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United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

January 14, 2019

The Honorable Robert Wilkie
Secretary of Veterans Affairs
810 Vermont Avenue, North West
Washington, DC 20420

Secretary Wilkie,

I am pleased that Tamara Bonzanto has been sworn in as the first Assistant Secretary of Accountability and Whistleblower Protection. Through her confirmation process, it was made clear that we share an understanding of the roles and responsibilities of her new office. To this point, I have some concerns that the Office of Accountability and Whistleblower Protection (OAWP) has not been operating in accordance with the intentions of the Congress. As such, I urge you and your immediate leadership team to provide Assistant Secretary Bonzanto with the flexibility and authority she needs to make appropriate changes to the direction of the office even if they run counter to guidance from non-confirmed political appointees who were previously tasked with running this office.

Statute dictates that the Office is tasked with receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance of employees of the Department. The law also makes it clear that the role of the Office is to advise the Secretary on all matters of the Department relating to accountability of employees of the Department, retaliation against whistleblowers, and recommendations related to accountability against employees of the Department. To date, it is my understanding that the Office only advises the Secretary on matters concerning Senior Executive Service or senior-level supervisory employees. This limited function does not meet the letter of the law. Congressional intent is that this Office would cover all employees, not just those at the top of the organization.

It is also my understanding that the Department's mid-level supervisors do not always demonstrate fair and consistent applicability of adverse actions. And since implementation of Public Law 115-46, Congress continues to hear of instances where individual low-level employees are being terminated or suspended for a first-time offense or other actions that demonstrate a potential misuse of authority. The prevalence of instances where new authorities are being used against low-level employees calls for further review of these decisions to be made by a third party. To eliminate the opportunity for rank and file employees to have their actions reviewed by a neutral third party is inappropriate.

I also urge your Department to be mindful that the definition of whistleblower disclosure in this law is a report of a violation of a law, rule, or regulation – which would include prohibited personnel practices, gross mismanagement or an abuse of authority. I can think of no circumstance in which it would be appropriate to refer complaints about supervisory abuse of

authority or mismanagement for review and investigation to the same facility where the abuse happened. This would undermine the ultimate goal of an impartial review. In her testimony before the Senate Committee on Veterans' Affairs, newly sworn-in Assistant Secretary Bonzanto expressed that same belief - that it is not appropriate for reports of retaliation to get referred back to the local level for investigation. There must be guidance sent to the field that clarifies that these investigations will be done by people outside the facility where the alleged behavior is taking place. This directive should be informed by the review that Assistant Secretary Bonzanto agreed to provide the Committee within 60 days that would determine whether the approach taken by the agency about where the review of complaints is fair and appropriate.

Moving forward, I urge you to use the opportunity of a new Assistant Secretary to take a fresh look at how OAWP can be used as a tool to ensure employees across the Department are treated fairly. And further, to ensure that the new accountability authorities are used more consistently and as intended by Congress. I look forward to working with you and your new Assistant Secretary to ensure the Department has the staffing and resources required to operate this office as envisioned by Congress.

Sincerely,



Jon Tester
Ranking Member