eOPF after a favorable suitability determination, it does not establish who is responsible for doing so. Additionally, VHA’s staffing policy does not contain procedures for filing the Declaration for Federal Employment in eOPF. Also, VHA officials told us that VHA does not have control procedures to ensure that certifications of investigation and Declarations for Federal Employment are filed in eOPF as required.⁸² The officials said

⁸¹VHA officials told us that VHA conducted two “100 percent” audits of suitability data. The officials said that limited resources amid VHA’s efforts to respond to the coronavirus pandemic prevented VHA from taking corrective action based on the information obtained during the first audit, so VHA completed a second audit.

⁸²This insufficient oversight of VHA’s documentation of background investigations is not unique to the 12,569 employees we identified with indications of controlled substance-related criminal history, but characterizes the onboarding and background investigation processes for all VHA employees who require investigations. Therefore, it is possible that VHA also did not appropriately document background investigations for some employees outside our study population.

that in August 2022 they held discussions about possible solutions for ensuring certifications of investigation are filed in eOPF and obtained some information from VHA's onboarding system regarding the number of Declarations for Federal Employment that were completed in the system but not filed in eOPF. However, the officials said they had not fully evaluated the extent of the issue.

Standards for Internal Control in the Federal Government state that management should document responsibilities for internal control through policies and design control activities to achieve objectives and respond to risks.⁸³ Further, management should establish and operate monitoring activities to monitor the internal control system and evaluate the results. Management should also evaluate and document internal control deficiencies, determine appropriate corrective actions, and complete and document such corrective actions on a timely basis.

Without policies that establish who is responsible for documenting employee background investigations in eOPF in accordance with OPM guidance and VA policy and control procedures to ensure that these policies are followed, VHA lacks assurance that its personnel are properly vetted and suitable to provide care to veterans. Further, by not ensuring that background investigations are documented in eOPF as required for the employees who we found lacked such documentation and those with indications of controlled substance-related criminal history, VHA cannot reliably attest to the suitability of these employees.

Conclusions

VHA is responsible for ensuring that its more than 400,000 health care professionals and support staff are qualified and competent to provide safe care to veterans. To that end, DEA, OPM, and VA regulations and policies require VHA to obtain DEA waivers for employment for certain individuals who have access to controlled substances, conduct background investigations on most personnel, and document its screening and suitability actions. Prior GAO and VA OIG work identified deficiencies in these areas. Our work, based on a generalizable sample and other cases, demonstrates that VHA's actions, including conducting "100 percent audits" of suitability data, have not completely eliminated previously identified issues. Moreover, we found additional deficiencies that may compromise VHA's employee screening process and result in VHA hiring individuals who pose a risk to veterans.

⁸³[GAO-14-704G](#).

Our review identified seven key vulnerabilities that may limit VHA's ability to identify and appropriately respond to adverse information regarding its applicants and employees.

- VHA does not have control procedures for evaluating whether its employees have access to controlled substances or need DEA employment waivers. VHA has taken steps to develop a waiver policy. However, VHA has not established a timeline for finalizing and implementing the policy and reviewing the 12,569 employees we identified with indications of controlled substance-related criminal history to determine whether they hold positions with access to controlled substances and thus need waivers. By not doing so, VHA lacks assurance that its facilities comply with DEA regulations that help control against theft and diversion of controlled substances.
- VHA does not have control procedures to ensure that suitability adjudicators use undisclosed adverse information identified during the employee screening process in compliance with OPM regulations and VA policy.
- VHA does not have control procedures to ensure that adjudicators follow up on active warrants and refer warrants for second-level review, as is required by VHA policy. Without control procedures to ensure that suitability adjudicators respond to such situations in accordance with regulation and policy, VHA lacks assurance that employees with undisclosed adverse information or active warrants are properly vetted and risks hiring unsuitable individuals who may pose a risk to veterans.
- VA has not developed policies and procedures for routing and appropriately resolving post-appointment arrest notifications.
- VA does not have policies and procedures for documenting follow-up work conducted on post-appointment arrest notifications it receives through Rap Back. Thus, VHA will not have assurance that post-appointment arrest notifications are fully investigated or that appropriate action has been taken.
- VHA does not conduct adequate oversight to ensure that employee background investigations are completed.
- VHA does not conduct adequate oversight to ensure that background investigations are documented as required. Therefore, VHA lacks assurance that its personnel are properly vetted and suitable to provide care. By not reviewing the employees among the 329 we examined who lacked completed and documented background investigations and the approximately 12,200 employees with

indications of controlled substance-related criminal history—whom we did not examine—to ensure that their investigations are completed and documented, VHA lacks assurance that these employees are suitable to care for veterans.

Although some progress has been made in the areas identified in the High-Risk List, our findings are consistent with broad areas of concern in our 2015 High-Risk designation—ambiguous policies, inconsistent processes, and inadequate oversight. Specifically, the vulnerabilities we found in VHA’s policies and processes indicate that VHA’s employee screening efforts may not address the potential risks to veterans posed by individuals with controlled substance-related criminal histories or other adverse information. Further, inadequate oversight raises questions regarding the integrity of VHA’s employee screening, as we identified some individuals who were not properly vetted. VHA has an opportunity to address these persistent problems by strengthening policies, procedures, and oversight of its employee screening efforts.

Recommendations for Executive Action

We are making the following 14 recommendations to VA:

The Under Secretary for Health should establish a timeline for finalizing and implementing a policy regarding DEA employment waivers. (Recommendation 1)

As the Veterans Health Administration develops a DEA employment waiver policy, the Under Secretary for Health should ensure that the policy includes guidance for determining whether employees have access to controlled substances. (Recommendation 2)

As the Veterans Health Administration develops a DEA employment waiver policy, the Under Secretary for Health should ensure that the policy specifies that an employment waiver is required to employ any individual in a position with access to controlled substances who, at any time, has been convicted of a felony offense related to controlled substances, had an application for a DEA registration denied, or had a DEA registration revoked or surrendered for cause, and does not presently hold an active DEA registration. (Recommendation 3)

After implementing a DEA employment waiver policy, the Under Secretary for Health should review the individuals still employed at VHA among the 50 we confirmed had controlled substance-related criminal history to determine whether they have access to controlled substances

as part of their assigned duties and thus need DEA employment waivers. (Recommendation 4)

After implementing a DEA employment waiver policy, the Under Secretary for Health should review the approximately 12,500 employees we identified with indications of controlled substance-related criminal history—but for whom we did not confirm controlled substance-related felony convictions—to determine whether they need DEA employment waivers. (Recommendation 5)

The Under Secretary for Health should implement control procedures to ensure that suitability adjudicators use information regarding undisclosed criminal history in compliance with OPM regulations and VA policy, including policies requiring that adjudicators document their assessments of the materiality and intent of undisclosed information and their rationale for not referring cases involving nondisclosure to OPM. (Recommendation 6)

The Under Secretary for Health should establish oversight procedures to ensure that adjudicators follow up on applicants' active warrants before hiring and notify the appropriate VISN suitability coordinator on the active warrant before rendering a favorable determination. (Recommendation 7)

As VA implements the Rap Back Program, the Secretary of Veterans Affairs should develop control procedures to ensure that PAA notifications are routed and resolved appropriately. (Recommendation 8)

As VA implements the Rap Back Program, the Secretary of Veterans Affairs should develop control procedures to document follow-up work conducted on a PAA notification in a VA system such as VA-CABS. (Recommendation 9)

The Under Secretary for Health should establish control procedures to ensure that employee background investigations are completed as required by OPM regulation and VA policy. (Recommendation 10)

The Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness should develop and implement policies that establish who is responsible for documenting employee background investigations in eOPF in accordance with OPM guidance and VA policy and control procedures to ensure that these policies are followed. (Recommendation 11)

The Under Secretary for Health should ensure that background investigations are completed and documented as required for the employees among the 329 we examined (i.e., those from our sample and those we identified with DEA registration actions or active warrants) and who we found did not have completed investigations or whose investigations were not documented in eOPF. (Recommendation 12)

The Under Secretary for Health should review the approximately 12,200 employees we identified with indications of controlled substance-related criminal history—but whom we did not examine—to ensure that employees who may require DEA employment waivers have completed background investigations. (Recommendation 13)

The Under Secretary for Health should review the approximately 12,200 employees we identified with indications of controlled substance-related criminal history—but whom we did not examine—to ensure that background investigations were documented in eOPF for employees who may require DEA employment waivers. (Recommendation 14)

Agency Comments and Our Evaluation

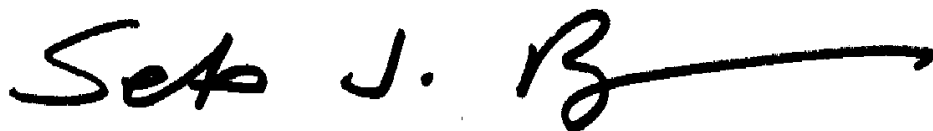
We provided a draft copy of this report to DOD, DOJ (which includes the FBI and DEA), HHS, OPM, and VA for review and comment. The FBI, HHS, and OPM provided technical comments on our draft, which we incorporated as appropriate. DOD and the DEA did not have comments.

In its written comments, reproduced in Appendix VI, VA agreed with all 14 of our recommendations and identified actions it is taking to implement them. Among other actions, VHA said that it was reviewing a draft employment waiver policy that will clarify whether employees' duties take place within the closed system of distribution and therefore may be subject to the waiver requirement. VHA also said that it will review certain employees to ensure their background investigations are completed and documented as required. VA also provided technical comments, which we incorporated as appropriate.

We are sending copies to the appropriate congressional committees, the Secretary of Veterans Affairs, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Seto Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov or Sharon Silas at (202) 512-7114 or silass@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 listed in appendix VII.

A handwritten signature in black ink that reads "Seto J. Bagdoyan". The signature is written in a cursive style with a long horizontal stroke extending to the right from the end of the name.

Seto Bagdoyan
Director, Forensic Audits and Investigative Service

A handwritten signature in black ink that reads "Sharon Silas". The signature is written in a cursive style with a long horizontal stroke extending to the right from the end of the name.

Sharon Silas
Director, Health Care

List of Requesters

The Honorable Mariannette J. Miller-Meeks
Chairwoman
Subcommittee on Health
Committee on Veterans' Affairs
House of Representatives

The Honorable Jen Kiggans
Chairwoman
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
House of Representatives

Jack Bergman
House of Representatives

Tracey Mann
House of Representatives

Chris Pappas
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report examines:

- (1) the extent to which the Veterans Health Administration (VHA) responded to identified adverse information regarding employees' criminal history or Drug Enforcement Administration (DEA) registrations before employees were hired or while they were employed; and
- (2) the extent to which vulnerabilities exist in VHA's processes for completing and documenting employee background investigations.

For our first objective, we conducted a multistep methodology. As detailed further below, we:

- identified relevant documentation and officials to interview;
- obtained a comprehensive list of VHA employees;
- matched the list of VHA employees to databases containing criminal history or other adverse actions taken against individuals;
- performed text analytics to identify criminal history or other adverse actions related to controlled substances;
- selected a generalizable sample of VHA employees found to have criminal or other adverse actions taken;
- reviewed court documentation to determine whether the criminal history or other adverse action resulted in a felony conviction;
- compared FBI universal control numbers (UCN) obtained in our biographic analysis to the UCNs obtained during the employee's federal background investigation to confirm the employees' identity;
- produced estimates of VHA employees with felony convictions related to controlled substances and the extent to which VHA received this information before employees were hired or while they were employed;
- examined whether VHA employees had active warrants related to controlled substances;
- identified whether any VHA employees had actions taken against their DEA registration; and
- examined background investigation and other documentation for those employees with adverse information we identified to determine the extent of VHA's response.

First, we reviewed relevant statutes, regulations, and policies from the Department of Veterans Affairs (VA), VHA, DEA, Office of Personnel Management (OPM), and Defense Counterintelligence and Security Agency (DCSA) that outline requirements for identifying and responding to adverse employee information. We interviewed relevant officials from these agencies and the Federal Bureau of Investigation (FBI) to determine how this information is identified and how VHA responded.¹

Second, to obtain a comprehensive list of the VHA employees, we obtained data from VA's HR Smart and VHA's VetPro systems, which showed 400,339 federally and nonfederally appointed VHA employees employed as of January and June 2020, the most recent data available at the time of our review.² HR Smart is VA's human resources information system, which contains data on all 365,600 federally appointed employees. VetPro is VHA's credentialing system which provided us data on approximately 34,739 additional VHA employees including contractors and other types of nonfederally appointed employees. VHA does not maintain a comprehensive, centralized list of its contractors in a readily analyzable format; therefore, we used VetPro as a means to identify a subset of VHA's contractors and other nonfederally appointed employees.

Third, to identify adverse information, such as criminal history, active warrants, and adverse licensure actions related to controlled substances, we matched our list of all VHA employees to the two databases listed below.

FBI's Next Generation Identification (NGI) System

The NGI System provides an electronic repository of biometric and criminal history record information for over 80 million criminal records voluntarily submitted by all states and territories, as well as federal and some foreign criminal justice agencies. NGI provides the Identity History Summary, which includes criminal history record information on file for an individual identified via fingerprint check, plus any additional information

¹We also interviewed individuals from non-VA organizations that previously requested DEA employment waivers to obtain background information regarding the waiver process.

²Specifically, we obtained two separate extracts of data on VHA employees from HR Smart employed as of January and June 2020 and data on VHA employees, contractors, and other obtained from VetPro as of May 2020. We analyzed this group of employees because the DEA employment waiver regulation does not specify types of positions that have access to controlled substances and VHA did not have a process for determining this access at the time of our review. Nonfederally appointed VHA employees include contractors, fee-basis providers, and other personnel who do not hold federal appointments.

maintained by a state that supports the purpose of the request. An initial retained fingerprint submission to NGI creates a unique identifier, called a UCN, and establishes the identity within the NGI System. NGI is one of the systems used by DCSA to identify criminal history as part the federal background investigation process.³

Our match to NGI resulted in Identity History Summaries, which include criminal history records, for 60,078 VHA employees.⁴ To improve our matching to NGI, we obtained UCN data from DCSA's Personnel Information Processing System (PIPS) for the VHA employees in our review, where available.⁵ For employees for whom we did not obtain UCNs, we provided the FBI with a list of VHA employees to match using a combination of Social Security number (SSN), names, and date of birth. Criminal history record information maintained in the NGI System is based on positive biometric identifications; however, due to the differences in biographic data captured at the time of an arrest and nature of reporting this data to the FBI, biographic information—such as SSN, names, and date of birth—reported to the NGI System may not always contain complete or accurate information. For each of the individuals in our sample and warrants analyses, we took additional steps to verify their identities as described later. Additionally, due to these limitations, our match may not have identified all relevant criminal history for the VHA employees in our review.

From the population of 60,078 employees with NGI Identity History Summaries, which include criminal history records, we used text analytics to analyze each criminal history record and identified 16,002 employees with possible offenses related to controlled substances. Because NGI offense data are generally free-form text that is input by the law enforcement or similar agencies responsible for reporting the data to the

³OPM delegated its authority to DCSA to conduct background investigations for the federal government.

⁴The presence of an Identity History Summary does not necessarily mean there was criminal history identified, as some individuals' Identity History Summaries contained only civil and no criminal information. Further, because law enforcement entities send criminal history information to the FBI on a voluntary basis, criminal history records may not contain a given individual's full criminal history.

⁵DCSA's PIPS contains important information to be used in security and suitability programs and decisions for all federal background investigations conducted by DCSA, including VA's. It contains UCNs for all federal employees for whom DCSA has conducted a federal background investigation since May 6, 2018. Prior to this time, UCNs were not stored in a system but instead maintained in the hard copy file containing the employee's FBI Identity History Summary, which includes the criminal history record.

FBI, there was no systematic way to identify all offenses related to controlled substances. Instead, we used regular expressions to transform the free-form text into a structured dataset, and developed a keyword list of over 290 words, abbreviations, and iterations (such as “drugs”, “Cocaine”, or “Contrlrd Sub”) to indicate possible offenses related to controlled substances. We developed the keyword list using a nongeneralizable sample of NGI data and DEA’s list of controlled substances, among other things.

From our population of 16,002 employees with possible offenses related to controlled substances, we then identified 12,161 employees whose controlled substance-related offenses or disposition dates occurred on or after January 1, 2000, or whose offense or disposition dates were missing. We selected this date due to the likelihood of available court records to verify these potential crimes for our sample, as discussed later.

The Department of Health and Human Services’ National Practitioner Data Bank (NPDB)

NPDB is a federally managed electronic repository of reports containing information on health-care providers, among others, who have been disciplined by a state licensing board, professional society, or health-care entity, have been named in a health care-related judgment or criminal conviction, or identified in some other adverse action.⁶

We submitted our list of 400,339 VHA employees which included providers and nonproviders to the Department of Health and Human Services for matching to NPDB using SSN, names, and date of birth as matching criteria.⁷ The Department of Health and Human Services provided us with two files containing 19 individuals in the judgments or convictions report file and 2,119 individuals in the adverse action report file. From there, we analyzed the data for the individuals who matched to NPDB to identify those who had judgments or convictions reported to NPDB or who had adverse actions taken on the basis of a criminal conviction, violation, or other action related to controlled substances as reported to NPDB. We also identified individuals who had actions taken

⁶Information in the NPDB can be disclosed only to eligible entities, as described in federal law.

⁷While not all VHA employees were eligible to be included in NPDB, we submitted the entire list of all VHA employees because the VA data did not allow us to readily identify employees with positions that would be included in NPDB. Additionally, HHS officials estimated that matching on SSN and names could miss approximately 10 percent of potential matches and up to 5 percent of the matched data may contain false positives. The potential for error with our matches does not affect our work. We took additional steps to verify identities as well as the adverse actions reported by NPDB as described later.

against them based on a criminal conviction without indication as to whether it was related to controlled substances because each reporting entity may not provide detailed information about the type of conviction. Specifically, we identified:

- 9 employees who had a judgment or conviction related to controlled substances reported to NPDB;
- 80 employees who had adverse actions taken on the basis of a conviction, violation, diversion, or other action related to controlled substances; and
- 432 employees who had adverse actions taken on the basis of a criminal conviction (not specified whether it was related to controlled substances).

Based on the results of our NGI and NPDB analyses, we identified a population of 12,569 employees who had indications of criminal history related to controlled substances.⁸ From this population, we selected a generalizable, stratified random sample of 305 employees for further review and verification. We stratified the sample frame into 11 mutually exclusive strata by the

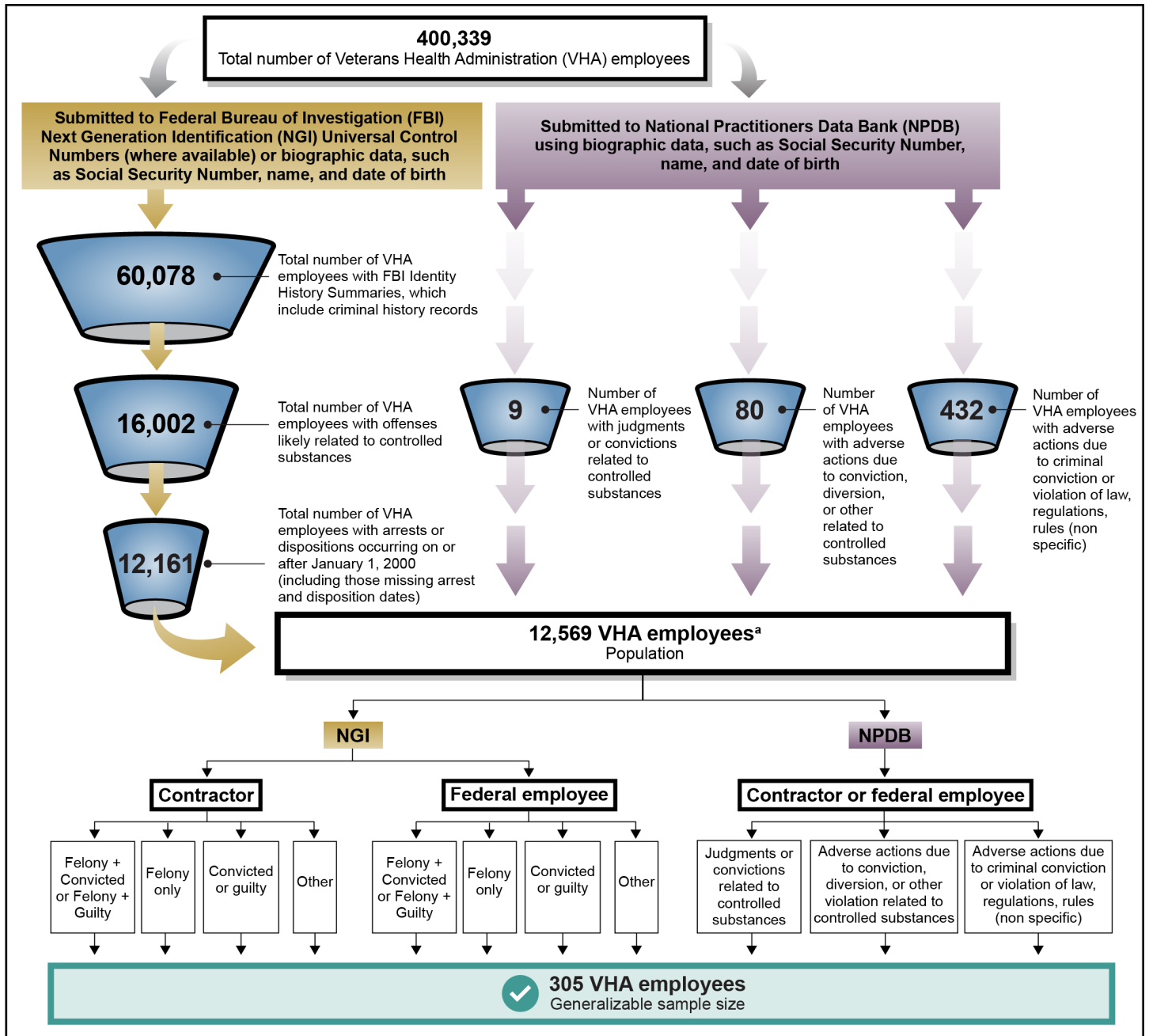
- type of match we obtained (NPDB judgment or conviction related to controlled substances, NPDB adverse action related to controlled substances, NPDB adverse action related to criminal conviction, and NGI);
- potential contractor status (federally appointed or contractor); and
- specific keywords identified in disposition, severity, or charge fields in the criminal history (felony, convicted, guilty, other).

We computed sample sizes necessary to obtain a precision of at least plus or minus 7 percentage points, at the 95 percent confidence level, for an estimate of the number of employees with an arrest or conviction.

⁸Of the 12,569 employees in our population, 113 individuals had both a relevant FBI Identity History Summary, which includes the criminal history record in NGI, and a relevant NPDB report. We described our matches as employees who had indications of criminal history because (1) law enforcement entities send criminal history information on a voluntary basis and NGI records may not contain a given individual's full criminal history; (2) biographic information reported to NGI may not always be complete or accurate; and (3) NGI data do not readily distinguish controlled substance related criminal offenses, so we relied on keyword searches to identify possible offenses related to controlled substances. As described below, we took additional steps to verify the identities and criminal histories of employees in our generalizable sample.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the interval (e.g., plus or minus 7 percentage points). This interval would contain the actual population value for 95 percent of the samples we could have drawn. See figure 5 below for additional information on our sample selection.

Figure 5: Generalizable Sample Selection Process for VHA Employees with Criminal Histories Related to Controlled Substances



Source: GAO analysis of data from the Department of Veterans Affairs, FBI, Department of Health and Human Services, Department of Defense, and Social Security Administration. | GAO-23-104296

^aThis number represents the distinct count of individuals in our population. Inputs sum to more than total because 113 individuals were identified in both our FBI and NPDB analyses.

We took steps to confirm convictions and identities. Specifically, to confirm whether the criminal indicators we identified resulted in a felony conviction related to controlled substances, we reviewed court documentation obtained from the relevant courthouses for each individual in our sample. To confirm that the Identity History Summary we obtained belonged to the VHA employee, we compared the UCN from our report to the UCN on the report obtained by DCSA during the employee's background investigation. In some cases, we were unable to confirm that the identity correctly matched because DCSA did not provide a criminal history record for that employee. Lastly, to confirm that the employee was actively employed at VHA during the scope of our review, we reviewed each sampled employee's electronic Official Personnel Folder (eOPF) records and confirmed employment status with VHA officials.

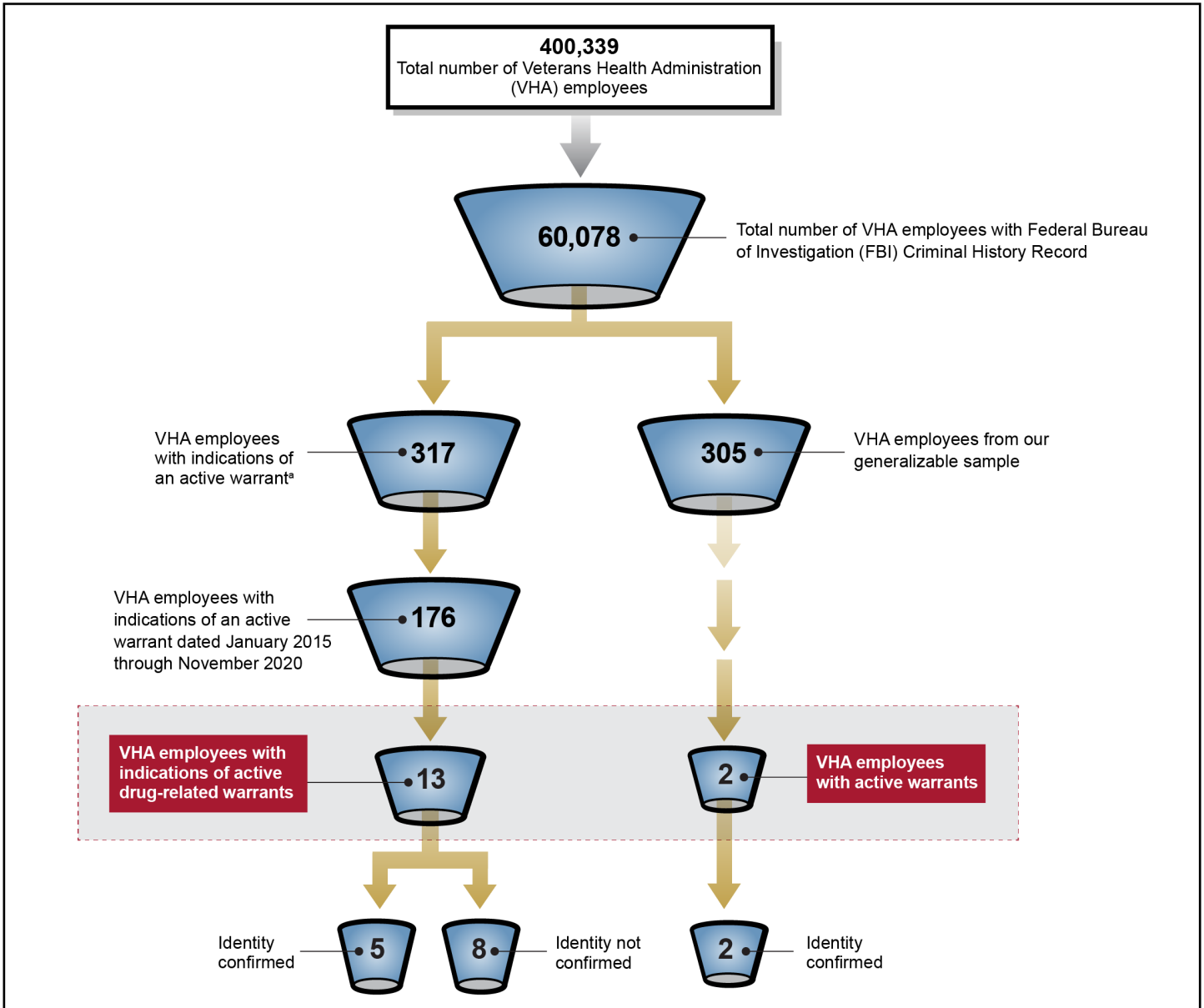
Based on the results of our work on the sample, we produced estimates of how many individuals were and were not likely to have a felony conviction related to controlled substances or were inconclusive because we could not verify their identities, we were unable to obtain court documentation, or they were not actively employed during the scope of our review. We also produced estimates on the extent to which VHA received the information we identified. The estimates are based on our generalizable, stratified random sample of 305 employees and have a margin of error at the 95 percent confidence level of plus or minus 7 percentage points or fewer.⁹

To determine whether VHA employees had active warrants related to controlled substances, we further analyzed the 60,078 FBI Identity History Summaries, which include criminal history records we identified for VHA employees. Specifically, we used regular expressions to transform the free-form text into a structured dataset to identify potential warrant information for 317 VHA employees. We then selected 176 VHA employees with indications of active warrants dated January 2015 through November 2020 for further review. We selected the five most recent years at the time of our review to better ensure we were able to verify the warrant information. For further review and verification, we selected 13 VHA employees who had indications that their warrants were

⁹We weighted the employees in the generalizable sample to reflect differences between strata in their proportions of the population of 12,569 employees. Thus, the estimated percentages of the population of 12,569 we project throughout the report differ from the actual percentages we found in the sample of 305 employees.

drug-related. We also selected any employees with indications of active warrants from our generalizable sample of 305 VHA employees with criminal history related to controlled substances. We verified that the warrant was valid and active by contacting local authorities, such as police departments. To confirm that the FBI criminal history record and warrant information we obtained belonged to the VHA employee, we compared the UCN from our report to the UCN on the report obtained by DCSA during the employee's background investigation, as described above. Figure 6 below illustrates the process for selecting VHA employees with active warrants for review.

Figure 6: VHA Employees with Active Warrants Selection Process



Source: GAO analysis of data from the Department of Veterans Affairs, FBI, Department of Defense, and Social Security Administration. | GAO-23-104296

^aWe described our matches as employees who had indications of an active warrant because (1) law enforcement entities send criminal history information on a voluntary basis and NGI records may not contain a given individual's full criminal history; (2) biographic information reported to NGI may not always be complete or accurate and (3) NGI data do not readily distinguish controlled substance related criminal offenses, so we relied on keyword searches to identify possible offenses related to controlled substances. We took additional steps to verify the identities and criminal histories of two

Appendix I: Objectives, Scope, and Methodology

employees from our generalizable sample with active warrants and five employees from the 13 employees with indications of active drug-related warrants.

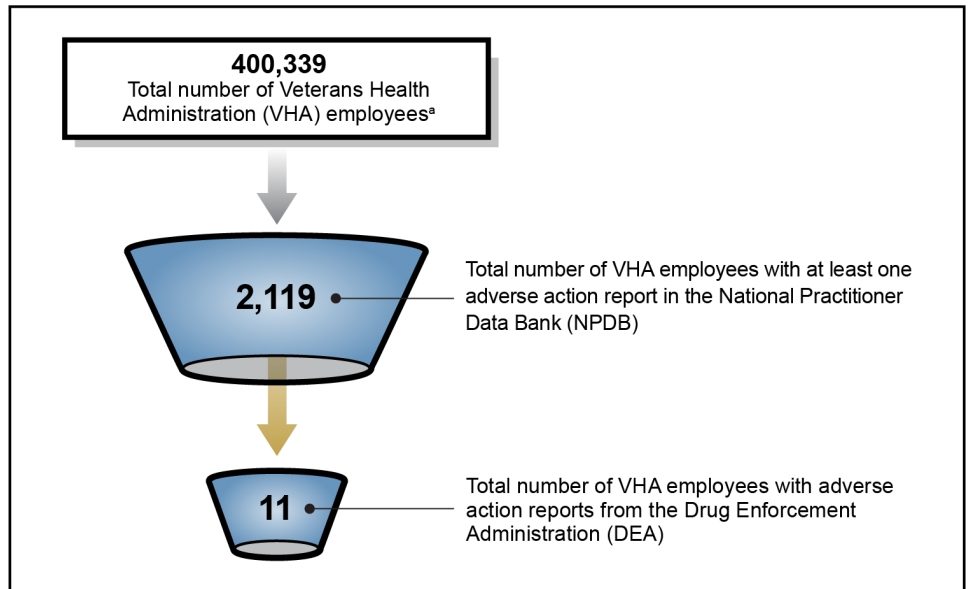
To determine the extent to which VHA responded to the adverse criminal information we identified for the employees in our sample and with active warrants, we reviewed background investigation documentation related to criminal history (such as the FBI NGI Identity History Summary run at the time of the employee's background investigation), information in VA's Centralized Adjudication and Background Investigation System (VA-CABS), and information from the employee's eOPF. In addition, we assessed whether the employee disclosed his criminal convictions on their Declaration for Federal Employment, when required.¹⁰ For employees whose criminal action occurred during their employment with VA, we also reviewed post-appointment arrest documentation. We asked VHA to provide details about how they responded to this information and interviewed officials from VA, VHA, OPM, and DCSA to obtain additional information about these processes, including the upcoming transition to the Rap Back Program.¹¹

To identify whether any VHA employees had actions taken against their DEA registration, we matched our list of all VHA employees to subjects reported in NPDB, as described above, and identified employees who had an adverse action reported by DEA. We then confirmed the information obtained from NPDB with DEA to ensure its accuracy. Figure 7 below shows how we derived the individuals for review.

¹⁰To avoid revealing the identities of the individuals mentioned in this report, we removed names and used "he" and "him" throughout the report regardless of the gender of the individual.

¹¹The FBI's Rap Back Program is part of DCSA's continuous evaluation services and provides an ongoing ability to gather real-time information about an individual's criminal behavior, including post-appointment arrests. It is currently in the process of being implemented government-wide. At the time of our review, VHA officials told us it aimed to have its employees enrolled by fiscal year 2024.

Figure 7: Employees with Actions Taken Against Their DEA Registrations Reported by NPDB for Further Review



Source: GAO analysis of data from the Department of Veterans Affairs, Department of Health and Human Services, and Social Security Administration. | GAO-23-104296

^aWhile not all VHA employees were eligible to be included in NPDB, we submitted the entire list of all VHA employees because the VA data did not allow us to readily identify employees with positions that would be included in NPDB.

To determine the extent to which VHA responded to the adverse information about its 11 employees' DEA registrations as reported in NPDB we identified, we reviewed for each employee credentialing information from VetPro, background investigation information from VA-CABS, and information from the employee's eOPF. We also asked VHA to provide details about how they responded to this information.

We assessed VA's response using federal statutes; DEA and OPM regulations; OPM, VA, VHA, and DEA policies; and federal internal control standards.¹² We asked VHA to identify which of the employees we identified with controlled substance-related criminal history or DEA registration actions had access to controlled substances, its method for

¹²Policies we reviewed include *VA Directive 0710* (June 4, 2010); *VA Handbook 0710* (May 2, 2016); *VHA Directive 0710* (Oct. 11, 2018); OPM's *Suitability Processing Handbook* (Sept. 2008); and OPM's *Guide to Personnel Recordkeeping* (June 1, 2011).

determining access, and whether it requested DEA employment waivers for the employees.

As part of this work, we determined that internal controls were significant to our objective. Specifically, the control environment component of internal control, along with the related principle that management should design control activities and implement control activities through policies, as outlined in the *Standards for Internal Control in the Federal Government*, was significant to our objective.¹³ Additionally, the monitoring environment component of internal control, along with the related principle that management should remediate identified internal control deficiencies on a timely basis were significant to our objective.

We assessed the reliability of the HR Smart, VetPro, NGI, PIPS, and NPDB data by (1) performing electronic testing, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing officials knowledgeable about the data. Based on our assessment of the data, we took additional steps to help improve the accuracy of our matching. Specifically, we compared VHA employees' SSN, names, and date of birth obtained by HR Smart and VetPro to the Social Security Administration's Enumeration Verification Service to identify employees whose information may not have been accurate. Specifically, we used the Enumeration Verification Service to locate SSN information, where available, for individuals whose HR Smart or VetPro information could not be validated by the Enumeration Verification Service. In these instances, we conducted our data matching using both the SSN provided by HR Smart and VetPro and the SSN provided by the Enumeration Verification Service to improve our matching.

As described earlier, for our sample and warrants analyses, we took additional steps to verify the identities of the individuals by comparing the FBI UCN associated with each SSN for the individuals we identified to the UCN obtained during the employees' background investigation to confirm that we matched to the correct individual based on biographics, not biometrics.¹⁴ We took additional steps to verify the criminal information we obtained from NGI for our sample of individuals by obtaining records from local courthouses where the crimes occurred. We also verified results

¹³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

¹⁴As described earlier, the FBI UCN is tied to an individual's fingerprints, and, potentially, other biometrics. A match based on fingerprints equals a positive identification.

from NPDB by reviewing board order information from DEA and state licensing board websites. We determined that the data were sufficiently reliable for the purposes of responding to our objectives.

For our second objective, we reviewed relevant executive orders, regulations, and policies from VA, VHA and OPM that outline requirements for completing and documenting background investigations. To assess the extent to which vulnerabilities exist in VHA's processes for completing background investigations, we obtained certifications of investigation or equivalent documentation for completed and adjudicated background investigations from OPM's eOPF system for all employees in the generalizable sample and among the employees with DEA registration actions and active warrants. For any employees for whom a certification of investigation or equivalent documentation was unavailable in eOPF, we requested the documentation from VHA. We also analyzed documents from VA-CABS. If VHA was unable to provide the documentation for an employee, we confirmed with VHA whether the employee had a completed and adjudicated background investigation. If VHA told us an employee had a background investigation but could not provide documentation, we reviewed investigative history data from DCSA's PIPS to verify that the employee had an investigation.

When reviewing background investigation information, we generally did not verify that the investigations satisfied employees' background investigation requirement based on, for example, employment dates and the type of investigation (i.e., investigation tier) required for the employee's position. Thus, our methodology may not have identified employees with out-of-date investigations or investigations that were not of the correct tier for their positions.

To assess the extent to which vulnerabilities exist in VHA's processes for documenting employee background investigations, we obtained Declarations for Federal Employment and certifications of investigation (and equivalent documentation) from eOPF for all employees in the generalizable sample and among the employees with DEA registration actions and active warrants. We requested this documentation from VHA for any employees for whom it was unavailable in eOPF.

We determined that internal controls were significant to our objective. Specifically, the control environment component of internal control, along with the related principle that management should design control activities and implement control activities through policies, as outlined in the *Standards for Internal Control in the Federal Government*, was significant

to our objectives.¹⁵ Additionally, the monitoring environment component of internal control, along with the related principle that management should establish and operate monitoring activities to monitor the internal control system and evaluate the results and remediate identified internal control deficiencies on a timely basis, were significant to our objective.

We conducted this performance audit from October 2019 to February 2023, 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.

¹⁵[GAO-14-704G](#).

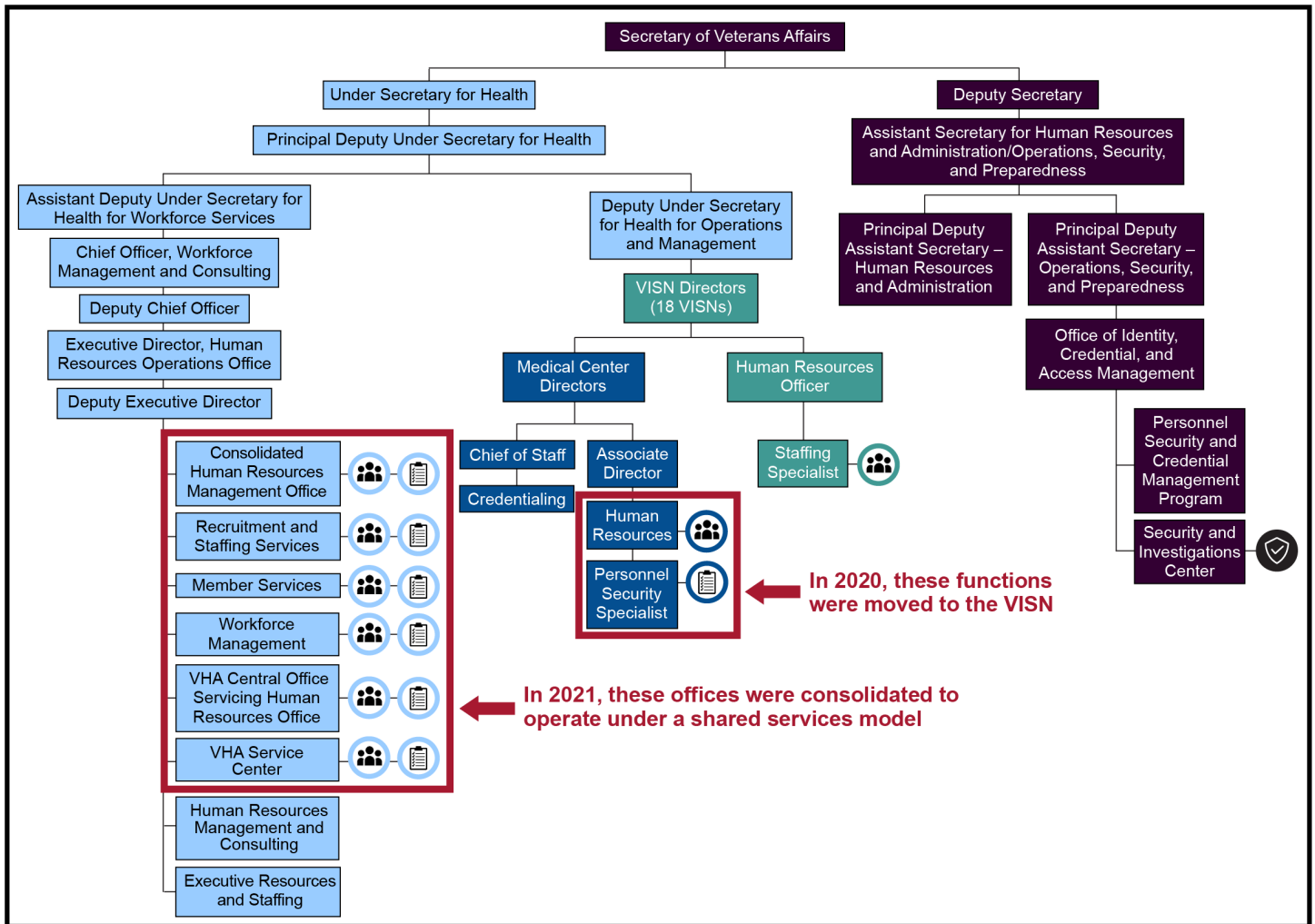
Appendix II: Veterans Health Administration (VHA) Organizational Structure Prior to the May 2020 Reorganization

In 2018, the Department of Veterans Affairs' (VA) Office of Inspector General (OIG) reported on deficiencies in VA's management of the personnel suitability program.¹ Specifically, the OIG found that VA did not manage the personnel suitability program effectively and lacked the oversight necessary to ensure that employee background investigations were completed and documented as required. Following the OIG's report, in 2020, VHA reorganized its human resources and security functions to modernize these functions across the agency. The employees we reviewed in this report were hired before the reorganization was complete. Figure 8 illustrates key aspects of VHA's organizational structure for employee screening prior to the May 2020 reorganization effort.

¹VA OIG, *Veterans Health Administration: Audit of the Personnel Suitability Program*, 17-00753-78 (Washington, D.C.: Mar. 26, 2018).

Appendix II: Veterans Health Administration (VHA) Organizational Structure Prior to the May 2020 Reorganization

Figure 8: Key Aspects of VHA’s Organizational Structure Prior to May 2020



Organization

- Department of Veterans Affairs (VA)
- Veterans Health Administration (VHA)
- Veterans Integrated Service Network (VISN)
- VA Medical Centers

Function related to employee screening

- Human resources**
Makes initial hiring decisions, extends conditional offers, and/or collects applicant screening forms.
- Adjudicator**
Reviews applicant screening forms and the results of any previous background investigations to make an interim suitability determination. Initiates investigation with Defense Counterintelligence Security Agency. Makes final suitability determinations and, if favorable, uploads Certificate of Investigation to the electronic Official Personnel Folder.
- Adjudicator for national security positions and contractors**
Processes and adjudicates the background investigations for all federal VA employees in national security positions, as well as all levels of investigation for contractors performing jobs and functions for VA. When VA receives notification that an employee has been arrested, officials send the notice to the individual's last known Servicing Human Resources Office.

Source: GAO analysis of VA information and sdecret/stock.adobe.com (icons). | GAO-23-104296

**Appendix II: Veterans Health Administration
(VHA) Organizational Structure Prior to the
May 2020 Reorganization**

As shown in Figure 8, prior to May 2020, the Security and Investigations Center processed and adjudicated the background investigations for all federal VA employees (including those within VHA) requiring security clearance.² The Security and Investigations Center also adjudicated security information for contractors performing jobs and functions for VA.

Six independent offices within VHA's Office of Workforce Management and Consulting performed the full range of human resources and security functions for various offices within VHA's central office.

Staffing and security personnel at the Veterans Integrated Service Networks (VISN) level were responsible for maintaining consistency in adjudicative practices within their VISNs, and reviewing some suitability cases, while staffing and security personnel at each VA medical center performed human resource functions and adjudicated security information for individuals working within their VA medical center.

²The Security and Investigations Center, within VA's central office, processed and adjudicated the background investigations for all moderate-risk, high-risk public trust, and national security positions for federal employees within VA as well as all levels of investigation for contractors performing jobs and functions for VA.

Appendix III: Selected Examples of Employees with Controlled Substance-Related Felony Convictions

The table below includes summaries of selected case studies of Veterans Health Administration (VHA) employees we identified as having controlled substance-related felony convictions. For each employee, we identified the controlled substance-related felony or felonies of which he was convicted. We also identified the position he held at VHA, the date he was hired, and his employment status at VHA. Finally, we summarized when, if at all, VHA received information about the conviction and the sources of this information.¹ To avoid revealing the identities of the individuals mentioned in this report, we removed names and used “he” and “him” throughout the report regardless of the gender of the individual.

Table 1: Selected Examples of Employees with Controlled Substance-Related Felony Convictions

Case	Summary
Case 21	<ul style="list-style-type: none"> • Controlled substance-related felony: The employee was convicted of felony possession of a controlled dangerous substance (marijuana) in July 2008. • VHA employment: The employee was hired as a program support clerk in March 2012 and, as of March 2022, continues to work at VHA as a medical support assistant. • Information received by VHA: VHA received information about the conviction from a February 2012 criminal history record and employee disclosure on a March 2012 Declaration for Federal Employment.
Case 22	<ul style="list-style-type: none"> • Controlled substance-related felony: The employee was convicted of felony possession of cocaine and cannabis in June 2009. • VHA employment: The employee was hired as a housekeeping aide in April 2014 and separated in March 2015. He was then rehired in October 2016 and resigned as a health aide in November 2021.^a • Information received by VHA: VHA received information about the convictions in a February 2014 criminal history record and employee disclosure on an April 2014 Declaration for Federal Employment.
Case 23	<ul style="list-style-type: none"> • Controlled substance-related felony: The employee was convicted of felony possession of cocaine in June 2009 and October 2015. • VHA employment: The employee was hired as a nursing assistant in August 2018 and, as of September 2022, continues to work at VHA. • Information received by VHA: VHA received information about both convictions in a June 2018 criminal history record and employee disclosure on a May 2018 Application for Nurses and Nurse Anesthetists (Form 10-2850a). In addition, VHA received information about the 2015 conviction from employee disclosure on an August 2018 Declaration for Federal Employment.

¹We obtained copies of the criminal history records provided to VHA by Defense Counterintelligence and Security Agency (DCSA) and its predecessor agencies as part of the employees’ suitability screening to determine whether they contained information about the employees’ felony convictions. Because DCSA removes investigative materials, including criminal history records, from its system of records after a specified retention period, the criminal history records we obtained were not inclusive of all reports VHA received for the employees under review. Thus, it is possible that VHA received information about some employees’ felony convictions from earlier criminal history records that we could not obtain.

**Appendix III: Selected Examples of Employees
with Controlled Substance-Related Felony
Convictions**

Case	Summary
Case 24	<ul style="list-style-type: none"><li data-bbox="363 464 1495 541">• Controlled substance-related felony: The employee was convicted of various controlled substance-related felonies between 1990 and 2011. Most recently, he was convicted of felony attempted possession of cocaine in March 2011 and felony possession of cocaine in November 2011.<li data-bbox="363 548 1495 625">• VHA employment: The employee was hired as a medical supply technician in March 2013 and retired from VHA in May 2020. He was then rehired for COVID-19 emergency staffing in November 2020 and resigned in May 2021.<li data-bbox="363 632 1495 716">• Information received by VHA: VHA received information about all of the convictions in a June 2013 criminal history record. VHA also received information about the 2011 convictions from employee disclosure on a March 2013 Declaration for Federal Employment.

Source: GAO analysis of Veterans Health Administration (VHA) and Defense Counterintelligence and Security Agency data and court records. | GAO-23-104296

^aTo avoid revealing the identities of the individuals mentioned in this report, we removed names and used “he” and “him” throughout the report regardless of the gender of the individual.

Appendix IV: Examples of Employees Who Did Not Disclose Controlled Substance-Related Convictions on Their Declarations for Federal Employment

The table below includes summaries of case studies of Veterans Health Administration (VHA) employees who did not disclose controlled substance-related felony or misdemeanor convictions on their Declarations for Federal Employment as required. For each employee, we identified the undisclosed convictions. We also identified the position he held at VHA, the date he was hired, and his employment status at VHA. Finally, we summarized when, if at all, VHA received information about the conviction and the sources of this information.¹ To avoid revealing the identities of the individuals mentioned in this report, we removed names and used “he” and “him” throughout the report regardless of the gender of the individual.

Table 2: Examples of Employees Who Did Not Disclose Controlled Substance-Related Felony or Misdemeanor Convictions on Their Declarations for Federal Employment

Case	Summary
Case 25	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted in August 1999 of misdemeanor criminal possession of a controlled substance in the seventh degree and did not disclose the conviction, as required, on his June 2007 Declaration for Federal Employment.^a • VHA employment: The employee was hired as a food service worker in September 2007 and, as of June 2022, continues to work at VHA as a food service worker leader. • Information received by VHA: VHA received information about the conviction in an October 2007 criminal history record.
Case 26	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted of felony possession of cocaine in April 2008 and did not disclose the conviction, as required, on his July 2011 Declaration for Federal Employment. • VHA employment: The employee was hired as a food service worker in July 2011 and, as of January 2022, continues to work at VHA as a mail clerk. • Information received by VHA: VHA received information about the conviction in a June 2011 criminal history record.
Case 27	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted of misdemeanor possession of cannabis in August 2004 and did not disclose the conviction, as required, on his October 2008 Declaration for Federal Employment. • VHA employment: The employee was hired as a supply technician in October 2008 and, as of January 2022, continues to work at VHA. • Information received by VHA: VHA received information about the conviction in a March 2010 criminal history record.

¹We obtained copies of the criminal history records provided to VHA by Defense Counterintelligence and Security Agency (DCSA) and its predecessor agencies as part of the employees' suitability screening to determine whether they contained information about the employees' undisclosed convictions. Because DCSA removes investigative materials, including criminal history records, from its system of records after a specified retention period, the criminal history records we obtained were not inclusive of all reports VHA received for the employees under review. Thus, it is possible that VHA received information about some employees' undisclosed convictions from earlier criminal history records that we could not obtain.

Appendix IV: Examples of Employees Who Did Not Disclose Controlled Substance-Related Convictions on Their Declarations for Federal Employment

Case	Summary
Case 28	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted of misdemeanor possession of marijuana in October 2005 and did not disclose the conviction, as required, on his August 2010 Declaration for Federal Employment. • VHA employment: The employee was hired as an industrial engineer in August 2010 and, as of October 2022, continues to work at VHA as a supervisory program specialist. • Information received by VHA: VHA received information about the conviction in an October 2010 criminal history record.
Case 29	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted of felony criminal possession of a controlled substance in September 1996 and did not disclose the conviction, as required, on his August 2000 Declaration for Federal Employment. • VHA employment: The employee was hired as a laborer in August 2000 and retired in April 2021. • Information Received by VHA: VHA received information about the conviction in a January 2007 criminal history record.
Case 30	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted of felony delivering or manufacturing controlled substances in November 1999 and did not disclose the conviction, as required, on his October 2009 Declaration for Federal Employment. • VHA employment: The employee was hired in October 2009 as a housekeeping aide and, as of March 2022, continues to work at VHA as a housekeeping aide supervisor. • Information received by VHA: VHA received information about the conviction in a January 2017 criminal history record.
Case 31	<ul style="list-style-type: none"> • Undisclosed criminal history: The employee was convicted of felony possession of a controlled substance in January 1999 and did not disclose the conviction, as required, on his January 2001 Declaration for Federal Employment. • VHA employment: The employee was hired as a patient services assistant in January 2001 and, as of March 2022, continues to work at VHA as a program support assistant. • Information received by VHA: We were unable to determine whether VHA received information about this conviction because the Defense Counterintelligence and Security Agency's system of records no longer maintained any of the criminal history records provided to VHA as part of the employee's suitability process.

Source: GAO analysis of Veterans Health Administration (VHA) and Defense Counterintelligence and Security Agency data and court records. | GAO-23-104296

^aTo avoid revealing the identities of the individuals mentioned in this report, we removed names and used "he" and "him" throughout the report regardless of the gender of the individual.

Appendix V: Excerpts of Forms Department of Veterans Affairs (VA) Applicants Complete During the Screening Process

Figures are excerpts of different forms VA applicants complete during the application/screening process. In the forms, the applicant is asked about its criminal history and certifies that the information provided is true, accurate and complete.


Figure 9 is the excerpt of the Office of Personnel Management (OPM) OF-306 Declaration for Federal Employment. This form is completed by applicants who are under consideration for federal and contract employment. The Declaration for Federal Employment requires that applicants disclose, among other criminal history information, felony and misdemeanor convictions that occurred during the preceding seven or ten years, depending on the version of the form.¹ Applicants sign and certify that their responses to the questions on the Declaration for Federal Employment are true, correct, complete, and made in good faith at the time they receive a tentative offer and again at the time of appointment. The form advises applicants that making a false statement may be grounds for not hiring them, firing them after they began work, or fine or imprisonment under 18 U.S.C § 1001.

¹The current version of the Declaration for Federal Employment, dated October 2019, asks about convictions during the preceding 7 years. Previous versions of the form asked about convictions during the preceding 10 years.

Appendix V: Excerpts of Forms Department of Veterans Affairs (VA) Applicants Complete During the Screening Process

Figure 9: OPM OF-306 Declaration for Federal Employment

Page 1



Declaration for Federal Employment*

(*This form may also be used to assess fitness for federal contract employment)

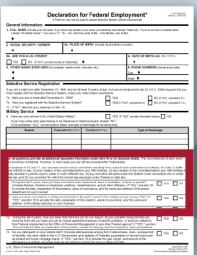
Form Approved:
OMB No. 3206-0182

Instructions

The information collected on this form is used to determine your acceptability for Federal and Federal contract employment and your enrollment status in the Government's Life Insurance program. You may be asked to complete this form at any time during the hiring process. Follow instructions that the agency provides. If you are selected, before you are appointed you will be asked to update your responses on this form and on other materials submitted during the application process and then to recertify that your answers are true.

All your answers must be truthful and complete. **A false statement on any part of this declaration or attached forms or sheets may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by a fine or imprisonment (U.S. Code, title 18, section 1001).**

Page 2



Background Information

For all questions, provide all additional requested information under item 16 or on attached sheets. The circumstances of each event you list will be considered. However, in most cases you can still be considered for Federal jobs.

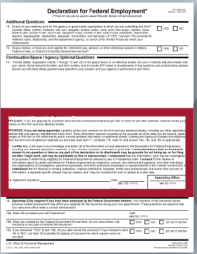
For questions 9, 10, and 11, your answers should include convictions resulting from a plea of *nolo contendere* (no contest), but omit (1) traffic fines of \$300 or less, (2) any violation of law committed before your 16th birthday, (3) any violation of law committed before your 18th birthday if finally decided in juvenile court or under a Youth Offender law, (4) any conviction set aside under the Federal Youth Corrections Act or similar state law, and (5) any conviction for which the record was expunged under Federal or state law.

9. During the last 7 years, have you been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies, firearms or explosives violations, misdemeanors, and all other offenses.) *If "YES," use item 16 to provide the date, explanation of the violation, place of occurrence, and the name and address of the police department or court involved.* YES NO

10. Have you been convicted by a military court-martial in the past 7 years? *(If no military service, answer "NO.") If "YES," use item 16 to provide the date, explanation of the violation, place of occurrence, and the name and address of the military authority or court involved.* YES NO

11. Are you currently under charges for any violation of law? *If "YES," use item 16 to provide the date, explanation of the charges, place of occurrence, and the name and address of the police department or court involved.* YES NO

Page 3



Certifications / Additional Questions

APPLICANT: If you are applying for a position and received a tentative/conditional job offer or have not yet been selected, carefully review your answers on this form and any attached sheets.

APPOINTEE: If you are being appointed, carefully review your answers on this form and any attached sheets, including any other application materials that your agency has attached to this form. If any information requires correction to be accurate as of the date you are signing, make changes on this form or the attachments and/or provide updated information on additional sheets, initialing and dating all changes and additions. When this form and all attached materials are accurate, read item 17, complete 17b, read 18, and answer 18a, 18b, and 18c as appropriate.

17. **I certify that, to the best of my knowledge and belief, all of the information on and attached to this Declaration for Federal Employment, including any attached application materials, is true, correct, complete, and made in good faith. I understand that a false or fraudulent answer to any question or item on any part of this declaration or its attachments may be grounds for not hiring me, or for firing me after I begin work, and may be punishable by fine or imprisonment. I understand that any information I give may be investigated for purposes of determining eligibility for Federal employment as allowed by law or Presidential order. I consent to the release of information about my ability and fitness for Federal employment by employers, schools, law enforcement agencies, and other individuals and organizations to investigators, personnel specialists, and other authorized employees or representatives of the Federal Government. I understand that for financial or lending institutions, medical institutions, hospitals, health care professionals, and some other sources of information, a separate specific release may be needed, and I may be contacted for such a release at a later date.**

17a. Applicant's Signature: _____ Date: _____
(MM / DD / YYYY)

17b. Appointee's Signature: _____ Date: _____
(MM / DD / YYYY)

Appointing Officer:
Enter Date of Appointment or Conversion
MM / DD / YYYY

Source: GAO analysis of Office of Personnel Management information. | GAO-23-104296

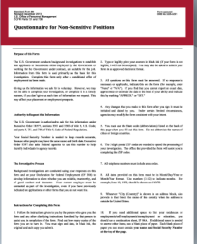
**Appendix V: Excerpts of Forms Department of
Veterans Affairs (VA) Applicants Complete
During the Screening Process**

Figure 10 is the excerpt of the OPM's Standard Form 85 Questionnaire for Non-Sensitive Positions. This form is used to request investigations to support Non-Sensitive/Low-Risk positions as defined in 5 C.F.R § 731. This form is also used to make credentialing determinations for access to government facilities or systems. The Standard Form 85 requires that applicants disclose, among other illegal drugs history information, any illegal drug use or possession within the last year. Applicants sign and certify that their responses to the questions on the Standard Form 85 are true, complete, correct, and made in good faith. The form advises applicants that making a false statement in the form can be punished by fine or imprisonment or both under 18 U.S.C § 1001. In November 2022 the Standard Form 85 was revised. The individuals in our review completed prior versions of the Standard Form 85.

Appendix V: Excerpts of Forms Department of Veterans Affairs (VA) Applicants Complete During the Screening Process

Figure 10: OPM Standard Form 85 Questionnaire for Non-Sensitive Positions

Page 1



Standard Form 85
Revised December 2013
U.S. Office of Personnel Management
5 CFR Parts 731 and 736


Form approved:
OMB No. 3208-0261

Questionnaire for Non-Sensitive Positions

Penalties for Inaccurate or False Statements

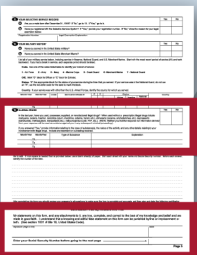
The U.S. Criminal Code (title 18, section 1001) provides that knowingly falsifying or concealing a material fact is a felony which may result in fines of up to \$10,000, and/or 5 years imprisonment, or both. In addition, Federal agencies generally fire, or disqualify individuals who have materially and deliberately falsified these forms, and this remains a part of the permanent record for future placements. Your trustworthiness is a very important consideration in deciding your suitability. Your prospects of placement are better if you answer

Page 2



all questions truthfully and completely. You will have adequate opportunity to explain any information you give us on the form and to make your comments part of the record.

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14 ILLEGAL DRUGS

In the last year, have you used, possessed, supplied, or manufactured illegal drugs? When used without a prescription, illegal drugs include marijuana, cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), stimulants (cocaine, amphetamines, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.). (NOTE: Neither your truthful response nor information derived from your response will be used as evidence against you in any subsequent criminal proceeding.)

		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>

If you answered "Yes," provide information relating to the types of substance(s), the nature of the activity, and any other details relating to your involvement with illegal drugs. Include any treatment or counseling received.

Month/Year	Month/Year	Type of Substance	Explanation
To			
To			
To			

After completing this form you should review your answers to all questions to make sure the form is complete and accurate, and then sign and date the following certification and sign and date the release on Page 6.

Certification That My Answers Are True

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code).

Signature (<i>Sign in ink</i>)	Date

Enter your Social Security Number before going to the next page →

Source: GAO analysis of Office of Personnel Management information. | GAO-23-104296

Figure 11 is the excerpt for VA Form 10-2850. Applicants for health-related occupations complete Form 10-2850, which requires applicants to

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GAO-23-104296 VHA Employee Screening

Appendix V: Excerpts of Forms Department of Veterans Affairs (VA) Applicants Complete During the Screening Process

provide licensure and registration information and describe their educational and professional history. The Form 10-2850 requires applicants to indicate whether they have been convicted, imprisoned, on probation or parole, or forfeited collateral in relation to a criminal charge within the last seven years. Applicants must certify that their statements are true, correct, complete, and made in good faith.

Figure 11: VA Form 10-2850 Application for Physicians, Dentists, Podiatrists, Optometrists and Chiropractors

Page 1

Department of Veterans Affairs

APPLICATION FOR PHYSICIANS, DENTISTS, PODIATRISTS, OPTOMETRISTS AND CHIROPRACTORS

<p>14. DO YOU HAVE PENDING, OR HAVE YOU EVER HAD ANY LICENSE REVOKED, SUSPENDED, DENIED, RESTRICTED, LIMITED OR ISSUED/PLACED IN A PROBATIONAL STATUS OR VOLUNTARILY RELINQUISHED?</p> <p><input type="radio"/> YES (If "YES", explain on separate sheet)</p> <p><input type="checkbox"/> NO</p>	<p>15A. NUMBER OF CURRENT OR MOST RECENT DEA (DRUG ENFORCEMENT ADMINISTRATION) CERTIFICATE AND/OR STATE LICENSE/PERMIT TO PRESCRIBE CONTROLLED SUBSTANCES</p>	<p>15B. DATE OF EXPIRATION</p>	<p>15C. HAVE YOU EVER HAD A DEA CERTIFICATE OR STATE LICENSE/PERMIT REVOKED, SUSPENDED, LIMITED, RESTRICTED IN ANY WAY OR VOLUNTARILY RELINQUISHED?</p> <p><input type="radio"/> YES (If "YES", explain on separate sheet)</p> <p><input type="checkbox"/> NO</p>
---	--	---------------------------------------	--

VA FORM JUN 2016 (R) **10-2850** EXISTING STOCK OF VA FORM 10-2850, JUN 2006, WILL BE USED. PAGE 1

Page 3

NOTE: A conviction or a discharge does not necessarily mean you cannot be appointed. The nature of the conviction or discharge and how long ago it occurred is important. Give all the facts so that a decision can be made. If your answer to question 36, 37 or 38 is "YES" give for each offense: (1) date; (2) charge; (3) place; (4) court and (5) action taken. When answering item 36 or 37, you may omit (1) traffic fines for which you paid a fine of \$100.00 or less; (2) any offense committed before your 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law; (3) any conviction the record of which has been expunged under Federal or State law; and (4) any conviction set aside under the Federal Youth Corrections Act or similar State authority.

36.	Have you ever been convicted, forfeited collateral, or are you now under charges for any felony or any firearms or explosives offense against the law? (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less.)	<input type="checkbox"/>	<input type="checkbox"/>
37.	During the past seven years have you been convicted, imprisoned, on probation or parole, or forfeited collateral, or are you now under charges for any offense against the law not included in 36 above?	<input type="checkbox"/>	<input type="checkbox"/>
38.	While in the military service were you ever convicted by a general court-martial?	<input type="checkbox"/>	<input type="checkbox"/>

XII - SIGNATURE OF APPLICANT

NOTE: A false statement on any part of your application may be grounds for not hiring you, or for terminating you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, Title 18, Section 1001).

CERTIFICATION: I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL OF MY STATEMENTS ARE TRUE, CORRECT, COMPLETE, AND MADE IN GOOD FAITH.

41A. SIGNATURE OF APPLICANT	41B. DATE (Month, Day, Year)
-----------------------------	------------------------------

VA FORM JUN 2016 (R) **10-2850** PAGE 3

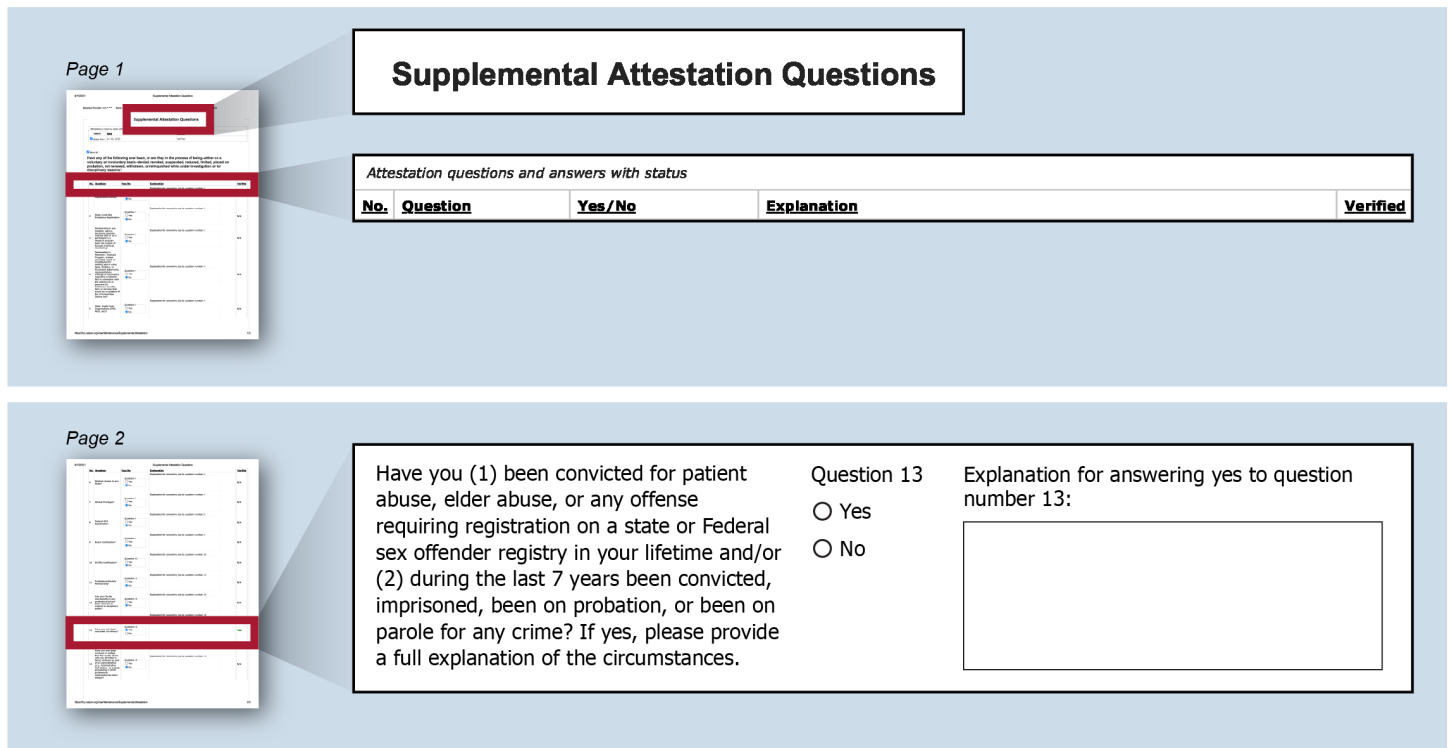
Source: GAO analysis of Department of Veterans Affairs information. | GAO-23-104296

Figure 12 is the excerpt of VA's VetPro supplemental attestation questions. Applicants requiring credentialing must complete VA's supplemental attestation questions in VetPro. Positions that require credentialing include, among others, physicians, dentists, and registered

Appendix V: Excerpts of Forms Department of Veterans Affairs (VA) Applicants Complete During the Screening Process

nurses. As part of the application, applicants indicate whether they have been, during the last 7 years, convicted, imprisoned, been on probation, or been on parole for any crime. Applicants attest to the accuracy and completeness before submission of information for credentialing purposes.

Figure 12: VA VetPro Supplemental Attestation Questions



Source: GAO analysis of Department of Veterans Affairs information. | GAO-23-104296

Appendix VI: Comments from the Department of Veterans Affairs



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON

February 6, 2023

Mr. Seto Bagdoyan
Director
Health Care
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Bagdoyan:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office (GAO) draft report: **VETERANS HEALTH ADMINISTRATION: Action Needed to Address Persistent Control Weaknesses and Related Risks in Employee Screening Processes** (GAO-23-104296SU).

The enclosure contains technical comments and the action plan to address the draft report recommendations. VA appreciates the opportunity to comment on your draft report.

Sincerely,

A handwritten signature in black ink, appearing to read "Tanya J. Bradsher".

Tanya J. Bradsher
Chief of Staff

Enclosure

Appendix VI: Comments from the Department
of Veterans Affairs



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON

February 6, 2023

Ms. Sharon M. Silas
Director
Health Care
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Silas:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office (GAO) draft report: **VETERANS HEALTH ADMINISTRATION: Action Needed to Address Persistent Control Weaknesses and Related Risks in Employee Screening Processes** (GAO-23-104296SU).

The enclosure contains technical comments and the action plan to address the draft report recommendations. VA appreciates the opportunity to comment on your draft report.

Sincerely,

A handwritten signature in black ink that reads "Tanya J. Bradsher".

Tanya J. Bradsher
Chief of Staff

Enclosure

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
**VETERANS HEALTH ADMINISTRATION: Action Needed to
Address Persistent Control Weaknesses and
Related Risks in Employee Screening Processes**
(GAO-23-104296SU)

Recommendation 1: The Under Secretary for Health should establish a timeline for finalizing and implementing a policy regarding DEA employment waivers.

VA Response: Concur. An Interdisciplinary Project Team (IPT) has been actively working to develop the Veterans Health Administration's (VHA) approach to management and oversight of Drug Enforcement Agency (DEA) waivers in response to GAO's previous report, (GAO-19-6). The IPT's proposed policy is under review within VHA.

Target Completion Date: June 2023

Recommendation 2: As the Veterans Health Administration develops a DEA employment waiver policy, the Under Secretary for Health should ensure that the policy includes guidance for determining whether employees have access to controlled substances.

VA Response: Concur. Policy guidance reference in response to Recommendation 1 will clarify, using position descriptions and functional statements, whether an individual's duties take place within the closed system of distribution, and thus may be subject to a waiver.

Target Completion Date: June 2023

Recommendation 3: As the Veterans health Administration develops a DEA employment waiver policy, the Under Secretary for Health should ensure that the policy specifies that an employment waiver is required to employ any individual in a position with access to controlled substances who, at any time, has been convicted of a felony offense related to controlled substances, had an application for DEA registration denied, or had a DEA registration revoked or surrendered for cause, and does not presently hold an active DEA registration.

VA Response: Concur. Policy in development in response to (GAO-19-6) will clarify that individuals with job duties within VA's closed system of distribution who, at any time, have been convicted of a felony offense related to controlled substances, had an application for DEA registration denied, or had a DEA registration revoked or surrendered for cause, and do not presently hold an active DEA registration, may not be eligible for hire.

Any employee who, during their employment, is convicted of a felony offense relating to controlled substances, or who, at any time, has an application for a DEA registration

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
**VETERANS HEALTH ADMINISTRATION: Action Needed to
Address Persistent Control Weaknesses and
Related Risks in Employee Screening Processes**
(GAO-23-104296SU)

denied, has a DEA registration revoked, has surrendered a DEA registration for cause, or action was taken on an employee's DEA registration that has the effect of restricting the individual's State license, action will be initiated in accordance with the provisions of VA Directive and Handbook 5021, Employee/Management Relations.

If, as a result of the review of clinical privileges, a decision is made to propose revocation of an employee's clinical privileges, separation action will be initiated using procedures in VA Directive and Handbook 5021, Employee/Management Relations.

Target Completion Date: June 2023

Recommendation 4: After implementing a DEA employment waiver policy, the Under Secretary for Health should review the individuals still employed at VHA among the 50 we confirmed had controlled substance-related criminal history to determine whether they have access to controlled substances as part of their assigned duties and thus need DEA employment waivers.

VA Response: Concur. Upon publication of the DEA employment waiver policy, VHA will review the identified sample and take actions as appropriate.

Target Completion Date: September 2023

Recommendation 5: After implementing a DEA employment waiver policy, the Under Secretary for Health should review the 12,519 employees we identified with indications of controlled substance-related criminal history, but for whom we did not confirm controlled substance-related felony convictions, to determine whether they need DEA employment waivers.

VA Response: Concur. Upon publication of the DEA employment waiver policy, VHA will conduct a 100% review of the list provided by GAO (12,519). If any employees have a prohibitive conviction, VHA will take actions as appropriate.

Target Completion Date: January 2024

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
**VETERANS HEALTH ADMINISTRATION: Action Needed to
Address Persistent Control Weaknesses and
Related Risks in Employee Screening Processes**
(GAO-23-104296SU)

Recommendation 6: The Under Secretary for Health should implement control procedures to ensure that suitability adjudicators use information regarding undisclosed criminal history in compliance with OPM regulations and VA policy, including policies requiring that adjudicators document their assessments of the materiality and intent of undisclosed information and their rationale for not referring cases involving nondisclosure to OPM.

VA Response: Concur. VHA will incorporate Office of Personnel Management (OPM) and VA control procedures regarding undisclosed criminal history into updated VHA guidance and procedures that will be distributed and monitored for compliance.

Target Completion Date: September 2023

Recommendation 7: The Under Secretary for Health should establish oversight procedures to ensure that adjudicators follow up on applicants' active warrants before hiring and notify the appropriate VISN Suitability Coordinator on the active warrant before rendering a favorable determination.

VA Response: Concur. VHA will update internal guidance to refer active warrant cases to the Veterans Integrated Service Network (VISN) Suitability Coordinator prior to any determination and will establish internal control and oversight procedures. VHA will also partner with the Office of Human Resources and Administration/Operations, Security and Preparedness (HRA/OSP) to enhance VA-CABS capabilities to provide effective oversight and compliance monitoring.

Target Completion Date: September 2023

Recommendation 8: As VA implements the Rap Back Program, the Secretary of Veteran Affairs should develop control procedures to ensure that PAA notifications are routed and resolved appropriately.

VA Response: Concur. VA's HRA/OSP will develop an action plan to include the development of control procedures and any other actions that must be completed to ensure that Rap Back notifications are routed and resolved appropriately.

Target Completion Date: June 2023

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
**VETERANS HEALTH ADMINISTRATION: Action Needed to
Address Persistent Control Weaknesses and
Related Risks in Employee Screening Processes**
(GAO-23-104296SU)

Recommendation 9: As VA implements the Rap Back Program, the Secretary of Veteran Affairs should develop control procedures for documenting follow-up work conducted on a PAA notification in a VA system such as VA-CABS.

VA Response: Concur. HRA/OSP will develop an action plan which will include the development of control procedures and any other actions that must be completed for documenting follow-up work conducted on Rap Back notifications in VA-CABS.

Target Completion Date: June 2023

Recommendation 10: The Under Secretary for Health should establish control procedures to ensure that employee background investigations are completed as required by OPM regulation and VA policy.

VA Response: Concur. VHA is evaluating oversight control procedures to monitor compliance of background investigations and will enhance operational procedures accordingly.

Target Completion Date: September 2023

Recommendation 11: The Under Secretary for Health should develop and implement policies that establish who is responsible for documenting employee background investigations in eOPF in accordance with OPM guidance and VA policy, and control procedures to ensure that these policies are followed.

VA Response: Concur. HRA/OSP will review and update policies that establish or clarify who is responsible for documenting employee background investigations in eOPF in accordance with OPM guidance, to include the development and implementation of control procedures to ensure that these policies are followed.

Target Completion Date: September 2023

Recommendation 12: The Under Secretary for Health should ensure that background investigations are completed and documented as required for the employee among the 329 we examined (i.e., those from our sample and those we identified with DEA registration actions or active warrants) and who we found did not have completed investigations or whose investigations were not documented in eOPF.

VA Response: Concur. VHA will validate investigation completion and ensure documentation of completion exists in eOPF.

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Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
**VETERANS HEALTH ADMINISTRATION: Action Needed to
Address Persistent Control Weaknesses and
Related Risks in Employee Screening Processes**
(GAO-23-104296SU)

Target Completion Date: September 2023

Recommendation 13: The Under Secretary for Health should review the 12,240 employees we identified with indications of controlled substance-related criminal history, but who we did not examine, to ensure that employees who may require DEA employment waivers have completed background investigations.

VA Response: Concur. Upon receipt of the list from GAO, VHA will review the employees identified to validate investigation completion.

Target Completion Date: September 2023

Recommendation 14: The Under Secretary for Health should review the 12,240 employees we identified with indications of controlled substance-related criminal history, but who we did not examine, to ensure that background investigations were documented in eOPF for employees who may require DEA employment waivers.

VA Response: Concur. VHA will review identified employees and ensure documentation of completion exists in eOPF.

Target Completion Date: September 2023

Appendix VII: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Sharon Silas, (202) 512-7114 or SilasS@gao.gov

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In addition to the contacts named above, Dave Bruno (Assistant Director), Ann Tynan (Assistant Director), James Ashley, Tracy Abdo, Garrick Donnelly, Timothy Kinoshita, Haley Klosky, Kaitlin McConnell, Gloria Proa, Miranda Richard, and Sabrina Streagle made key contributions to this report. Other contributors include Daniel Bibeault, Barbara Lewis, Colin Fallon, Maria McMullen, Samuel Portnow, Cherie Starck, and Julie Stewart.

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