



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

September 6, 2024

The Honorable Hampton Dellinger  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036

RE: OSC File No. DI-24-000289

Dear Mr. Dellinger:

I am responding to the January 22, 2024, Acting Special Counsel letter to the Department of Veterans Affairs (VA) and the June 20, 2024, follow-up email regarding the steps VA is taking to ensure Equal Employment Opportunity (EEO) Program Managers are properly realigned as mandated by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 and the Appropriations Act of 2023.

As the enclosed report indicates, VA continues to work with Congress, the Equal Employment Opportunity Commission, and other stakeholders to ensure that its EEO program is aligned properly in VA. Please note that included as Attachment E is an unredacted copy of an Office of Accountability and Whistleblower Protection report that contains sensitive personal information that has not been publicly released and may be protected by the Privacy Act.

Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read "ArA", is positioned above the name Denis McDonough.

Denis McDonough

Enclosure

**Department of Veterans Affairs  
Response to OSC File No. DI-24-000289**

In a January 22, 2024, referral from the Office of Special Counsel (OSC) to the Department of Veterans Affairs (VA) (OSC File No. DI-24-000289), a whistleblower (WB) contended that the Office of Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP) may have engaged in a violation of law, rule, or regulation and gross mismanagement. The WB consented to release of her name.

Ms. (b) (6), (b) (7)(C) Chief of Staff, Office of Management, VA, was assigned to interview the WB in relation to her allegations. The interview took place on March 21, 2024, and Ms. (b) (6) and the WB signed a summary of the interview. (Attachment A). The WB also provided an additional email related to her allegations. (Attachment B).

In a June 20, 2024, email to VA, OSC conveyed additional allegations from the same WB and directed VA to add them to its report. These additional allegations had been discussed at length in Ms. (b) (6)'s earlier interview with WB (Attachment A), so no additional interview was necessary.

**OSC Allegations.** According to OSC's January 22, 2024, letter to VA, the following disclosure was made:

That VA has failed to complete the realignment of Equal Employment Opportunity (EEO) Program Managers mandated by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (the Cummings Act) and the Appropriations Act of 2023 (the Appropriations Act). Specifically,

- (a) The failure to realign 41 of the 57 Veterans Benefits Administration (VBA) Office's EEO Program Managers under the Office of Resolution Management, Diversity, and Inclusion (ORMDI) as required by the above two Acts; and
- (b) Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

According to OSC's June 20, 2024, email to VA, the following additional disclosures were made:

- (c) ORMDI improperly reports to the Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness and must report directly to the Secretary or Deputy Secretary pursuant to Management Directive 110 and 29 C.F.R. § 1614.102(b)(4).
- (d) VA is in violation of Management Directive 715 for aligning VA's Harassment Prevention Program (HPP) Office under ORMDI's Complaint Processing Office and that HPP should be realigned. Further, VA does not have a separate written policy or HPP process for ORMDI employees to report allegations of sexual harassment.

**Summary Conclusion.** The realignment of VBA EEO Program Managers as required by the Cummings Act and the Appropriations Act is complete. These laws require that each EEO Program Manager of the Department at the facility level report to the head of ORMDI, with respect to the equal employment functions of the program manager. For VBA, those requirements were met in 2017 when six EEO Program Managers were realigned. While there may be some positions within VBA performing tangential functions related to EEO, they are not EEO Program Managers, they are not classified in the General Schedule (GS) 260 series, and they are not required by law to be realigned.

VA acknowledges a conflict of laws governing the organizational placement of its EEO program and is currently reviewing options for realignment of the program, so it does not report to HRA/OSP. VA is also reviewing the organizational alignment of its HPP Office and working with the Office of General Counsel to determine if legislative change is needed to resolve legal conflicts.

**Background.** The President signed P.L. 117-328, the Consolidated Appropriations Act, 2023, into law on December 29, 2022. Section 402(b) of this Act states that the Secretary shall ensure that each EEO Program Manager of the Department at the facility level reports to the head of ORMDI, with respect to the equal employment functions of the program manager. Section 402(f) also requires the Secretary of Veterans Affairs to submit a semiannual report to the Senate and House Committees on Veterans' Affairs, which describes the Secretary's progress in carrying out section 402. In reports to Congress submitted June 15, 2023, and March 11, 2024 (corrected), VA reported that while EEO Program Managers realignment across the entire Department was ongoing, VBA's realignment of EEO Program Managers is complete. (Attachment C).

**Analysis.** VA's determination that VBA's realignment is complete and in compliance with the Cummings Act and the Appropriations Act is based on work completed in 2017. Even before the passage of the Cummings Act and the Appropriations Act, the Equal Employment Opportunity Commission (EEOC) raised concerns about VBA's misaligned EEO reporting structure and insufficient staffing. EEOC's concerns on misalignment stemmed from its position that officials engaged in the neutral EEO functions should not be subject to the authority, direction, and control of the agency's facility directors, but should report to its EEO Director. EEOC's staffing concerns stemmed from its recommendation that VA appoint a full time EEO manager for all offices with more than 600 employees.

In response to EEOC's concerns, VBA worked with the VA office reporting to its EEO Director—then known as the Office of Resolution Management (now known as ORMDI)—to identify EEO Program Manager positions for realignment. VA defined "EEO Program Manager" as those positions engaged full time in the core EEO Program Manager functions and determined that within VBA these positions were all classified in the 260 series. At that time, it was determined that only six such VBA positions existed, and all six positions were realigned as documented in an October 31, 2017, Service

Level Agreement (SLA) to perform specific functions unique to EEO liaison work. Those functions include providing program direction and guidance in the areas of alternative dispute resolution, affirmative action, special emphasis program management, and resolution of discrimination complaints. The SLA (Attachment D) states that no other persons in the GS-260 job series may exist in VBA and that other collateral duty functions, such as liaison work to collect documents and information, could be performed by persons in a non-GS-260 job series, such as a GS-301 or a GS-343.

In VA's congressionally mandated semiannual report (corrected<sup>1</sup>) dated February 2024, VA reported the following on page 3:

The realignment of the National Cemetery Administration, Veterans Benefits Administration, and Office of Information and Technology EEO Program Managers to the Office of Resolution Management, Diversity, and Inclusion (ORMDI) is complete. The realignment of the VBA collateral duty EEO functions is ongoing. The employees performing those functions will not be moved but discussions have occurred regarding how the collateral duty EEO functions will be handled.

The Veterans Health Administration EEO Program Managers realignment to ORMDI will be accomplished in fiscal year (FY) 2024 pending Congressional approval in raising ORMDI's reimbursable cap in the FY 2024 Military Construction, Veterans Affairs, and Related Agencies Bill, 118th Congress (2023-2024).

VA similarly reported recently to the General Accountability Office (GAO) that the National Cemetery Administration, VBA, and Office of Information and Technology (OIT) EEO Program Managers realignment to ORMDI is complete, while VBA's realignment of collateral duty EEO functions is ongoing: the employees performing those functions will not be moved but discussions have occurred regarding how the collateral duty EEO functions will be handled.

The distinction between the completed realignment of EEO Program Manager *positions* and the ongoing work to address collateral duty EEO *functions* performed in VBA reflects VA's efforts to address EEOC's staffing recommendation of 1 EEO Program Manager for every VA facility with more than 600 employees. This distinction may also be the basis for the WB's allegation that VA has failed to realign 41 of the 57 VBA EEO Program Managers. To be clear, VA never established that there were 57 VBA EEO Program Managers subject to realignment from VBA to ORMDI. After the 2017 realignment of the six positions, VA created additional (new) positions within ORMDI to

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<sup>1</sup>A version of the report issued to Congress in December 2023 indicated that the realignment of VBA EEO Program Managers was ongoing, and that 19 EEO Program Managers had been realigned and that there were 40 remaining to realign. It was discovered later that month that this language was erroneous and not approved by VBA leadership. The report language was corrected in February 2024 to make clear that the realignment of VBA EEO Program Managers is complete, and the realignment of the VBA collateral duty EEO *functions* is ongoing.

meet VBA's needs. There may be some positions within VBA performing tangential functions related to EEO, but they are not EEO Program Managers, they are not classified in the GS-260 series, and they are not required by law to be realigned.

The WB was interviewed and was asked why she believed that VA is not complying with the Cummings Act and the Appropriations Act of 2023 regarding VBA's EEO Program Managers, among other questions. (Attachment A). The WB was not able to provide any specific information as to why she believes VA is violating the requirements of the law regarding the realignment of VBA EEO Program Managers. She believes that past and current leaders have not been truthful in Congressional testimony, discussions, and behavior. She also believes the matter was not prioritized properly. For the reasons set forth above, VA believes that the WB allegations are without merit.

**Office of Accountability and Whistleblower Protection Investigation.** VA's Office of Accountability and Whistleblower Protection (OAWP) heavily investigated the WB's allegations and the investigation resulted in an extensive report issued in late January 2024 (OAWP Report of Investigation 23-Washington DC-22984), including the issue raised in this letter (realignment of program managers). (Attachment E). OAWP specifically investigated whether Harvey Johnson, the then-Deputy Assistant Secretary of ORMDI, provided false information regarding VBA's EEO Program Managers' realignment to ORMDI being complete, including in his testimony to Congress on July 28, 2022.<sup>2</sup> After reviewing documentation from the 2017 realignment of VBA EEO Program Managers and interviewing VA employees with relevant information, OAWP concluded Mr. Johnson's statement regarding the status of the realignment (that VBA's realignment was complete) during the July 28 hearing was informed by EEOC and GAO guidance, and corroborated as accurate by witness testimony and that he did not provide a false statement under oath during the Congressional hearing.

OSC also directs VA to investigate any additional or related allegations of wrongdoing discovered during the investigation into this matter. OAWP investigated numerous allegations of widespread misconduct in ORMDI spanning the timeframe of January 2022 through January 2024. OAWP's report substantiated many allegations and found others unsubstantiated. VA has accepted the results of OAWP's investigation and is in the process of fully implementing its recommendations, including its recommendation to review the organizational alignment of ORMDI to ensure compliance with law. As part of this review, VA is also looking into where the various EEO functions are performed within VA and ORMDI to ensure organizational placement does not create conflicts or that appropriate firewalls are in place. The placement of VA's HPP Office is part of this review. As to the WB's allegation that VA does not have a separate written policy or HPP process for ORMDI employees to report allegations of sexual harassment, VA-wide HPP Policy, found in VA Directive 5979, Harassment Prevention Policy and VA Handbook 5979, Harassment Prevention Program Procedures, applies equally to

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<sup>2</sup>At a hearing of the Subcommittee on Oversight and Investigations of the House Committee on Veterans Affairs on July 28, 2022, Mr. Johnson testified that the "[r]ealignment of VBA, NCA, and OIT are already complete."

ORMDI employees. Further, on May 24, 2024, the Acting Deputy Assistant Secretary reminded ORMDI employees of the procedures available to them to report unlawful harassment and designated an individual to serve as ORMDI's interim Harassment Prevention Coordinator (Attachment F).

VA continues to work with Congress, EEOC, and other stakeholders to ensure that its EEO program is aligned properly in VA (based on other aspects of the laws cited earlier in this report) including persons performing duties related to EEO work across the Department. While we do not find the specific allegations the WB raised substantiated, we acknowledge that work is ongoing to ensure that VA has a transparent and properly aligned EEO office.

# ATTACHMENT A

## Investigative Questions for OSC File No. DI-24-000289

Interviewer: (b) (6), (b) (7)(C)

Interviewee: [REDACTED]

Date/Time of Interview: 11am-12:45pm, March 21, 2024.

### Introduction:

I have been assigned to interview you as part of the investigation into your allegation to the Office of Special Counsel (OSC File No. DI-24-000289), in which you alleged that the Office of Human Resources and Administration / Operations, Security and Preparedness (HRA/OSP) may have engaged in a violation of law, rule or regulation and gross mismanagement.

You consented to OSC to release your name, and I was asked to talk to you about your allegations.

According to OSC's January 22, 2024, letter to VA, you disclose the following:

That VA has failed to complete the realignment of EEO Program Managers mandated by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (the Cummings Act) and the Appropriations Act of 2023 (the Appropriations Act). Specifically,

- (a) The failure to realign 41 of the 57 Veterans Benefits Administration (VBA) Office's EEO Program Managers under the ORMDI as required by the above two Acts; and
- (b) Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

**Question:** Why do you believe that VA is not complying with the Cummings Act and the Appropriations Act of 2023 regarding VBA's EEO program managers?

Ms. (b) (6), (b) (7)(C) believes that non-compliance with the law to realign VBA EEO Program Managers (PM) is solely because of Harvey Johnson and Anne-Marie Duncan's defiance with the law. Ms. (b) (6), (b) (7)(C) primary concern has to do with the conduct of Mr. Johnson and what he chose to communicate to Congress and GAO regarding the status of the realignment of VBA's EEO PMs. Ms. (b) (6), (b) (7)(C) perceived Mr. Johnson's actions as selfish for placing the Secretary of VA (SECVA) in a position to defend his actions before Congress. Ms. (b) (6), (b) (7)(C) made Mr. Johnson aware of her assessment that the alignment of VBA's EEO PMs was not complete while assisting with an ORMDI Congressional testimony, the Congressionally Mandated Report (CMR), and updates to GAO on the subject. Specifically, Ms. (b) (6), (b) (7)(C) reiterated the conflict of interest first

identified by the EEO Commission (EEOC) that VA's EEO PMs should not be under the control of HR Specialists and that the EEO PM positions should report to ORMDI.

The reason Ms. (b) (6), (b) (7)(C) believes there is an issue with VA's compliance with the Cummings and Appropriations Acts is that, instead of reporting an interim status update that VBA's EEO PMs were in the process of being realigned, Mr. Johnson informed Congress and GAO that the VBA realignment was complete and only VHA remained. According to Ms. (b) (6), (b) (7)(C) this was despite him knowing additional positions were not realigned and that those functions were still being performed by HR Specialists.

Ms. (b) (6), (b) (7)(C) along with other members on her team, proposed a plan to Mr. Johnson regarding steps to complete the realignment and achieve full compliance with the law. This was prepared one month before Mr. Johnson's Congressional hearing in July 2022. Ms. (b) (6), (b) (7)(C) travelled to VA Central Office in June 2022 to work with Mr. Johnson on hearing prep and she thought she had his buy-in regarding the pending realignment actions. She conveyed there was still work to be done to complete the alignment of all VBA EEO PMs, like herself, and her proposal outlined how to complete the realignment expeditiously compared to the current snail's pace.

At that point in time, some of VBA's EEO PMs had been reassigned (some wanted to be reassigned) and some were recruited for a total of 13 positions correctly aligned within ORMDI. A few additional positions were aligned but at a snail's pace for compliance. Ms. (b) (6), (b) (7)(C) was one of six VBA EEO PMs who onboarded in Oct. 2017 and since then minimal effort was made for full compliance despite other hiring actions taking place within ORMDI. By Nov. 2021, 13 VBA EEO PMs were onboard but that was not all the EEO PMs as required by law.

Mr. Johnson communicated that VBA realignments were complete in his July 2022 Congressional hearing. This created a hardship for Ms. (b) (6), (b) (7)(C) when Mr. Johnson provided false information to Congress. Additionally, Ms. (b) (6), (b) (7)(C) identified that the same false information was shared with GAO and included in the CMR on the subject. The CMR was signed by SECVA.

The Appropriations Act signed in Jan. 2023, required a CMR status update on the progress of realigning the VBA and VHA EEO PMs. The report was required every six months, June and December, until the realignment is complete. The response to this CMR originated in ORMDI, and like other Congressional correspondence was tasked in VIEWS, VA's correspondence system of record. This system has tracked changes and comments leading up to the final version for submission to SECVA for review and signature.

According to Ms. (b) (6), (b) (7)(C) ORMDI's initial draft of the CMR included information that VBA's EEO PM realignment was not complete. Ms. (b) (6), (b) (7)(C) identified that during CMR preliminary review, VBA acknowledged that the EEO PM realignment was not complete. This was captured via tracked changes and comments. However, she said ORMDI changed the CMR to reflect it was complete which resulted in SECVA signing

false information. From Ms. (b) (6), (b) (7)(C) perspective, Mr. Johnson had already lied to Congress about the status of the VBA EEO PM realignment and now SECVA had done the same, unknowingly.

Based on Ms. (b) (6), (b) (7)(C) understanding, the June CMR signed by SECVA and dispatched to Congress had incorrect information citing that the VBA EEO PM realignment was complete. She is under the impression there was a change to the next CMR in December to correct this information, but she has not been able to verify if it was reported as a correction to the previous CMR or just a revised status update.

Ms. (b) (6), (b) (7)(C) reached out to OAWP for help due to her ethical conflict with Mr. Johnson not reporting accurate information internal and external to the agency and due to her morale conflict with how Mr. Johnson's sexual encounters (forced or consensual) impacted ORMDI's resourcing and operations. She referenced (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in the context of the resourcing and operations impacts. The implication was that if you submitted to Mr. Johnson's sexual advances or aided in process, you would get what you wanted. [Note: Ms. (b) (6), (b) (7)(C) fully supports the pursuit of a criminal investigation related to the conduct of ORMDI's former leadership.] Additionally, Ms. Duncan, Associate Deputy Assistant Secretary for ORMDI, enforced Mr. Johnson's false narrative. In an e-mail, Ms. Duncan directed ORMDI employees to continue forward with the statement that the realignment of VBA's EEO PMs was completed.

When elaborating on the impacts to ORMDI resourcing and operations, Ms. (b) (6), (b) (7)(C) shared specific conflicts of interest that related to complaints processing. Ms. (b) (6), (b) (7)(C) stated it was a conflict of interest to have additional programs under Ms. (b) (6), (b) (7)(C) which included Reasonable Accommodations, Harassment Prevention Program, external complaints, and other EEO PMs. As an example of the significance of these conflicts, Ms. (b) (6), (b) (7)(C) highlighted that the Harassment Prevention Program is within ORMDI, and as a result, ORMDI employees cannot partake in this program since VA policy prohibits an investigation of self. Therefore, there is no available reporting outlets or advocates for ORMDI employees experiencing harassment. Ms. (b) (6), (b) (7)(C) views this as an inherent design flaw in the protection of employees' rights, specifically those within ORMDI.

To summarize, Ms. (b) (6), (b) (7)(C) blames Mr. Johnson, not VA, as the individual responsible for conveying false information to Congress and GAO on the status of the VBA EEO PM realignment. It is her understanding that Mr. Johnson conveyed false information because he had other motives and did not want to be transparent. In her opinion, it was a deliberate manipulation of information to get back at an VBA EEO Director, Ms. (b) (6), (b) (7)(C) (ORMDI VBA EEO Liaison Office), for denying Mr. Johnson's sexual advances. Ms. (b) (6), (b) (7)(C) shared that her Director, her employees, and herself felt a sense of fear and manipulation related to Mr. Johnson's (and Archie Davis') behaviors in the workplace. As a result, her perception is that Mr. Johnson's reason for asserting that VBA's realignment was complete was skewed for personal gain and

retaliation, and in the process, he did not think about the other employees involved and how the consequences of his actions would impact them, as well as SECVA.

**Question:** Do you know how many VBA EEO program managers were realigned to ORMDI?

**Response:** Ms. (b) (6), (b) (7)(C) asserted that the VBA EEO PMs would be more effective under VBA. Additionally, she commented that teleworking during COVID created more of a safe harbor from workplace harassment. The total number of VBA EEO PMs currently realigned was stated to be 16 or 17 full time EEO PMs onboard to support individual offices. At the time Ms. (b) (6), (b) (7)(C) and her team presented the proposal to Mr. Johnson in June 2022, the total was 25 because some EEO PMs were covering multiple offices. Ms. (b) (6), (b) (7)(C) has an Exec Spreadsheet with the most up to date information that she is tracking and offered to confirm the number. That information is included as an attachment to this report. Regardless of the number, she stated that part of the reason they were not fully realigned or fully staffed was because ORMDI did not have adequate funding.

As additional perspective for the need to have ample and properly aligned EEO PMs, Ms. (b) (6), (b) (7)(C) emphasized that the PACT Act changed the responsibility and the number of EEO PMs needed to support VBA's EEO program. For example, EEO PMs review VBA hiring actions, according to EEOC's 2018 assessment of VBA's EEO program. As a result, having one EEO PM per office was not sufficient to fully integrate EEO PM objectives and outcomes. In the cases where EEO PMs covered two small offices, that was not sufficient either. Ms. (b) (6), (b) (7)(C) stated that VBA needed 40 EEO PMs based on how quickly VBA was hiring due to the PACT Act and the required integration of EEO practices into hiring decisions.

**Question:** How many VBA EEO program managers do you believe have not yet been realigned?

**Response:** Ms. (b) (6), (b) (7)(C) stated that the number of offices that do not have a full time EEO PMs is approximately 35 to 41. Her estimate was based on number of VBA EEO PMs that will cover more than one Regional Office, depending on the size. For example, two to three Regional Offices with less than 100 employees can be covered the same EEO PM. She explained that vacant EEO PM positions will vary due to hiring plans based on size of the individual offices.

When asked if she knew of any individuals performing HR duties which would be an inherent conflict of interest, Ms. (b) (6), (b) (7)(C) stated that at the time the realignment proposal was completed, there were approximately 12 and that Mr. Johnson was aware of who those individuals were performing HR and EEO duties. She explained that this construct required an oversight manager as "a work around" until the requirements of the Cummings Act were met and the EEO PMs were realigned.

Ms. (b) (6), (b) (7)(C) further elaborated that funding was not available for ORMDI to support the additional VBA EEO PMs who needed to be realigned. This was despite VBA being willing to transfer the EEO PMs to ORMDI, as appropriate. As a result, the VBA EEO PM realignment was moving at a snail's pace, because alignments were not completed timely and excess resources were being spent -on other hires, contracts/contractors, travel, and training.

From Ms. (b) (6), (b) (7)(C) perspective, Mr. Johnson was not prioritizing or utilizing ORMDI's resources efficiently and effectively. Further, she stated he manipulated the process to get justifications for SES positions. Based on her understanding of Mr. Johnson's motives, he was manipulating the process to have two select individuals ((b) (6), (b) (7)(C)) and (b) (6), (b) (7)(C) oversee large EEO teams of 200-250 employees each if VBA and VHA were realigned under ORMDI.

**Question:** How do you define a VBA EEO program manager? Are they under a certain job series? Certain title?

**Response:** Ms. (b) (6), (b) (7)(C) a former HR classification specialist, emphasized the importance of grade controlling duties. She stated that although all are titled EEO PM in her office, there should be more of a focus on the special emphasis areas between the job series (e.g., 260 job series and 1860 job series). Ms. (b) (6), (b) (7)(C) explained that the Organizational title within VA is "EEO Program Manager;" however, the classification title for a 260 job series is "EEO Specialist" and the classification title for a 1860 job series should be "EEO Investigator." Organizational titles are allowed, however classifying a position is against OPM's Classification Standards.

Ms. (b) (6), (b) (7)(C) articulated to Mr. Johnson that conflicts exist in duties and responsibilities when positions within ORMDI are not classified properly and cited the Classification Guide for different positions; specifically, the 260 job series (i.e., special emphasis, first face of EEO, resolve cases upfront, and remove obstacles) and 1860 series (i.e., investigate cases and conduct complaints processing). She emphasized the need to clearly articulate the difference between positions as a key aspect of distinguishing between proactively resolving cases and investigating established cases.

Ms. (b) (6), (b) (7)(C) has concerns about the perceived plan to combine the complaints processing and special emphasis functions. Although Mr. Johnson is no longer with the VA and his motives are no longer driving the organizational structure, Ms. (b) (6), (b) (7)(C) is concerned that Ms. Duncan wants to combine fields thus inhibiting the proactive nature and outcomes of the 260 job series.

**Question:** Why do you believe that VBA has not realigned all its EEO program managers?

**Response:** Ms. (b) (6), (b) (7)(C) said she knows the realignment is not complete because ORMDI is still recruiting for positions after Mr. Johnson said the realignment was complete.

Based on Ms. (b) (6), (b) (7)(C) proximity to and understanding of the CMR correspondence process, VBA wanted to comply per the notes added in the CMR which stated the VBA EEO PM realignment was not complete. She had awareness that VBA amended its performance plans for compliance to remove any EEO duties in preparation for the realignment. Ms. (b) (6), (b) (7)(C) suspects that the reason for the lack of action in realigning the VBA EEO PMs is a funding issue and Mr. Johnson's false narratives and retaliatory motives.

With these obstacles in mind, she helped prep Mr. Johnson for the following questions from Congress: Have you completed the realignment? What else do you need? Ms. (b) (6), (b) (7)(C) recommended Mr. Johnson ask for more funding at that time. While preparing for the hearing, Ms. (b) (6), (b) (7)(C) and her team asked Mr. Johnson to secure funding from Congress to complete the realignment of VBA's EEO PMs. During the July 2022 Congressional hearing, Mr. Johnson was asked by Congressman Pappas if he needed anything from Congress to support the realignment. Mr. Johnson stated he did not need anything at that time. Mr. Johnson's response impeded VA's progress to comply with the law.

It is Ms. (b) (6), (b) (7)(C) understanding that Mr. Johnson wanted a one-stop-shop and that the EEO Council recommended against it. Despite the opposition, Mr. Johnson proceeded with his vision for the organization, which was skewed by personal motives and gains, and Ms. (b) (6), (b) (7)(C) is concerned that Ms. Duncan is continuing the course.

**Question:** What has been the practical impact of the alleged failure to complete the realignment of EEO program managers?

**Response:** Ms. (b) (6), (b) (7)(C) identified the conflict of interest of HR Specialist work in combination with EEO work. Most importantly, VA as an agency is not in compliance with the law which requires Congressional oversight. As a large agency, VA should not have a need for anyone to hold its hands. In addition to the conflict of interest for combining those duties, she articulated that performing EEO PM duties for multiple offices was labor intensive and often required overtime for appropriate coverage. She stated that not having the proper mix of staffing, roles, and responsibilities was taxing on ORMDI EEO PMs who were working to support entire districts and regional offices, and that this could impact VBA's ability to meet EEO objections and outcomes.

Ms. (b) (6), (b) (7)(C) emphasized that ORMDI's mission was established by law and there should have been a sound justification for additional resources if requested. She further elaborated that Mr. Johnson did not pursue requesting additional resources to support the ORMDI VBA EEO Liaison team or its larger mission since he focused on personal gains. She discussed this with Mr. Johnson and subsequently in emails with Ms. Duncan regarding how Ms. Duncan appears to be pursuing an ORMDI funding and organization structure similar to Mr. Johnson's approach.

According to Ms. (b) (6), (b) (7)(C) EEO PMs love what they do but it is unfair to them to not be supported with sufficient resources in a safe work environment free of fear, coercion,

and harassment. She stated that her team is not allowed to have temporary promotions or hire additional staff (detail opportunities). Instead, the expectation is to divide the work to cover for other offices. Ms. (b) (6), (b) (7)(C) identified as being part of a passionate team supremely interested in VA's mission to advance EEO. By way of example, she is currently responsible for serving as an EEO PM for a vacant office, assisting with EEO PM duties for VBA's Central Office, and overseeing the entire eastern district.

**Question:** Have there been any damage or injury suffered by individuals or VA as a result of the alleged failure to complete the realignment?

**Response:** Ms. (b) (6), (b) (7)(C) has been with VA for 37 years and loves her agency. The fear and pressure of having to be a whistleblower to help correct a wrong has been challenging. She is torn between protecting her employees and allowing the noncompliance to persist. Ms. (b) (6), (b) (7)(C) believes the lack of appropriate action is harming EEO PMs and VBA's abilities to achieve a model EEO program according to EEOCs standards. The ORMDI EEO PMs are covering multiple offices to ensure coverage. Overtime is not offered and EEO PMs are leaving ORMDI for other positions.

**Question:** Do you have any documents supporting your allegation that VA should review?

**Response:** Ms. (b) (6), (b) (7)(C) stated she has an organizational chart which outlines the current and to-be state of the VBA EEO PM component of ORMDI. This and other testimonial artifacts are included in the attached email which was provided as a follow-up to this interview.

**Question:** Are there any individuals who would support your allegation about VBA EEO program managers that we should interview?

**Response:** Ms. (b) (6), (b) (7)(C) listed two positions who may be interested in being interviewed, which included her Director, Ms. (b) (6), (b) (7)(C) who is on leave and her District Manager who remained unnamed and was mentioned to be out of the office on medical leave.

**Question:** Do you have anything else to add related to this matter that you presented to the OSC?

**Response:** Ms. (b) (6), (b) (7)(C) noted that there are laws in effect to enforce what should have been in place for compliance years prior.

Additionally, Ms. (b) (6), (b) (7)(C) noted that ORMDI HR has major obstacles in onboarding employees. These obstacles include:

- Removing an approved FTE once received;
- During the initial realignment of the first group of EEO PMs, ORMDI HR wanted to spread out the onboarding over multiple pay periods;
- Taking two to three months to onboard a disabled Veteran under non-competitive hiring authorities; and

- Implementing unnecessary recruitment requirements.

Ms. (b) (6), (b) (7)(C) stated that all the ORMDI HR obstacles above were intended to slow down the onboarding process. This results in potential applicants no longer being considered for the position or being offered other positions.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

# ATTACHMENT B

**From:** (b) (6), (b) (7)(C) ORMDI (she/her/hers)  
**To:** (b) (6), (b) (7)(C)  
**Subject:** Additional Information  
**Date:** Sunday, March 24, 2024 7:54:16 PM  
**Attachments:** [image001.png](#)  
[RE GAO Questions 12-16 GAO Responses - Due Today.msg](#)  
[2023 Omnibus Appropriations Act - 12-29-2023.pdf](#)  
[ORMDI Org Chart According to Appropriations Act & EEOC Directives.pptx](#)  
[RO's FTE as of 02-02-2023.xlsx](#)  
[Harvey E-mail - Pappas Response - looping you in.pdf](#)  
[Duncan Response - VBA EEO Program Managers - Consolidated Appropriations Act Report.pdf](#)  
[CyberFEDS - EEOC Study on Reporting Structures.pdf](#)  
[9360286 SECVA Encl CMR Appropriations Act 2023 - Final ORMDI VBA EEO Liaison Office .docx](#)

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Hi (b) (6), (b) (7)(C)

Hope you are well. As a follow-up to our meeting on Thursday, March 21<sup>st</sup>, attached are the documents we discussed. Additionally, I'm including the link to the HVAC hearing where Mr. Johnson informed the Congressional Committee that the VBA realignment was complete and no additional funding was needed. This false information placed additional work responsibilities on the team. Additionally, he put the VA Secretary in a difficult position when this false information was shared with Congress.

Based on my notes here's a recap of what we discussed to include in your report:

- Harvey Johnson, former DAS, had the support of Congress and the law to move forward with realigning the entire EEO program from VBA. However, when (b) (6), (b) (7)(C) did not submit to his sexual advances in February 2022, he refused to comply with the law.
- GAO investigated racial disparities within VA in 2022 – 2023. Our office confirmed that the realignment of VBA's EEO program was not complete in our written and oral responses to GAO's questions. However, Harvey Johnson changed our written response to reflect differently. GAO had a final interview with Harvey Johnson in January 2023 where he conceded.
- In the GAO Questions document attached, Harvey Johnson approved the February 2023 release of our response to complete training for EEO Program Managers once they were realigned during FY 2023. However, during the HVAC Hearing, Mr. Johnson falsely advised HVAC members that the realignment was complete and in ORMDI's CMR, our corrections which contradicted this statement was ignored. As such, The VA Secretary signed false information in the bi-annual response to the Appropriations Act.
- In June 2022, members of the ORMDI VBA EEO Liaison Office met with Harvey Johnson to prep him for the HVAC hearing and present our proposed plan and org chart to comply with the Cummings and Appropriations Acts. The Hearing which can be viewed here: [Progress Made? Ending Sexual Harassment at the Department of Veterans Affairs - YouTube](#)
- In May 2023, a meeting with VBA and ORMDI was scheduled to discuss realigning the remaining EEO Program Managers.

- EEOC's guidance prohibited ORMDI to have the Reasonable Accommodation and Harassment Prevention Programs under complaints processing. However, Harvey Johnson dismissed EEOC's written and verbal guidance and allowed (b) (6), (b) (7)(C) to have these programs.
- My first line supervisor is (b) (6), (b) (7)(C) Director. One of my District Managers is (b) (6), (b) (7)(C). One of many of Archie Davis' contributions to ORMDI's toxic, manipulative, unprofessional and hostile work environment was sharing with subordinate employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) about his locker room talk with Harvey Johnson. Specifically, Archie Davis stated that Harvey Johnson was messing around with (b) (6), (b) (7)(C). He further told (b) (6), (b) (7)(C) that he wanted to "bend" (b) (6), (b) (7)(C).
- VBA was onboard with realigning the remaining EEO Program Manager duties out from VBA. The supplemental EEO duties were removed from those positions designated to serve as collateral duty EEO Program Managers.
- Anne-Marie Duncan supported Harvey Johnson's false narrative after being informed that VBA was concurred with changes

*Thanks and have a great OZA day!*

(b) (6), (b) (7)(C) *(she, her, hers)*

ORMDI VBA EEO Liaison Office, Supervisor, Eastern Region

Work Cell: 267-279- (b) (6), (b) (7)(C) Work: 215-842-2000 (b) (6), (b) (7)(C)

*"...whatever you do, work at it with all your heart..."*

# ATTACHMENT C

## **DEPARTMENT OF VETERANS AFFAIRS**



### **Congressionally Mandated Report**

**H.R. 2617- 117<sup>th</sup> Congress (2021-2022):  
Consolidated Appropriations Act, 2023**

**June 2023**

Submitted By: Denis McDonough  
Secretary  
Department of Veterans Affairs

Prepared By: Harvey W. Johnson  
Deputy Assistant Secretary for  
Resolution Management,  
Diversity & Inclusion  
Department of Veterans Affairs

## **BACKGROUND**

House of Representatives (H.R.) 2617 - 117th Congress (2021-2022): Consolidated Appropriations Act, 2023, P.L. 117-328, § 402(f) dated December 29, 2022, requires the Secretary of Veterans Affairs (VA) to submit a semiannual report no later than 180 days after enactment to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives. This report is due to Congress on June 27, 2023. The Semiannual Report must contain the progress made by the Secretary in carrying out §§ 402(a) through (e) and § 516 of title 38 U.S.C. as amended by § 402, including reporting sexual and other harassment and employment discrimination complaints pursuant to § 516(a)(2).

## **REPORTING REQUIREMENTS**

**Section 402. Improvements to Equal Employment Opportunity (EEO) Functions of Department of Veterans Affairs.**

**(a) Alignment of EEO Director.**

**(1) Reporting and duties – Subsection (h) of § 516 of title 38, United States Codes, is amended.**

**(A) by striking “The provisions” and inserting “(1) The provisions”; and**

**(B) by adding at the end a new paragraph.**

### **Amendment:**

(1) The provisions of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission (EEOC); and

(2) Beginning not later than 90 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, in carrying out paragraph (1), the Secretary shall ensure that the official of the Department who serves as the EEO Director of the Department:

(A) reports directly to the Deputy Secretary with respect to the functions under this section; and

(B) does not also serve in a position that has responsibility over personnel functions of the Department or other functions that conflict with the functions under this section.

**Progress Statement:** Implementation is ongoing.

VA continues to make all efforts to evaluate options for full compliance with the law. VA is in ongoing consultation with the Office of General Counsel on different options in light of the amendments to 38 U.S.C. § 516, including how to reconcile the provisions of 38 U.S.C. § 308 and whether that statute poses additional necessary legislative amendments or if there are other remaining options for alignment that do not require further legislation.

**Commented [1]:** The Appropriations Act is a form of enforcement of the prior law (Cummings Act), requiring VA to adhere to the realignment provisions. The law does not allow for any option about to comply with the exact provisions.

**(2) Conforming amendments. Such section is further amended.**

**(A) rein subsection (b)(1), by inserting “, in accordance with subsection (h)(2),” after “an Assistant Secretary or a Deputy Assistant Secretary”; and**

**(B) in subsection (e)(1)(A), by striking “the Assistant Secretary for Human Resources and Administration” and inserting “the Secretary”.**

**Amendment:**

**(b) The Secretary shall provide –**

**(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary in accordance with subsection (h)(2), for complaint resolution management; and**

**Progress Statement**

**(e)(1)(A) Not later than 45 days after the end of each calendar quarter, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals referred to in paragraph (2) during such quarter.**

**Commented [2]:** A progress statement is needed for this requirement. The final, signed organizational chart currently shows the EEO functions associated with employment discrimination report to the Associate Deputy Assistant Secretary (ADAS) and not the Deputy Assistant Secretary (DAS) for complaint resolution management.

**Progress Statement: Implementation Complete**

The Secretary for VA submitted the Calendar Year (CY) 2022 Annual and CY 2023 1st Quarter Senior Managers Report to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals. VA submitted the reports 45 days after the end of CY 2022 and the 1st quarter of 2023. The VA Secretary will submit all future Senior Managers Reports to the Committees on Veterans' Affairs of the Senate and House of Representatives timely.

**(b) Alignment of EEO Program Managers. Such section is further amended by adding at the end the following new subsection.**

**Amendment:**

(i) In accordance with subsection (b), not later than one year after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall ensure that each EEO Program Manager of the Department at the facility level reports to the head of the Office of Resolution Management, or such successor office established pursuant to subsection (a), with respect to the equal employment functions of the program manager.

**Progress Statement:** Implementation ongoing

The realignment of the Veterans Benefit Administration, National Cemetery Information and Office of Information & Technology EEO Program Managers to the ORMDI is complete.

The Veteran Health Administration EEO Program Managers realignment to ORMDI will be accomplished in FY 2024 pending Congressional approval in raising ORMDI's reimbursable cap in the Military Construction and Veterans Affairs FY 2024 Appropriations Act.

**(c) Reporting Harassment and Employment Discrimination Complaints.**  
Subsection (a) of such section is amended.

(1) by striking "The Secretary" and inserting "(1) The Secretary"; and

(2) by adding at the end the following new paragraph.

**Amendment:**

(1) The Secretary shall provide that the employment discrimination complaint resolution system established under paragraph (1) requires that any manager of the Department who receives a sexual or other harassment or employment discrimination complaint reports such complaint to the Office of Resolution Management, or successor office, immediately, or if such immediate reporting is impracticable, not later than two days after the date on which the manager receives the complaint; and

**Progress Statement:** Implementation ongoing

**Managers of the Department who receive sexual or other harassment complaint reports:**  
Implementation complete.

VA Handbook 5979, Harassment Prevention Program (HPP) Procedures dated March 21, 2022, requires all managers who receive harassment and sexual harassment allegations report them to VA's HPP within two business days. VA Handbook 5979 is available on VA's Publications website at: <https://www.va.gov/vapubs/>

**Commented [B10]:** 3]: The information provided is incorrect. There are remaining EEO Program Managers located within VBA's Regional Offices that are expected to be realigned in compliance with GAO's assessment, Cummings Act and subsequently the Appropriations Act.

**Managers of the Department who receive employment discrimination complaint reports:**

Implementation ongoing

VA is determining the best path forward to meet the intent of Congress for § 402(c). Well established EEO laws and EEOC complaint processing procedures exist. The EEOC provides leadership and guidance to federal agencies on all aspects of the federal government's equal employment opportunity program. 29 C.F.R.

§ 1614.105(a)(1) requires an aggrieved party to initiate contact with an EEO counselor within 45 days of the date of the matter to be alleged discriminatory. Currently, it is the aggrieved party's responsibility for reporting discrimination to ORMDI and not that of a "manager" who could be the accused management official for the alleged discrimination. Thus far in our evaluation, VA has identified at least seven issues with requiring a manager to report allegations of discrimination to ORMDI.

- i. No EEOC complaint process exists to follow-up on managers who report complainant's allegation of discrimination.
- ii. In accordance with the Privacy Act, managers have no right to know what happens because of the manager reporting an aggrieved party's allegation of discrimination.
- iii. Timeliness for filing an EEO complaint and reporting discrimination to ORMDI is the aggrieved party's responsibility. Consequently, changing the EEOC requirement for reporting discrimination becomes a 29 C.F.R. § 1614.105 and § 1614.107(a)(2) timeliness issue for processing EEO complaints.
- iv. This requirement could negatively affect aggrieved party's right to anonymity during the pre-complaint/counseling stage.
- v. The act for managers to report an aggrieved party's allegations to ORMDI could be considered *Per Se Retaliation*<sup>1</sup> which supports a finding of discrimination.
- vi. Managers would be self-reporting to ORMDI in situations where managers are the accused. This could result in self-incrimination and violate the Fifth Amendment of the U.S. Constitution.
- vii. No other Federal Agency has this requirement, to include EEOC.

**(d) Training. Subsection (c) of such section is amended.**

**(1) by inserting "(1)" before "The Secretary"; and**

**(2) by adding at the end the following new paragraph:**

---

<sup>1</sup> *Per se* retaliation is any action, behavior, or comment, whether hostile, negative, or not, that alone likely, objectively suffices to chill or deter an employee or an employee's co-workers from engaging in EEO activity, when viewed from a reasonable person's point of view. The actions or comments, on their face, may-violate the letter and spirit of EEOC's regulations. *Per se* retaliation requires no adverse employment action and no finding of a discriminatory motive or intent. Action, behavior, or a single comment, under certain circumstances, may be discriminatory-in-and-of-themselves.

#### **Amendment:**

##### **(2) The Secretary**

(A) Beginning not later than 180 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall provide to each employee of the Department mandatory annual training on identifying and addressing sexual and other harassment and employment discrimination, including with respect to processes under the Harassment Prevention Program of the Department, or such successor program; and

(B) An employee of the Department who is hired on or after such date shall receive the first such mandatory annual training not later than 60 days after being hired.

#### **Progress Statement: Implementation Complete**

##### **The EEO, Diversity and Inclusion Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR) and Whistleblower Rights and Protection Policy Statement training course Talent Management System (TMS) # 4309852.**

TMS #4309852 is intended to help learners apply a working knowledge of Federal and VA EEO, Diversity and Inclusion, No FEAR, Whistleblower Rights and Protection policies. VA does not tolerate unlawful discrimination, workplace harassment or retaliation based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation and pregnancy), age (40 or older), disability, genetic information, marital status, parental status, political affiliation or retaliation for opposing discriminatory practices or participating in the discrimination-complaint process. This applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits and separation. VA's instructional materials address all applicable mandates required by No FEAR Act (P.L. 107-174 § 102(5)(B) and § 202(c)) and the Consolidated Appropriations Act, 2023 (P.L. 117-328 § 402(d)).

All VA employees are universally assigned biennial EEO, Diversity and Inclusion No FEAR and Whistleblower Rights and Protection Policy Statement training course and are automatically alerted through VA's TMS emails. Prior to the Consolidated Appropriations Act, employees were required to complete the training within the first 90 days of their appointments and biannually thereafter. Subsequently, VA changed the initial training date from 90 days to 60 days of the employee's appointment date.

##### **Harassment Prevention and Accountability Training TMS #45224**

VA is committed to providing a safe, welcoming and equitable environment for all Veterans, families, caregivers and survivors VA serves, and the workforce that makes it possible to accomplish VA's mission. VA's Harassment Prevention and Accountability

training complies with EEOC's "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," the Deborah Sampson Act (P.L. 116-316 § 5001) and Consolidated Appropriations Act, 2023 (P.L. 117-328 § 402(d)). Employees receive training on identifying and addressing sexual and other harassment allegations, including processes under the Harassment Prevention Program. The training includes several scenarios depicting workplace and sexual harassment to test their knowledge and sharpen their skills to recognize, prevent and report all allegations of harassment.

All VA employees are universally assigned annual Harassment Prevention & Accountability training and are automatically alerted through VA's TMS emails. Prior to the Consolidated Appropriations Act, employees were required to complete the Harassment Prevention & Accountability training within the first 90 days of their appointments and annually thereafter. Subsequently, VA changed the initial training date from 90 days to 60 days of the employee's appointment date.

#### **EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors TMS# 45049**

TMS #45049 is intended to help learners apply a working knowledge of EEO, Diversity, Equity and Inclusion, Harassment Prevention and Accountability, Reasonable Accommodation, Conflict Management for Executives, Managers and Supervisors. This course is designed so that learners can: (1) Apply strategies that enhance the impact of workforce diversity, workplace inclusion, and inclusive diversity on VA's organizational culture; (2) Apply best practices to prevent unlawful discrimination, harassment, and retaliation in the workplace; (3) Articulate the distinction between VA's EEO Program and VA's Harassment Prevention Program; (4) Determine legal and appropriate accommodations when addressing reasonable accommodation requests from employees with disabilities; and, (3) Determine appropriate methods and uses of alternative dispute resolution for given workplace situations.

All VA Executives, Managers and Supervisors are universally assigned annual EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors and are automatically alerted through VA's TMS emails. Prior to the Consolidated Appropriations Act, Executives, Managers and Supervisors were required to complete the EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors training within the first 90 days of their appointments and annually thereafter. Subsequently, VA changed the initial training date from 90 days to 60 days of the employee's appointment date.

VA training methodology is web-based asynchronous online learning. TMS courses provide learning content and knowledge checks that demonstrate employee grasp of course material. Upon completion of the courses and surveys, employees have the option to print training completion certificates. Supervisors of the employees that are assigned courses are emailed alerts, and each has the capability to monitor employees' progress in TMS.

Online training is located on the TMS site at the following link:

<https://auth-hcm03.ns2cloud.com/SecureAuth35/>

**(e)(1) Harassment and Employment Discrimination Policies and Directives. The Secretary of Veterans Affairs shall:**

**Amendment:**

(1) by not later than the date that is 180 days after the date of the enactment of this Act, and on a regular basis thereafter, review the policies relating to sexual and other harassment and employment discrimination of the Department of Veterans Affairs to ensure that such policies are complete and in accordance with the sexual and other harassment and employment discrimination policies established by the Office of Resolution Management of the Department, or successor office; and

(2) by not later than 180 days after the date of the enactment of this Act, issue a final directive and a handbook for the Harassment Prevention Program of the Department.

**Progress Statement:**

ORMDI created a Supplemental Policy Review Checklist to ensure that all VA Facility and Staff Office supplemental policies on harassment (sexual and nonsexual) are compliant with VA Handbook 5979, HPP procedures. The initial policy review was completed on October 17, 2022, and will occur annually thereafter. ORMDI also conducts VA HPP Compliance Reviews for VA Facility and Staff Office's. VA will use the HPP Compliance Reviews to monitor VA Facility and Staff Office supplemental policies to ensure they remain compliant with the VA's HPP procedures.

Prior to H.R. 2617-117th Congress (2021-2022): Consolidated Appropriations Act, 2023, P.L. 117-328, Section 402 dated December 29, 2022, VA Directive 5979, Harassment Prevention Policy was issued on December 8, 2020, and VA Handbook 5979 HPP procedures was issued on March 21, 2022. VA Directive and Handbook 5979 are available on VA's website at:

VA Directive 5979 Link:

[https://www.va.gov/vapubs/viewPublication.asp?Pub\\_ID=1219&FTtype=2](https://www.va.gov/vapubs/viewPublication.asp?Pub_ID=1219&FTtype=2)

VA Handbook 5979 Link:

[https://www.va.gov/vapubs/viewPublication.asp?Pub\\_ID=1367&FTtype=2](https://www.va.gov/vapubs/viewPublication.asp?Pub_ID=1367&FTtype=2)

June 2023



*Get more on making an impact in the EEO world from Health Resources & Services Administration's Office of Civil Rights, Diversity & Inclusion Director Anthony Archeval's session, Take Your EEO Career to the Next Level: Become an Influencer, on Wed., Aug. 10, 2022 at [FDR Training 2022](#).*

**Key points:**

- Only 3 cabinet-level agencies have EEO direct reporting compared to 29 small agencies
- 41 percent of those without direct reporting identified leadership reluctance as obstacle
- Excessive vetting, lack of follow through, and fearing agency head reports also posed barriers

**EEOC study shows reporting structure affects EEO program's success**

By Anjali Patel, Esq., **cyberFEDS®** Legal Editor Washington Bureau

**IN FOCUS:** Even though a direct reporting structure between EEO directors and agency heads is required by law and has a "positive correlation with overall effectiveness" of an agency's EEO program, a new [study](#) found that only 21 percent of cabinet-level agencies had a compliant reporting structure.

The data shows that many agencies have yet to fully comply with the [Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020](#), which incorporated the direct reporting requirement that was long-required by EEOC's MD-715 into statute. The Cummings Act, however, did not impose specific penalties for noncompliance, the report explained.

**Compliance**

Overall, the Equal Employment Opportunity Commission study found small agencies achieving the "greatest levels of success" on compliance, "while mid-sized, large, and cabinet-level agencies reported only mixed levels." Specifically, the EEOC found that in FY 2021:

- Only three cabinet-level agencies -- 21 percent -- indicated a direct reporting structure, six -- or 43 percent -- say they did not, and 3 did not participate in the survey.

"In the wake of the Cummings Act, this high level of noncompliance among cabinet-level agencies is troubling," the EEOC said.

- 43 large agencies -- 36 percent -- maintained a direct reporting structure, while 37 -- 31 percent -- reported they did not, and 36 -- 30 percent -- did not participate in the survey.
- Six mid-sized agencies -- 33 percent -- had a direct reporting structure, while 4 -- 22 percent -- did not, and 739 percent) did not participate in the survey.
- 23 small agencies -- 46.9 percent -- had a direct reporting structure, while 2 -- 4.1 percent -- did not, and 24 -- 49 percent -- did not participate in the survey.

To assess the "status and impact" of a direct reporting structure on agencies, the EEOC analyzed MD-715 and Form 462 data, conducted a governmentwide survey of EEO directors, and held four focus groups and three interviews involving EEO officials.

The study concluded that "where there are direct reporting relationships with the agency head, the agency has fewer deficiencies in its EEO program," EEOC said. "Almost without exception, EEO Directors believe direct reporting structures to be beneficial in maintaining an effective EEO program."

Survey respondents indicated a direct reporting structure either very positively (72 percent) or positively (20 percent) impacted their EEO program with the data also confirming that direct reporting facilitates "frequent communication" between leadership and EEO personnel. For example, 47 percent of those with direct reporting maintained daily or weekly communication with their agency head, 21 percent having biweekly communication, and 28 percent monthly communication.

### **Obstacles and recommendations**

At agencies without a direct reporting structure, 41 percent said the main obstacle was leadership reluctance, 19 percent said excessive bureaucratic vetting, 11 percent said a lack of EEOC support, and about 12 percent said a lack of opportunity to propose changes to leadership.

In addition, 36 percent responded with "other" obstacles, of which the "top trending" were "constant organizational changes resulted in the loss of momentum to follow through" and the "fear of too many direct reports to the agency head."

To push changes at agencies without direct reporting, the EEOC recommended common first steps, including "discussions with agency leadership, requests for guidance from the EEOC, and memoranda written to agency leadership."

In addition, interviewees recommended:

- Using "a value-added approach to appeal to senior leadership about the need for a direct reporting structure," which can make the agency more invested in EEO and a better place to work.
- Asking for one-on-one meetings with the agency head and scheduling them regularly, creating an "opportunity to discuss EEO trends or ways that the agency can improve its EEO practices."

### **Case study**

To illustrate the impact of a direct reporting structure on an EEO program, the EEOC provided a case study involving the EEO program evaluations of a department and its subcomponents, one of which had a compliant structure and no deficiencies. Another subcomponent had just changed the reporting structure three weeks prior, and impact on the EEO program was not expected "in such a short time."

The cabinet-level department and 6 other subcomponents, which did not comply with the reporting structure requirement, had numerous deficiencies including insufficient resources allocated to EEO and special emphasis programs, lack of EEO and HR coordination, not incorporating EEO into strategic planning, and an ineffective alternative dispute resolution program.

These "structural deficiencies decreased the effectiveness" of their EEO programs, "which did not fully leverage EEO resources and expertise," the study found. Plus, "[i]ncreased proximity to the agency head seemed to inversely affect an agency's number of negative factors," so the closer to an agency head, the more compliant the EEO program overall.

The case study also revealed that when agencies don't include EEO in strategic planning — one of the most important elements of a model EEO program — "it is more likely to fall short on allocating sufficient resources" for the EEO program and special emphasis programs.

"Although compliance with the direct reporting mandate needs improvement, this study shows a good start has been made in improving structures to increase equal opportunity in the federal workplace," Carlton Hadden, the director of the EEOC's Office of Federal Operations, said in a press release. "I am hopeful that this increase will be a continuing trend and that all agencies will come into compliance with the law."

Resources on **cyberFEDS®**:

- [Quick Start Guide: No FEAR Act](#)
- [Checklist Plus+: Working with the No FEAR Act](#)
- [Quick Start Guide: Diversity, Equity, Inclusion, and Accessibility](#)
- [Executive Order 14035](#): Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce (06/25/21)

Also, see the [2022 Federal Personnel Guide](#) in our [online store](#).

**July 28, 2022**

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**From:** (b) (6), (b) (7)(C) (ORMDI) (she/her/hers)  
**To:** (b) (6), (b) (7)(C) (ORMDI)  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) (b) (6), (b) (7)(C) (ORMDI)  
**Subject:** Re: VBA EEO Program Managers - Consolidated Appropriations Act Report  
**Date:** Monday, June 5, 2023 12:30:58 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Good afternoon,

Even though the ADAS is stating that the VBA realignment of EEO Program Managers is complete, the record does not reflect completion, in compliance with either the EEOC's assessment conducted of VBA's EEO Program in 2018, Elijah Cummings Act or the Appropriations Act.

ORMDI has been in recent contact with VBA leadership including the CoS to facilitate the realignment of the remaining VBA EEO Managers. This is the basis for the CoS stating that VBA's realignment is not complete.

I respect the ADAS' position and the requirement to follow her instructions. Therefore, please note in your records that VBA's CoS and this office (b) (6), (b) (7)(C) have stated that VBA's realignment is incomplete for the given reasons, should GAO, Congress, and/or EEOC question the validity of VA's reporting that VBA realignment is complete.

Thank you,

(b) (6), (b) (7)(C)

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---

**From:** (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Sent:** Monday, June 5, 2023 9:10 AM  
**To:** (b) (6), (b) (7)(C) (ORMDI) (she/her/hers) <(b) (6), (b) (7)(C)@va.gov>  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Subject:** FW: VBA EEO Program Managers - Consolidated Appropriations Act Report

FYSA

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**From:** Duncan, Dr. Anne-Marie (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Sent:** Monday, June 5, 2023 8:44 AM  
**To:** (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; Johnson, Harvey W. (ORMDI) (he/him/his) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>; Davis, Archie (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Subject:** RE: VBA EEO Program Managers - Consolidated Appropriations Act Report

Good Morning

(b) (6), (b) (7)(C)

The DAS has consistently stated to GAO and Congress that the VBA, OIT, and NCA realignment is complete.

Whether additional EEO PMs are needed for VBA is a topic for a future discussion but not for the CMR.

Therefore, as reported to GAO, the VBA realignment is complete for purposes of the CMR as well.

Anne-Marie

**Dr. Anne-Marie Duncan**  
Associate Deputy Assistant Secretary

Office of Resolution Management, Diversity & Inclusion (ORMDI)

U.S. Department of Veterans Affairs  
1575 I Street, NW | Suite 1000 | Washington, DC 20005  
Telephone: (202) 461- (b) (6), (b) (7)(C) Mobile: (202) 372- (b) (6), (b) (7)(C)



<https://www.va.gov/ORMDI/> or Call: (888) 566-3982 / TTY/TDD (888) 626-9008

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---

From: (b) (6), (b) (7)(C) ORMDI (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@va.gov>

Sent: Monday, June 5, 2023 8:30 AM

**To:** Davis, Archie (ORMDI) (b) (6), (b) (7)(C)@va.gov>; Johnson, Harvey W. (ORMDI) (he/him/his) (b) (6), (b) (7)(C)@va.gov>; Duncan, Dr. Anne-Marie (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Subject:** FW: VBA EEO Program Managers - Consolidated Appropriations Act Report  
**Importance:** High

Archie – Can you assist with VBA edits to the CMR we are fast tracking? The CMR needs to keep this moving through VIEWS concurrence. I reached out to the DAS and have not heard back.

How should we proceed with VBA's response that the VBA EEO Program Manager realignment is incomplete. For several months we told GAO that the VBA EEO Program manager realignment was complete. Last week I learned only sixteen of the fifty-six Regional Offices and three Central Office EEO Program Managers were realigned. If indeed the VBA EEO Program Manager realignment is incomplete and the DAS agrees it is not complete, (b) (6), (b) (7)(C)@va.gov recommends reporting the latest status in the CMR and explain the gap in reporting to GAO.

Consequently, why did we report to GAO it was complete and what should I say in the CMR?

I look forward to a response.

Thank you. (b) (6), (b) (7)(C)

**From:** (b) (6), (b) (7)(C) (ORMDI)  
**Sent:** Friday, June 2, 2023 4:49 PM  
**To:** Johnson, Harvey W. (ORMDI) (he/him/his) <(b) (6), (b) (7)(C)@va.gov>; Duncan, Dr. Anne-Marie (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (she/her/hers) <(b) (6), (b) (7)(C)@va.gov>  
**Subject:** FW: VBA EEO Program Managers - Consolidated Appropriations Act Report

Good Afternoon DAS.

Can you explain why we reported that VBA's EEO Program Manager realignment is incomplete to GAO and VBA believes it is incomplete? If it is indeed not complete, and you agree it is not complete, Eskenazi, Laura H (b) (6), (b) (7)(C)@va.gov recommends reporting the latest status in the CMR and explain the gap in reporting to GAO.

Thoughts?

(b) (6), (b) (7)(C)

**Program Specialist**

Office of Policy, Compliance & Oversight (OPCO)

Office of Resolution Management, Diversity & Inclusion (ORMDI)

Washington, DC 20420

216-390-(b) (6), (b) (7)(C)

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**U.S. Department of Veterans Affairs**

**Human Resources and Administration  
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---

**From:** Eskenazi, Laura H. (b) (6), (b) (7)(C)@va.gov

**Sent:** Friday, June 2, 2023 1:45 PM

**To:** (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov

**Subject:** RE: VBA EEO Program Managers - Consolidated Appropriations Act Report

Hi (b) (6), (b) (7)(C) - I defer to Harvey – I have no independent insight on the status of the VBA realignment of EEO counselors – I also thought it was complete. If it is indeed not complete, and Harvey agrees, then I think the report needs to reflect the latest status and explain the gap in reporting to GAO.

Keep me posted!

---

**From:** (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Sent:** Friday, June 2, 2023 9:26 AM  
**To:** Eskenazi, Laura H. <(b) (6), (b) (7)(C)@va.gov>  
**Subject:** FW: VBA EEO Program Managers - Consolidated Appropriations Act Report

Hello and Good morning Laura.

I want to get my CMR through concurrence. VBA concurs with edits (attached). Previously we reported to GAO that the VBA EEO Program Manager realignment is complete. However, VBA is telling me it is in progress/ongoing. See email chain below. Should we continue reporting what we told GAO that the VBA EEO Program Manager realignment is complete or state: "The Veterans Benefits Administration EEO Program Managers realignment is ongoing. Sixteen of the fifty-six Regional Offices and three Central Office EEO Program Managers were realigned."

I am waiting to hear back from the DAS, but thought you might want to include your thoughts... Thanks in advance. (b) (6), (b) (7)(C)

---

**From:** (b) (6), (b) (7)(C) (ORMDI)  
**Sent:** Thursday, June 1, 2023 4:03 PM  
**To:** Johnson, Harvey W. (ORMDI) (he/him/his) <(b) (6), (b) (7)(C)@va.gov>  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (she/her/hers) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; Duncan, Dr. Anne-Marie (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Subject:** RE: VBA EEO Program Managers - Consolidated Appropriations Act Report

Good Afternoon DAS,

VBA concurred in VIEWS with edits for the enclosed Congressional Report.

VBA stated: The realignment of VBA was previously completed; however, ORMDI requested that VBA provide temporary support for EEO managerial duties and we continue to have employees performing these functions on an ancillary basis. These employees are not full-time EEO managers and do not report to the head of ORMDI.

I asked for clarification on VBA's concur with edits because no suggested language specific to the realignment was provided. VBA's reply is as follows:

The Veterans Benefits Administration EEO Program Managers realignment is ongoing. Sixteen of the fifty-six Regional Offices and three Central Office EEO Program Managers were realigned.

Please provide me the VBA statement that should be included in the report.

Thank you.

(b) (6), (b) (7)(C)

### Program Specialist

Office of Policy, Compliance & Oversight (OPCO)

Office of Resolution Management, Diversity & Inclusion (ORMDI)

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---

From: (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>

Sent: Thursday, June 1, 2023 3:54 PM

To: (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>; Johnson, Harvey W. (ORMDI) (he/him/his) (b) (6), (b) (7)(C)@va.gov>; Duncan, Dr. Anne-Marie (ORMDI) (b) (6), (b) (7)(C)@va.gov>

Cc: (b) (6), (b) (7)(C) Ph.D. (ORMDI) (b) (6), (b) (7)(C)@va.gov> (b) (6), (b) (7)(C) (ORMDI)

(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Subject:** Re: VBA EEO Program Managers - Consolidated Appropriations Act Report

Harvey,

Recommend we use the same language Dr. Duncan provided for the last GAO request for consistency.

(b) (6), (b) (7)(C)

---

**From:** (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Sent:** Thursday, June 1, 2023 1:55:11 PM  
**To:** Johnson, Harvey W. (ORMDI) (he/him/his) (b) (6), (b) (7)(C)@va.gov>; Duncan, Dr. Anne-Marie (ORMDI) (b) (6), (b) (7)(C)@va.gov> (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Cc:** (b) (6), (b) (7)(C) Ph.D. (ORMDI) (b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (she/her/hers) (b) (6), (b) (7)(C)@va.gov> (b) (6), (b) (7)(C) (ORMDI) (b) (6), (b) (7)(C)@va.gov>  
**Subject:** VBA EEO Program Managers - Consolidated Appropriations Act Report

Mr. Johnson,

On several GAO responses and in the enclosed draft Consolidated Appropriations Act Report, we indicated that VBA EEO Program Managers report to ORMDI and the realignment is complete. The VBA Chief of Staff and (b) (6), (b) (7)(C) indicate that the VBA EEO Program Managers is ongoing. Only 16 of the 56 EEO Program Managers report to ORMDI. (VBA has 3 vacant EEO Program Managers positions.) This will change the Congressional Report as listed below.

**Please approve/edit and return.**

The Veterans Benefits Administration EEO Program Managers realignment is ongoing. Sixteen of the fifty-six Regional Offices and three Central Office EEO Program Managers were realigned.

Thank you. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

**Program Specialist**

Office of Policy, Compliance & Oversight (OPCO)

Office of Resolution Management, Diversity & Inclusion (ORMDI)

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questions. Thanks!  
Maureen

**Maureen L. Marks, PhD (she/her)** [\[what is this?\]](#)

**Acting VHA Chief of Staff**

**For Scheduling:** [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

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**I value your work-life boundaries and rhythm. Unless I've noted the above as an urgent issue, please do not feel pressure to respond outside of your working hours.**

---

**From:** Pope, Brent (OGC) [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

**Sent:** Tuesday, September 20, 2022 5:48 PM

**To:** Eskenazi, Laura H. [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

**Cc:** Mayo, Jeffrey [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#); Marks, Maureen L. [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#); Johnson, Harvey W. (ORMDI) (he/him/his) [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#); Mccallum, Deborah K. (OGC) (she/her/hers)

[\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

**Subject:** Re: DRAFT Pappas Response - looping you in

Thanks Laura.

D. Brent Pope

Deputy General Counsel, Legal Operations

Office of General Counsel

Office: (202) 461-[\(b\) \(6\), \(b\) \(7\)\(C\)](#)

Cell: (202) 257-[\(b\) \(6\), \(b\) \(7\)\(C\)](#)

---

**From:** Eskenazi, Laura H. [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

**Sent:** Tuesday, September 20, 2022 5:21:13 PM

**To:** Pope, Brent (OGC) [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

**Cc:** Mayo, Jeffrey [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#); Marks, Maureen L. [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#); Johnson, Harvey W. (ORMDI) (he/him/his) [\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#); Mccallum, Deborah K. (OGC) (she/her/hers)

[\(b\) \(6\), \(b\) \(7\)\(C\) @va.gov](#)

**Subject:** DRAFT Pappas Response - looping you in

Hi Brent –

Just looping you in on this incoming letter from Pappas and others, following a July hearing. The letter inquires about the alignment of the EEO office in VA, as well as alignment of the VHA EEO program managers.

Flagging for you as the letter includes a request for OGC's opinion on the legality of the EEO alignment. We have seen this same question in other GAO inquiries, and Debbie worked with me on an informal GAO response on the topic back in July.

Here is a relevant snippet from the Pappas letter:

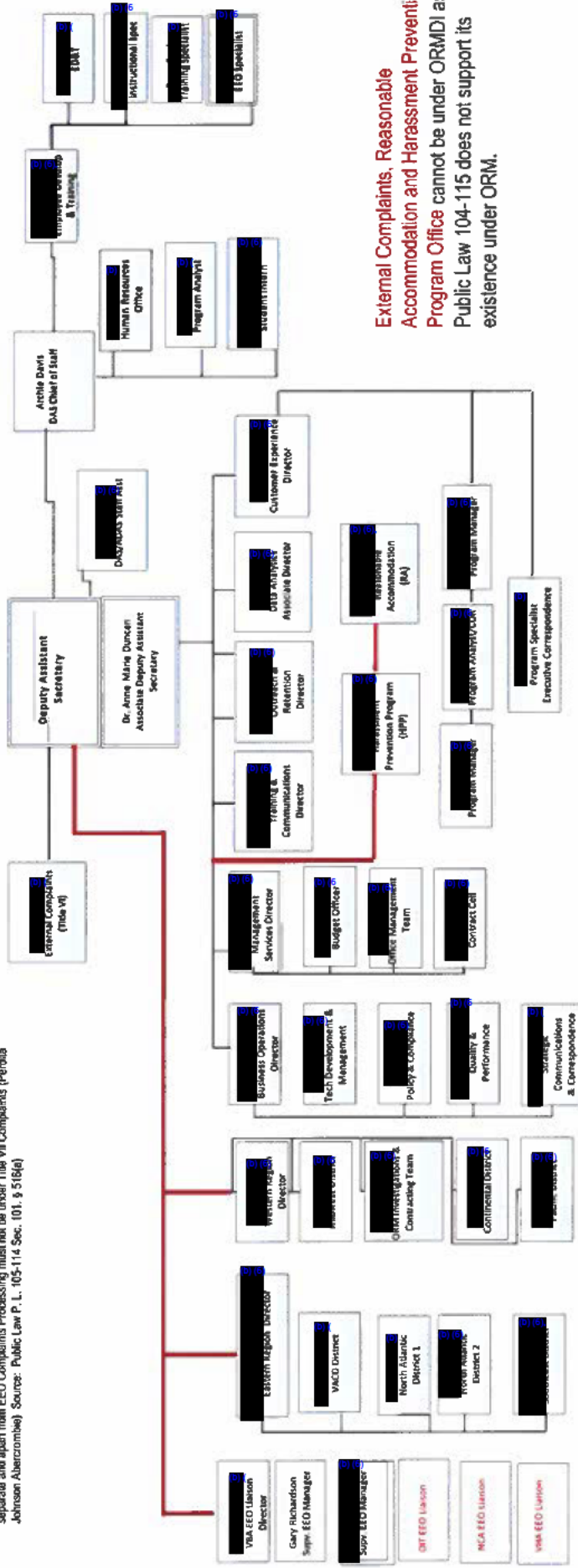
- 1) Please provide your plan to ensure compliance with GAO recommendations, EEOC directives, and federal law concerning the alignment of VA's departmentwide EEO Director position along with Office of General Counsel analysis as to how this plan will satisfy statutory and regulatory requirements.

VA has no current plan to realign the EEO office (i.e. ORMDI), so there is no plan to review. But the question as to whether we are in compliance with the law keeps coming up.

I don't know if OGC will be asked to "opine" as stated in this letter, but I am sure you will be at least asked to review / concur on the response when it is ready. This is at the early drafting stages (including a draft response we are working on with Exec Sec) but just wanted to loop you in for now.

Thanks,

Laura



**External Complaints, Reasonable Accommodation and Harassment Prevention Program Office cannot be under ORMDI as Public Law 104-115 does not support its existence under ORM.**

**Harvey W. Johnson**  
Deputy Assistant Secretary  
Office of Resolution Management, Diversity and Inclusion

(b) (6), (b) (7)(C) (VACO)

**From:** Johnson, Harvey W. (ORMDI) (he/him/his)  
**Sent:** Thursday, February 23, 2023 3:12 PM  
**To:** (b) (6), (b) (7)(C) (ORMDI)  
**Cc:** Duncan, Dr. Anne-Marie (ORMDI); (b) (6), (b) (7)(C) Management Services, ORMDI;  
ORMDI GAO; (b) (6), (b) (7)(C) (ORMDI) (she/her/hers); (b) (6), (b) (7)(C) (ORMDI)  
(she/her/hers)  
**Subject:** RE: GAO Questions 12-16 GAO Responses - Due Today  
**Attachments:** FY23\_ALL\_STAFF-#381886-v2-105429 - \_QUESTIONS\_FOR\_ORMDI\_(FEBRUARY\_2023)  
(b) (6), (b) (7)(C) Washington Q12 to Q14 02 23 2023.docx

(b) (6), (b) (7)(C) – Good afternoon, I approve.

This version provides SED District Manager. Thank you. Harvey

---

**From:** (b) (6), (b) (7)(C) (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Sent:** Thursday, February 23, 2023 8:23 AM  
**To:** Johnson, Harvey W. (ORMDI) (he/him/his) <(b) (6), (b) (7)(C)@va.gov>  
**Cc:** Duncan, Dr. Anne-Marie (ORMDI) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI)  
(b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@va.gov>; ORMDI GAO <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (she/her/hers)  
(b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@va.gov>; (b) (6), (b) (7)(C) (ORMDI) (she/her/hers) <(b) (6), (b) (7)(C)@va.gov>  
**Subject:** FW: GAO Questions 12-16 GAO Responses - Due Today

DAS Johnson,

Please review/edit/approve (b) (6), (b) (7)(C)'s response to Q12-Q14. (b) (6), (b) (7)(C)'s attachments have been imbedded into the Word Document. This is due to GAO today. Thank you.

(b) (6), (b) (7)(C)

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Washington, DC 20420

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conducted in a virtual capacity (i.e. telephonic, skype, video conference etc.). Your patience is appreciated during the COVID-19 Pandemic.

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From: <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) (she/her/hers) <sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>  
Sent: Wednesday, February 22, 2023 11:19 PM  
To: <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>  
Cc: ORMDI GAO <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>; <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) (she/her/hers) <sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>; Richardson, Gary, (ORMDI) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>; <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>  
Subject: RE: GAO Questions 12-17 GAO Responses - Due

Hi <sup>(b) (6), (b) (7)(C)</sup>

Please see ORMDI's VBA EEO Liaison Office's response and attachments.

Thanks,

<sup>(b) (6), (b) (7)(C)</sup> (she, her, hers)

ORMDI VBA EEO Liaison Office, Supervisor, Eastern Region

Work Cell: 267-279-<sup>(b) (6), (b) (7)(C)</sup> Work: 215-842-2000 x <sup>(b) (6), (b) (7)(C)</sup>

"...whatever you do, work at it with all your heart..."

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From: <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>  
Sent: Wednesday, February 22, 2023 2:26 PM  
To: <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) (she/her/hers) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>; <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) (she/her/hers) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>; <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>; <sup>(b) (6), (b) (7)(C)</sup> (ORMDI) <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>  
Cc: ORMDI GAO <<sup>(b) (6), (b) (7)(C)</sup> [@va.gov](#)>  
Subject: GAO Questions 12-17 GAO Responses - Due  
Importance: High

<sup>(b) (6), (b) (7)(C)</sup> and <sup>(b) (6), (b) (7)(C)</sup> Reminder that ORMDI needs forward your GAO responses to the DAS for approval today. They are due to GAO tomorrow.

<sup>(b) (6), (b) (7)(C)</sup>

Office of Policy and Compliance

Office of Policy and Compliance Vision/Mission: *To advance the quality of EEO complaint processing by expert application of EEO laws and regulations to policy, advice, quality reviews, oversight, and compliance commensurate with the highest standards of integrity so VA can better serve veterans.*

Office of Resolution Management, Diversity & Inclusion (ORMDI)  
Washington, DC 20420

Telephone: 216-390- (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)@va.gov

**VA**



**U.S. Department of Veterans Affairs**

**Human Resources and Administration  
Operations, Security and Preparedness**

*Office of Resolution Management, Diversity & Inclusion*

**VA Core Values:** Integrity **C**ommitment **A**dvocacy **R**espect **E**xcellence

**VA Core Characteristics:** Trustworthy | Accessible | Quality | Innovative | Agile | Integrated

**NOTICE:** ORMDI is operating in a 100% telework environment. ORMDI does not have the capability to send and/or receive hardcopy documents at this time. In order to be more responsive, we ask that if you have previously sent documents to us via U.S. Mail or other delivery services, please resend those documents to us electronically. All meetings, interviews, and mediation sessions will be conducted in a virtual capacity (i.e. telephonic, skype, video conference etc.). Your patience is appreciated during the COVID-19 Pandemic.

Thank you for contacting the Office of Resolution Management, Diversity & Inclusion. Our goal is to provide you with exceptional customer service. Please take a moment to [complete a very brief survey](#) to let us know how my service was today.

This e-mail and any attachments thereto are intended only for the use of the addressee(s) named herein and may contain privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail (and any attachments thereto) is strictly prohibited. If you have received this e-mail in error, please notify me via return e-mail and via telephone at (202) 461- (b) (6), (b) (7)(C) and permanently delete the original and any copy of any e-mail and any printout thereof.

## VA Racial and Employment Discrimination (105429)

### Follow-Up Questions for ORMDI

February 14, 2023 | GAO Contact (b) (6), (b) (7)(C)@gao.gov

GAO Contact: (b) (6), (b) (7)(C)@gao.gov

OPC Received: 02/15/2023

GAO Due Date: 02/23/2023

Assigned to: Questions 12, 13 & 14 – (b) (6), (b) (7)(C)

Assignment Due Date: 02/20/2023

Forwarded to DAS Date: 02/23/2023

Approved by DAS Date:

### Complaint Trend Analysis and Related Training

Questions 12, 13 & 14 – (b) (6), (b) (7)(C)

12. How, if at all does the VBA EEO office assess and address trends in HPP complaints at VBA offices? Please provide documentation of such assessments.

**ORMDI Response:** (b) (6), (b) (7)(C) ORMDI VBA National Harassment Prevention Manager, reviews all incoming cases and conducts assessment of trends of harassment/assault complaints on VBA property, within the jurisdiction of VBA offices (to include satellite locations such as on-campus offices of certain Educational Benefits Representative or call centers who may receive calls from persons in detention facilities) or otherwise affecting VBA employees (such as via texting, social media comments, etc.) is an important, ongoing process.

Cases can be reported in various ways:

- Facility leadership officials;
- Employees experiencing alleged incident(s) of harassment/hostile work environment and bullying;
- Third-party reporters (also known as “bystanders” to include VA medical providers who have a duty to report).

Reviewing cases and providing guidance on processing allegations, requires timely interaction with Harassment Prevention Coordinators (HPCs) in the field as well as factfinders, HR, OGC and members of the leadership team.

Sterling provides status updates when requested and relies on data from ORMDI's National Harassment Prevention Program Office (NHPPPO) for reports of trends and late cases. Suggestions about outlying issues and suggestions on ways to reduce those types of complaints are provided.

Some cases involving two or more persons filing complaints against a single individual result discussions with management. These discussions identify possible actions to reduce the trend and institute early prevention mechanisms.

One recent example of cases being processed in the jurisdiction of the Southeast District Manager is attached.

Mr. (b) (6), (b) (7)(C) also conducts ad hoc consultations with facility leaders to include local EEO Program Managers/HPCs on trends identified to provide guidance on how to combat the situation. For instance, Call Centers were receiving multiple distressing calls. We brainstormed with the appropriate VBA officials to provide benefits to incarcerated Veterans with the need to protect workers from inappropriate sexual comments. (b) (6), (b) (7)(C) was the point of contact. Case 4157. See Actions Taken below<sup>1</sup>

Deborah McCallum, OGC's Personnel Law Chief, and VP of PRIDE VA, provides Mr. (b) (6), (b) (7)(C) related trend results in the field. For example, employees submitted complaints about the LGBTQ+ Flag being flown at facilities, issues with rainbow-colored hair being challenged by some employees, objections to SEPM event notifications in which employees who receive such invitations object to it as "Harassment."

We rely on data from the National Harassment Prevention Program Office (NHPPPO) who receives all sexual harassment allegations reported via the new SharePoint.

**Please provide documentation of such assessments.**

- The minutes of the meetings are available at PRIDE VA. Mr. (b) (6), (b) (7)(C) serves as the Point of Contact for this information.

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1

Harassing calls that are being received by the Veterans Benefits Administration's (VBA) call centers from an individual at a correctional facility in Colorado. As we discussed, the calls are sexual in nature and employees have been subjected to a variety of harassing comments and sounds of inappropriate actions. Since the first report on February 17, 2022, VBA has taken steps to address and resolve the issue and ensure the psychological safety of our employees.

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A summary of the completed actions is provided below:

- 2/17/22: Issued guidance to the call centers that they have the authority to immediately disconnect calls from this number/individual upon hearing inappropriate comments/actions with no need to attempt to deescalate or redirect to official business.
- 2/17/22: Referred the issue to the VA OIG for assistance with identifying the individual and stopping the calls.
- OIG POC: (b) (6), (b) (7)(C)
- Correctional Facility: Arkansas Valley Correctional, Crowley, CO
- Calls received from: 720-330-(b) (6), (b) (7)(C)
- Facility contact number: 719-267-(b) (6), (b) (7)(C)
- Telecommunications Provider: GTL The Corrections Innovation Leader ([gtl.net](http://gtl.net))
- A breakdown of the number of calls received from this number during the period of March 1st-15th is provided below. This volume/pattern is representative of the call volume we continue to receive from this number.

- Monthly team meetings for ORMDI HPCs need to assist with identifying trends. These meetings are not typically recorded.
- Issues are raised by participants attending the live-instructor-led Harassment/Assault Prevention and Bystander Intervention Basic Training are identified as cases reported after such trainings.

#### Areas for improvement:

In order to conduct a more consistent assessment, additional staff is needed for the ORMDI VBA's Harassment Program Management Office within ORMDI's. Paperwork was submitted for approval of an additional FTE in January 2023.

- Less turnover and more consistency among the VBA Regional Offices.
- Updated and more user-friendly tracking systems/Dashboards etc. See Enterprise Operating Model and IT efforts to improve VA-wide tracking of Harassment and Assault.

#### Complaint Activity:

- Upon review, for example, Buffalo seems to have had largest number of harassment complaints.
- We would need additional resources to conduct deeper analysis of type of review.
- Pulling reports takes time. We are often short-handed and training personnel in the process due to frequent turnovers, retirements, etc. E.g. (b) (6), (b) (7)(C) retired, we had a case it took more than a month to find out her replacement. Ms. (b) (6), (b) (7)(C) of Puerto Rico retired, with no real replacement identified until a harassment complaint was reported.
- Many EEOPMs or HPCs have little training but we have recently obtained USB approval to require them to complete the Designated Points of Contact Training and this is being assigned to them as we speak. POC is (b) (6), (b) (7)(C) Talent Mgt. System (TMS) Administrator for VBA.

13. VBA EEO liaison officials described efforts to track trends in EEO complaint activity at VBA offices. Please provide examples of reports/analyses of EEO complaint data.

**ORMDI Response:** The Director, ORMDI VBA EEO Liaison requires all ORMDI EEO Program Managers to conduct the "state of the agency" of their respective EEO programs and present findings their Regional Offices' Directors. The presentation to include EEO complaint activity.

EEO Program Managers have either weekly, monthly, or quarterly meetings with their respective Regional Office Director to address the state of the EEO program. The precedent is set based on meeting requests from the Directors or the volume of activity.

Collateral duty EEO Program Managers will be trained on this requirement once the realignment is finalized in FY 2023. There are plans during FY 2023 to realign VBA's collateral duty EEO Program Managers to ensure each office is conducting trend analysis of EEO complaints.

In order to conduct a thorough analysis of specific trends, we recommend complete access and additional training on ORMDI's E2 system and BI Launch pad to understand if certain EEO activity is received from a specific unit within VBA, i.e. Public Contact, Fiduciary (in-home visits) Call Centers, etc.

Please see examples of these reports attached.

14. VBA EEO liaison officials described conducting webinars based on what is going on in the field. Please provide 2-3 examples of such trainings, including the rationale for the webinar, the topic and audience trained.

Targeted training for specific requests or needs are received directly from the EEO Program Managers, District Managers, Director and/or VBA Directors. ORMDI VBA EEO Liaison Office will share training from other federal agencies or petition internal sources. Pending budget requests submitted for FY 2023 and FY 2024 will allow the office to plan and support immediate training needs for VBA.

ORMDI VBA EEO Liaison Office schedules quarterly briefings with VBA collateral duty EEO Program Managers and ORMDI EEO Program Managers. During these meetings, we solicit training requests from the EEO Program Managers. Additionally, specific concerns are discussed at monthly Team meetings. We assessed the training needs based on topics raised by individual EEOPMs or their respective Directors.

For example, after reviewing the Management Directive 715 from the individual Regional Offices, (b) (6), (b) (7)(C) ORMDI VBA EEO Liaison Office's, Continental District Manager provided training on "How to Use the All-Employee Survey to Identify and Remove Barriers to Employment".

Additional training shared or offered by ORMDI VBA EEO Liaison Office was the following training sessions:

- o March 9, 2021: EEOCs Table Discussion: The Cummings Act of 2019
- o March 26, 2021: EEOC Webinar - How and Why Mediation is Effective for Resolving Employment Discrimination Charges
- o April 13, 2021: EEOC Promising Practices to Rebuilding the Federal Government through Diverse and Effective Hiring in the Competitive Service
- o April 28, 2021: EEOC Webinar - Federal Civil Rights Enforcement: A Conversation Addressing Efforts to Stop Anti-Asian Hate and Discrimination
- o August 12, 2021: EEOC Webinar - Fostering a Safe Work Environment
- o May 20, 2021: EEOC Webinar - Promising Practices for Individuals with Disabilities

- May 25, 2021: EEOC Webinar - Illegal Harassment in the Workplace in Recognition of AANH/PI Heritage Month
- June 16, 2021: EEOC Webinar - Advancing Racial & Gender Equality
 

Updated  
Championing for Tran
- August 9, 2021: EEOC Webinar - Legal Update (provide a review of the current federal EEO legal landscape)
- August 12, 2021: EEOC Webinar - Fostering a Safe Work Environment
- October 12, 2021: EEOC Webinar - The Americans with Disabilities Act
- October 18, 2021: Section 508 Document Compliancy Overview and Discussion
- January 25, 2022: EEOC Webinar - Accessibility for Online Hiring Documents and Applications
- February 8, 2022: EEOC Webinar - Facts About Title VII Protections Against Race and Color Discrimination
- February 18, 2022: EEOC Webinar - Advancing Equity for African American Women in the Workforce -See below
- February 22, 2022: - Special Emphasis Training
- March 8, 2022: Management Directive (MD) 715 Training
- November 16, 2022: Championing Gender Diverse and Transgender Inclusion in the Workplace -See below
- November 29, 2022: EEOC Webinar: Things You Wanted to Know About EEOC Hearings but Were Afraid to Ask"
- November 30, 2022: Championing Gender Diverse and Transgender Inclusion in the Workplace.
- Veterans Day 2022: Pact Act Briefing – EEOPMs need to understand how their work indirectly assists Veterans and VBA's recruitment efforts
- January 11, 2023: Executive Order – Valuing Workforce Diversity and Workplace Inclusion.
- February 15, 2023: Hiring Without Bias: Driving Change – See below.



GAO Examples -  
Trainings.docx

|       |             |                      | Nation |
|-------|-------------|----------------------|--------|
|       |             |                      | 27,058 |
| STN # | District    | Station              | Total  |
| 333   | Continental | Des Moines           | 190    |
| 334   | Continental | Lincoln              | 447    |
| 335   | Continental | St. Paul             | 883    |
| 339   | Continental | Denver               | 354    |
| 349   | Continental | Waco                 | 1,083  |
| 351   | Continental | Muskogee             | 1,537  |
| 362   | Continental | Houston              | 689    |
| 436   | Continental | Ft. Harrison         | 154    |
| 437   | Continental | Fargo                | 70     |
| 438   | Continental | Sioux Falls          | 123    |
| 442   | Continental | Cheyenne             | 43     |
| 452   | Continental | Wichita              | 116    |
| 301   | Northeast   | Boston               | 176    |
| 304   | Northeast   | Providence           | 384    |
| 306   | Northeast   | New York             | 204    |
| 307   | Northeast   | Buffalo              | 805    |
| 308   | Northeast   | Hartford             | 186    |
| 309   | Northeast   | Newark               | 145    |
| 310   | Northeast   | Philadelphia         | 930    |
| 311   | Northeast   | Pittsburgh           | 246    |
| 313   | Northeast   | Baltimore            | 171    |
| 325   | Northeast   | Cleveland            | 718    |
| 326   | Northeast   | Indianapolis         | 636    |
| 328   | Northeast   | Chicago              | 235    |
| 329   | Northeast   | Detroit              | 459    |
| 330   | Northeast   | Milwaukee            | 835    |
| 331   | Northeast   | St. Louis            | 1,198  |
| 372   | Northeast   | Washington           | 49     |
| 373   | Northeast   | Manchester           | 86     |
| 402   | Northeast   | Togus                | 270    |
| 405   | Northeast   | White River Junction | 49     |
| 460   | Northeast   | Wilmington           | 32     |
| 340   | Pacific     | Albuquerque          | 141    |
| 341   | Pacific     | Salt Lake City       | 856    |
| 343   | Pacific     | Oakland              | 337    |
| 344   | Pacific     | Los Angeles          | 428    |
| 345   | Pacific     | Phoenix              | 938    |
| 346   | Pacific     | Seattle              | 980    |
| 347   | Pacific     | Boise                | 137    |
| 348   | Pacific     | Portland             | 254    |
| 354   | Pacific     | Reno                 | 270    |
| 358   | Pacific     | Manila               | 81     |

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| Nation |           |                | 27,058 |
|--------|-----------|----------------|--------|
| STN #  | District  | Station        | Total  |
| 377    | Pacific   | San Diego      | 867    |
| 459    | Pacific   | Honolulu       | 151    |
| 463    | Pacific   | Anchorage      | 66     |
| 314    | Southeast | Roanoke        | 492    |
| 315    | Southeast | Huntington     | 256    |
| 316    | Southeast | Atlanta        | 743    |
| 317    | Southeast | St. Petersburg | 1,386  |
| 318    | Southeast | Winston-Salem  | 949    |
| 319    | Southeast | Columbia       | 899    |
| 320    | Southeast | Nashville      | 909    |
| 321    | Southeast | New Orleans    | 243    |
| 322    | Southeast | Montgomery     | 328    |
| 323    | Southeast | Jackson        | 230    |
| 327    | Southeast | Louisville     | 540    |
| 350    | Southeast | Little Rock    | 267    |
| 355    | Southeast | San Juan       | 516    |
| 318    | Southeast | Jacksonville   | 216    |
| TBD    | TBD       | TBD (Fid CC)   | 75     |

# **DEPARTMENT OF VETERANS AFFAIRS**



## **Congressionally Mandated Report**

### **Improvements to Equal Employment Opportunity Functions of the Department of Veterans Affairs**

**June 2023**

## **BACKGROUND**

The President signed P.L. 117-328, the Consolidated Appropriations Act, 2023, into law on December 29, 2022. Section 402(f) of P.L. 117-328 requires the Secretary of Veterans Affairs (VA) to submit a semiannual report no later than 180 days after enactment, and semiannually thereafter for 1 year, to the Senate and House of Representatives Committees on Veterans' Affairs. The semiannual report must contain the progress made by the Secretary in carrying out 38 U.S.C §§ 402(a) through (e) and section 516 as amended by section 402, including reporting sexual and other harassment and employment discrimination complaints pursuant to section 516.

## **REPORTING REQUIREMENTS**

**Section 402. Improvements to Equal Employment Opportunity (EEO) Functions of Department of Veterans Affairs.**

**(a) Alignment of EEO Director.**

**(1) Reporting and duties – Subsection (h) of § 516 of title 38, United States Codes, is amended.**

**(A) by striking “The provisions” and inserting “(1) The provisions”; and**

**(B) by adding at the end a new paragraph.**

**Amendment:**

**(1) The provisions of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission (EEOC); and**

**(2) Beginning not later than 90 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, in carrying out paragraph (1), the Secretary shall ensure that the official of the Department who serves as the EEO Director of the Department:**

**(A) reports directly to the Deputy Secretary with respect to the functions under this section; and**

**(B) does not also serve in a position that has responsibility over personnel functions of the Department or other functions that conflict with the functions under this section.**

**Progress Statement: Implementation Ongoing**

VA continues to make all efforts to evaluate options for full compliance with the law. VA is in ongoing consultation with the Office of General Counsel on different options regarding the amendments to 38 U.S.C. § 516, including how to reconcile the provisions of 38 U.S.C. § 308 and whether that statute poses additional necessary legislative amendments or if there are other remaining options for alignment that do not require further legislation.

**(2) Conforming amendments. Such section is further amended.**

**(A) rein subsection (b)(1), by inserting “, in accordance with subsection (h)(2),” after “an Assistant Secretary or a Deputy Assistant Secretary”; and**

**(B) in subsection (e)(1)(A), by striking “the Assistant Secretary for Human Resources and Administration” and inserting “the Secretary.”**

**Amendment:**

**(b) The Secretary shall provide –**

**(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary in accordance with subsection (h)(2), for complaint resolution management.**

**(e)(1)(A) Not later than 45 days after the end of each calendar quarter, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals referred to in paragraph (2) during such quarter.**

**Progress Statement: Implementation Complete**

The Secretary for VA submitted for calendar year (CY) 2022 annual and CY 2023 first quarter Senior Managers Report to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals. VA submitted the reports 45 days after the end of CY 2022 and the first quarter of 2023. The VA Secretary will submit all future Senior Managers Reports to the Committees on Veterans' Affairs of the Senate and House of Representatives in a timely manner.

**(b) Alignment of EEO Program Managers. Such section is further amended by adding at the end the following new subsection.**

**Amendment:**

**(i) In accordance with subsection (b), not later than 1 year after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans**

Benefits and Health Care Improvement Act of 2022, the Secretary shall ensure that each EEO Program Manager of the Department at the facility level reports to the head of the Office of Resolution Management, or such successor office established pursuant to subsection (a), with respect to the equal employment functions of the program manager.

**Progress Statement: Implementation Ongoing**

The realignment of the National Cemetery Administration, Veterans Benefits Administration and Office of Information and Technology EEO Program Managers to the Office of Resolution Management, Diversity & Inclusion (ORMDI) is complete.

The Veterans Health Administration EEO Program Managers realignment to ORMDI will be accomplished in fiscal year (FY) 2024 pending Congressional approval in raising ORMDI's reimbursable cap in the FY 2024 Military Construction, Veterans Affairs and Related Agencies Bill, 118th Congress (2023-2024).

**(c) Reporting Harassment and Employment Discrimination Complaints.**  
**Subsection (a) of such section is amended.**

**(1) by striking "The Secretary" and inserting "(1) The Secretary"; and**

**(2) by adding at the end the following new paragraph.**

**Amendment:**

(1) The Secretary shall provide that the employment discrimination complaint resolution system established under paragraph (1) requires that any manager of the Department who receives a sexual or other harassment or employment discrimination complaint reports such complaint to the Office of Resolution Management, or successor office, immediately, or if such immediate reporting is impracticable, not later than 2 days after the date on which the manager receives the complaint.

**Progress Statement: Implementation Ongoing**

**Managers of the Department who receive sexual or other harassment complaint reports: Implementation complete.**

VA Handbook 5979, Harassment Prevention Program (HPP) Procedures, dated March 21, 2022, requires all managers who receive harassment and sexual harassment allegations to report them to VA's HPP within 2 business days. VA Handbook 5979 is available on VA's Publications website at <https://www.va.gov/vapubs/>.

**Managers of the Department who receive employment discrimination complaint reports: Implementation ongoing**

VA is determining the best path forward to meet the intent of Congress for section 402(c). Well established EEO laws and EEOC complaint processing procedures exist. The EEOC provides leadership and guidance to Federal agencies on all aspects of the Federal Government's equal employment opportunity program. Title 29 C.F.R. § 1614.105(a)(1) requires an aggrieved party to initiate contact with an EEO counselor within 45 days of the date of the alleged discriminatory matter. Currently, it is the aggrieved party's responsibility for reporting discrimination to ORMDI and not that of a "manager" who could be the accused management official for the alleged discrimination. Thus far in our evaluation, VA has identified at least seven issues with the new requirement for a manager to report allegations of discrimination to ORMDI:

- i. No EEOC complaint process exists to follow-up on managers who report complainant's allegation of discrimination.
- ii. In accordance with the Privacy Act, managers are prohibited from obtaining information about an aggrieved party's allegation of discrimination.
- iii. Timeliness for filing an EEO complaint and reporting discrimination to ORMDI is the aggrieved party's responsibility. Consequently, changing the EEOC requirement for reporting discrimination becomes a timeliness issue regarding 29 C.F.R. §§ 1614.105 and 1614.107(a)(2) for processing EEO complaints.
- iv. This requirement could negatively affect aggrieved party's right to anonymity during the pre-complaint/counseling stage.
- v. The act for managers to report an aggrieved party's allegations to ORMDI could be considered *Per Se Retaliation*<sup>1</sup> which supports a finding of discrimination.
- vi. Managers would be self-reporting to ORMDI in situations where managers are the accused. This could result in self-incrimination and violate the Fifth Amendment of the U.S. Constitution.
- vii. No other Federal Agency has this requirement, to include EEOC.

**(d) Training. Subsection (c) of such section is amended.**

**(1) by inserting "(1)" before "The Secretary"; and**

**(2) by adding at the end the following new paragraph:**

**Amendment:**

**(2) The Secretary**

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<sup>1</sup> *Per se* retaliation is any action, behavior or comment, whether hostile, negative or not, that alone likely objectively suffices to chill or deter an employee or an employee's co-workers from engaging in EEO activity, when viewed from a reasonable person's point of view. The actions or comments, on their face, may violate the letter and spirit of EEOC's regulations. *Per se* retaliation requires no adverse employment action and no finding of a discriminatory motive or intent. Action, behavior or a single comment, under certain circumstances, may be discriminatory-in-and-of-themselves.

(A) Beginning not later than 180 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall provide to each employee of the Department mandatory annual training on identifying and addressing sexual and other harassment and employment discrimination, including with respect to processes under the HPP of the Department, or such successor program; and

(B) An employee of the Department who is hired on or after such date shall receive the first such mandatory annual training not later than 60 days after being hired.

**Progress Statement: Implementation Complete**

**The EEO, Diversity and Inclusion Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act (P.L. 107-174) and Whistleblower Rights and Protection Policy Statement training course in the Talent Management System (TMS) # 4309852.**

TMS #4309852 is intended to help learners apply a working knowledge of Federal and VA EEO, Diversity and Inclusion, No FEAR, Whistleblower Rights and Protection policies. VA does not tolerate unlawful discrimination, workplace harassment or retaliation based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation and pregnancy), age (40 or older), disability, genetic information, marital status, parental status, political affiliation or retaliation for opposing discriminatory practices or participating in the discrimination complaint process. This applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits and separation. VA's instructional materials address all applicable mandates required by the No FEAR Act (P.L. 107-174 §§ 102(5)(B) and 202(c)) and the Consolidated Appropriations Act, 2023 (P.L. 117-328 § 402(d)).

All VA employees are universally assigned biennially the EEO, Diversity and Inclusion No FEAR and Whistleblower Rights and Protection Policy Statement training course and are automatically alerted through VA's TMS emails. Prior to the Consolidated Appropriations Act of 2023 (P.L. 117-328), employees were required to complete the training within the first 90 days of their appointments and biannually thereafter. Subsequently, VA changed the initial training date from 90 days to within 60 days of the employee's appointment date.

**Harassment Prevention and Accountability Training TMS #45224**

VA is committed to providing a safe, welcoming and equitable environment for all Veterans, families, caregivers and survivors VA serves, and the workforce that makes it possible to accomplish VA's mission. VA's Harassment Prevention and Accountability training complies with EEOC's guidance entitled, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," Title V of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2010 (Deborah Sampson Act) (P.L. 116-315) and section 402(d) of the Consolidated

Appropriations Act, 2023 (P.L. 117-328). Employees receive training on identifying and addressing sexual and other harassment allegations, including processes under the HPP. The training includes several scenarios depicting workplace and sexual harassment to test their knowledge and sharpen their skills to recognize, prevent and report all allegations of harassment.

All VA employees are universally assigned annual Harassment Prevention & Accountability training and are automatically alerted through VA's TMS emails. Prior to the Consolidated Appropriations Act of 2023 (P.L. 117-328), employees were required to complete the Harassment Prevention & Accountability training within the first 90 days of their appointments and annually thereafter. Subsequently, VA changed the initial training date from 90 days to within 60 days of the employee's appointment date.

#### **EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors TMS# 45049**

TMS #45049 is intended to help learners apply a working knowledge of EEO, Diversity, Equity and Inclusion, Harassment Prevention and Accountability, Reasonable Accommodation and Conflict Management for Executives, Managers and Supervisors. This course is designed so learners can (1) apply strategies that enhance the impact of workforce diversity, workplace inclusion and inclusive diversity on VA's organizational culture; (2) apply best practices to prevent unlawful discrimination, harassment and retaliation in the workplace; (3) articulate the distinction between VA's EEO Program and VA's HPP; (4) determine legal and appropriate accommodations when addressing reasonable accommodation requests from employees with disabilities; and (5) determine appropriate methods and uses of alternative dispute resolution for given workplace situations.

All VA Executives, Managers and Supervisors are universally assigned annual EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors and are automatically alerted through VA's TMS emails. Prior to the Consolidated Appropriations Act of 2023 (P.L. 117-328), Executives, Managers and Supervisors were required to complete the EEO, Diversity, Equity and Inclusion Training for Executives, Managers and Supervisors training within the first 90 days of their appointments and annually thereafter. Subsequently, VA changed the initial training date from 90 days to within 60 days of the employee's appointment date.

VA training methodology is web-based asynchronous online learning. TMS courses provide learning content and knowledge checks that demonstrate an employee's grasp of course material. Upon completion of the courses and surveys, employees have the option to print training completion certificates. Supervisors of the employees who are assigned courses are emailed alerts, and each has the capability to monitor employees' progress in TMS.

**(e)(1) Harassment and Employment Discrimination Policies and Directives. The Secretary of Veterans Affairs shall:**

**Amendment:**

(1) by not later than the date that is 180 days after the date of the enactment of this Act, and on a regular basis thereafter, review the policies relating to sexual and other harassment and employment discrimination of the Department of Veterans Affairs to ensure that such policies are complete and in accordance with the sexual and other harassment and employment discrimination policies established by the Office of Resolution Management of the Department, or successor office; and

(2) by not later than 180 days after the date of the enactment of this Act, issue a final directive and a handbook for the Harassment Prevention Program of the Department.

**Progress Statement:**

ORMDI created a Supplemental Policy Review Checklist to ensure that all VA Facility and Staff Office supplemental policies on harassment (sexual and nonsexual) are compliant with VA Handbook 5979, HPP procedures. The initial policy review was completed on October 17, 2022, and will occur annually thereafter. ORMDI also conducts VA HPP Compliance Reviews for VA Facility and Staff Offices. VA will use the HPP Compliance Reviews to monitor VA Facility and Staff Office supplemental policies to ensure they remain compliant with VA's HPP procedures.

Prior to the enactment of The Consolidated Appropriations Act of 2023 (P.L. 117-328), VA Directive 5979, Harassment Prevention Policy was issued on December 8, 2020, and VA Handbook 5979 HPP procedures was issued on March 21, 2022. VA Directive and Handbook 5979 are available on VA's website at:

**VA Directive 5979 Link:**

[https://www.va.gov/vapubs/viewPublication.asp?Pub\\_ID=1219&FTYPE=2](https://www.va.gov/vapubs/viewPublication.asp?Pub_ID=1219&FTYPE=2)

**VA Handbook 5979 Link:**

[https://www.va.gov/vapubs/viewPublication.asp?Pub\\_ID=1367&FTYPE=2](https://www.va.gov/vapubs/viewPublication.asp?Pub_ID=1367&FTYPE=2)

**Department of Veterans Affairs  
June 2023**

# **DEPARTMENT OF VETERANS AFFAIRS**



## **Congressionally Mandated Report**

### **Improvements to Equal Employment Opportunity Functions of the Department of Veterans Affairs**

**February 2024**

## **BACKGROUND**

The President signed P.L. 117-328, the Consolidated Appropriations Act, 2023, into law on December 29, 2022. Section 402(f) of P.L. 117-328 requires the Secretary of the Department of Veterans Affairs (VA) to submit a semiannual report no later than 180 days after enactment, and semiannually thereafter for 1 year, to the Senate and House Committees on Veterans' Affairs. The semiannual report must contain the progress made by the Secretary in carrying out sections 402(a) through (e) of P.L. 117-328 and 38 U.S.C. § 516, as amended by section 402, including reporting sexual and other harassment and employment discrimination complaints pursuant to section 516.

## **REPORTING REQUIREMENTS**

**Section 402. Improvements to Equal Employment Opportunity (EEO) Functions of Department of Veterans Affairs.**

**(a) Alignment of EEO Director.**

**(1) Reporting and duties – Subsection (h) of § 516 of title 38, United States Codes, is amended.**

**(A) by striking “The provisions” and inserting “(1) The provisions”;**  
**and**

**(B) by adding at the end a new paragraph.**

### **Amendment:**

**(1) The provisions of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission (EEOC); and**

**(2) Beginning not later than 90 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, in carrying out paragraph (1), the Secretary shall ensure that the official of the Department who serves as the EEO Director of the Department:**

**(A) reports directly to the Deputy Secretary with respect to the functions under this section; and**

**(B) does not also serve in a position that has responsibility over personnel functions of the Department or other functions that conflict with the functions under this section.**

**Progress Statement: Implementation Ongoing**

VA continues to make all efforts to evaluate options for full compliance with the law. VA continues to consult with the Office of General Counsel and VA senior leadership on different options regarding the amendments to 38 U.S.C. § 516, including how to reconcile the amendments under section 402(a) with the provisions of 38 U.S.C. § 308, and whether that statute requires additional necessary legislative amendments or if there are other remaining options for alignment that do not require further legislation.

**(2) Conforming amendments. Such section is further amended.**

**(A) in subsection (b)(1), by inserting, “in accordance with subsection (h)(2),” after “an Assistant Secretary or a Deputy Assistant Secretary;” and**

**(B) in subsection (e)(1)(A), by striking “the Assistant Secretary for Human Resources and Administration” and inserting “the Secretary.”**

**Amendment:**

**(b) The Secretary shall provide –**

**(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary in accordance with subsection (h)(2), for complaint resolution management.**

**(e)(1)(A) Not later than 45 days after the end of each calendar quarter, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals referred to in paragraph (2) during such quarter.**

**Progress Statement: Implementation Complete**

The Secretary of Veterans Affairs submitted the annual calendar year (CY) 2022 Senior Managers Report and the CY 2023 first, second, and third quarter reports to the Committees on Veterans' Affairs of the Senate and House of Representatives. These reports summarize the employment discrimination complaints filed against the individuals referred to in paragraph (2). VA submitted the reports 45 days after the end of CY 2022 and the first and second quarter of 2023. The Secretary of Veterans Affairs will submit all future Senior Managers Reports to the Committees on Veterans' Affairs of the Senate and House of Representatives in a timely manner.

**(b) Alignment of EEO Program Managers. Such section is further amended by adding at the end the following new subsection.**

**Amendment:**

(i) In accordance with subsection (b), not later than 1 year after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall ensure that each EEO Program Manager of the Department at the facility level reports to the head of the Office of Resolution Management, or such successor office established pursuant to subsection (a), with respect to the equal employment functions of the program manager.

**Progress Statement: Implementation Ongoing**

The realignment of the National Cemetery Administration, Veterans Benefits Administration (VBA), and Office of Information and Technology EEO Program Managers to the Office of Resolution Management, Diversity & Inclusion (ORMDI) is complete. The realignment of the VBA collateral duty EEO functions is ongoing. The employees performing those functions will not be moved but discussions have occurred regarding how the collateral duty EEO functions will be handled.

The Veterans Health Administration EEO Program Managers realignment to ORMDI will be accomplished in fiscal year (FY) 2024 pending Congressional approval in raising ORMDI's reimbursable cap in the FY 2024 Military Construction, Veterans Affairs, and Related Agencies Bill, 118th Congress (2023-2024).

**(c) Reporting Harassment and Employment Discrimination Complaints. Subsection (a) of such section is amended.**

(1) by striking "The Secretary" and inserting "(1) The Secretary"; and

(2) by adding at the end the following new paragraph.

**Amendment:**

(1) The Secretary shall ensure that the employment discrimination complaint resolution system established under paragraph (1) requires that any manager of the Department who receives a sexual or other harassment or employment discrimination complaint reports such complaint to the Office of Resolution Management, or successor office, immediately, or if such immediate reporting is impracticable, not later than 2 days after the date on which the manager receives the complaint.

**Progress Statement: Implementation Ongoing**

**Managers of the Department who receive sexual or other harassment complaint reports: Implementation complete**

VA Handbook 5979, Harassment Prevention Program (HPP) Procedures, dated March 21, 2022, requires all managers who receive harassment and sexual harassment allegations to report them to VA's HPP within 2 business days. VA Handbook 5979 is available on VA's Publications website at <https://www.va.gov/vapubs/>.

**Managers of the Department who receive employment discrimination complaint reports: Implementation Ongoing**

VA is determining the best path forward to meet the intent of Congress for section 402(c). Well established EEO laws and EEOC complaint processing procedures exist. EEOC provides leadership and guidance to Federal agencies on all aspects of the Federal Government's equal employment opportunity program.

Title 29 C.F.R. § 1614.105(a)(1) requires an aggrieved party to initiate contact with an EEO counselor within 45 days of the date of the alleged discriminatory matter. Currently, it is the aggrieved party's responsibility for reporting discrimination to ORMDI and not that of a "manager" who could be the accused management official for the alleged discrimination. Thus far in our evaluation, VA has identified at least seven issues with the new requirement for a manager to report allegations of discrimination to ORMDI:

- i. No EEOC complaint process exists to follow-up on managers who report complainant's allegation of discrimination.
- ii. In accordance with the Privacy Act, managers are prohibited from obtaining information about an aggrieved party's allegation of discrimination.
- iii. Timeliness for filing an EEO complaint and reporting discrimination to ORMDI is the aggrieved party's responsibility. Consequently, changing the EEOC requirement for reporting discrimination becomes a timeliness issue per the regulation governing EEO pre-complaint processing, 29 C.F.R. § 1614.105, which would result in a dismissal of the complaint under 29 C.F.R. § 1614.1079(a)(2).
- iv. This requirement could negatively affect the aggrieved party's right to anonymity during the pre-complaint/counseling stage.
- v. The act for managers to report an aggrieved party's allegations to ORMDI could be considered *Per Se Retaliation*<sup>1</sup> which supports a finding of discrimination.
- vi. Managers would be self-reporting to ORMDI in situations where managers are the accused. This could result in self-incrimination and violate the Fifth Amendment of the U.S. Constitution.
- vii. No other Federal Agency has this requirement, including EEOC.

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<sup>1</sup> *Per se retaliation* is any action, behavior or comment, whether hostile, negative or not, that alone likely objectively suffices to chill or deter an employee or an employee's co-workers from engaging in EEO activity, when viewed from a reasonable person's point of view. The actions or comments, on their face, may violate the letter and spirit of EEOC's regulations. *Per se retaliation* requires no adverse employment action and no finding of a discriminatory motive or intent. Action, behavior or a single comment, under certain circumstances, may be discriminatory-in-and-of-themselves.

**(d) Training. Subsection (c) of such section is amended.**

**(1) by inserting “(1)” before “The Secretary”; and**

**(2) by adding at the end the following new paragraph:**

**Amendment:**

**(2) The Secretary**

**(A) Beginning not later than 180 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall provide to each employee of the Department mandatory annual training on identifying and addressing sexual and other harassment and employment discrimination, including with respect to processes under the HPP of the Department, or such successor program and**

**(B) An employee of the Department who is hired on or after such date shall receive the first such mandatory annual training not later than 60 days after being hired.**

**Progress Statement: Implementation Complete**

**The EEO, Diversity and Inclusion, Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act (P.L. 107-174), and Whistleblower Rights and Protection Policy Statement training course in the Talent Management System (TMS) # 4309852.**

TMS #4309852 is intended to help students apply a working knowledge of Federal and VA EEO, Diversity and Inclusion, No FEAR Act, and Whistleblower Rights and Protection policies. VA does not tolerate unlawful discrimination, workplace harassment, or retaliation based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age (40 or older), disability, genetic information, marital status, parental status, political affiliation, or retaliation for opposing discriminatory practices or participating in the discrimination complaint process. This applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation. VA's instructional materials address all applicable mandates required by the No FEAR Act (P.L. 107-174 §§ 102(5)(B) and 202(c)), and the Consolidated Appropriations Act, 2023 (P.L. 117-328 § 402(d)).

All VA employees are universally assigned biennially the EEO, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement training course and are automatically alerted through TMS emails. Prior to the Consolidated Appropriations Act, 2023 (P.L. 117-328), employees were required to complete the training within the first 90 days of their appointments and biennially thereafter.

Subsequently, VA changed the initial training date from 90 days to within 60 days of the employee's appointment date.

#### **Harassment Prevention and Accountability Training TMS #45224**

VA is committed to providing a safe, welcoming, and equitable environment for the Veterans, families, caregivers, and survivors we serve, and the workforce that makes it possible to accomplish our mission. VA's Harassment Prevention and Accountability training complies with EEOC's guidance entitled, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," section 5303 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2010 (Deborah Sampson Act) (P.L. 116-315) and section 402(d) of the Consolidated Appropriations Act, 2023 (P.L. 117-328). Employees receive training on identifying and addressing sexual and other harassment allegations, including processes under HPP. The training includes several scenarios depicting workplace and sexual harassment to test their knowledge and sharpen their skills to recognize, prevent, and report all allegations of harassment.

All VA employees are universally assigned annual Harassment Prevention and Accountability training and are automatically alerted through TMS emails. Prior to the Consolidated Appropriations Act, 2023 (P.L. 117-328), employees were required to complete the Harassment Prevention and Accountability training within the first 90 days of their appointments and annually thereafter. Subsequently, VA changed the initial training date from 90 days to within 60 days of the employee's appointment date.

#### **EEO, Diversity, Equity, and Inclusion Training for Executives, Managers, and Supervisors TMS# 45049**

TMS #45049 is intended to help students apply a working knowledge of EEO, Diversity, Equity, and Inclusion, Harassment Prevention and Accountability, Reasonable Accommodation, and Conflict Management for Executives, Managers, and Supervisors. This course is designed so employees can (1) apply strategies that enhance the impact of workforce diversity, workplace inclusion, and inclusive diversity on VA's organizational culture, (2) apply best practices to prevent unlawful discrimination, harassment, and retaliation in the workplace, (3) articulate the distinction between VA's EEO Program and VA's HPP, (4) determine legal and appropriate accommodations when addressing reasonable accommodation requests from employees with disabilities, and (5) determine appropriate methods and uses of alternative dispute resolution for given workplace situations.

All VA Executives, Managers, and Supervisors are universally assigned annual EEO, Diversity, Equity, and Inclusion Training for Executives, Managers, and Supervisors and are automatically alerted through TMS emails. Prior to the Consolidated Appropriations Act, 2023 (P.L. 117-328), Executives, Managers, and Supervisors were required to complete the EEO, Diversity, Equity, and Inclusion Training for Executives, Managers, and Supervisors training within the first 90 days of their appointments and annually thereafter. Subsequently, VA changed the initial training date from 90 days to within 60 days of the employee's appointment date.

VA training methodology is web-based asynchronous online learning. TMS courses provide learning content and knowledge checks that demonstrate an employee's grasp of course material. Upon completing the courses and surveys, employees have the option to print training completion certificates. Supervisors of the employees who are assigned courses are emailed alerts, and each has the capability to monitor employees' progress in TMS.

**(e)(1) Harassment and Employment Discrimination Policies and Directives. The Secretary of Veterans Affairs shall:**

**Amendment:**

(1) by not later than the date that is 180 days after the date of the enactment of this Act, and on a regular basis thereafter, review the policies relating to sexual and other harassment and employment discrimination of the Department of Veterans Affairs to ensure that such policies are complete and in accordance with the sexual and other harassment and employment discrimination policies established by the Office of Resolution Management of the Department, or successor office and

(2) by not later than 180 days after the date of the enactment of this Act, issue a final directive and a handbook for the Harassment Prevention Program of the Department.

**Progress Statement: Implementation Complete**

ORMDI created a Supplemental Policy Review Checklist to ensure that all VA facility and Staff Office supplemental policies on harassment (sexual and nonsexual) are compliant with VA Handbook 5979, HPP procedures. The initial policy review was completed on October 17, 2022, and is conducted annually thereafter. This year's annual policy review is ongoing and is expected to be completed by December 31, 2023. ORMDI also conducts VA HPP Compliance Reviews for VA facility and Staff Offices. VA will use HPP Compliance Reviews to monitor VA facility and Staff Office supplemental policies to ensure they remain compliant with VA's HPP procedures.

Prior to the enactment of The Consolidated Appropriations Act, 2023 (P.L. 117-328), VA Directive 5979, Harassment Prevention Policy, was issued on December 8, 2020, and VA Handbook 5979, HPP Procedures, was issued on March 21, 2022. VA Directive and Handbook 5979 are available on VA's Publications website at:

**VA Directive 5979:**

[https://www.va.gov/vapubs/viewPublication.asp?Pub\\_ID=1219&FType=2](https://www.va.gov/vapubs/viewPublication.asp?Pub_ID=1219&FType=2)

**VA Handbook 5979:**

[https://www.va.gov/vapubs/viewPublication.asp?Pub\\_ID=1367&FType=2](https://www.va.gov/vapubs/viewPublication.asp?Pub_ID=1367&FType=2)

**Department of Veterans Affairs  
February 2024**

**FY 2023 Appropriations Omnibus Law – Division J, Title II, Veterans Affairs**

**SEC. 210. Funds available in this title or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management, Diversity and Inclusion,** the Office of Employment Discrimination Complaint Adjudication, and the Alternative Dispute Resolution function within the Office of Human Resources and Administration for all services provided at rates which will recover actual costs but **not to exceed \$86,481,000 for the Office of Resolution Management, Diversity and Inclusion,** \$6,812,000 for the Office of Employment Discrimination Complaint Adjudication, and \$4,576,000 for the Alternative Dispute Resolution function within the Office of Human Resources and Administration: Provided, That payments may be made in advance for services to be furnished based on estimated costs: Provided further, That amounts received shall be credited to the “General Administration” and “Information Technology Systems” accounts for use by the office that provided the service.

**Title IV – Other [VA] Matters**

**SEC. 402. IMPROVEMENTS TO EQUAL EMPLOYMENT OPPORTUNITY FUNCTIONS OF DEPARTMENT OF VETERANS AFFAIRS.**

**(a) ALIGNMENT OF EQUAL EMPLOYMENT OPPORTUNITY DIRECTOR.**— (1) REPORTING AND DUTIES.— **Subsection (h) of section 516 of title 38, United States Code, is amended—** (A) by striking “The provisions” and inserting “(1) The provisions”; and (B) by adding at the end the following new paragraph: **“(2) Beginning not later than 90 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, in carrying out paragraph (1), the Secretary shall ensure that the official of the Department who serves as the Equal Employment Opportunity Director of the Department— “(A) reports directly to the Deputy Secretary** with respect to the functions under this section; and **“(B) does not also serve in a position that has responsibility over personnel functions of the Department or other functions that conflict with the functions under this section.”.** (2) CONFORMING AMENDMENTS.—Such section is further amended— (A) in subsection (b)(1), by inserting “,” in accordance with subsection (h)(2),” after “an Assistant Secretary or a Deputy Assistant Secretary”; and (B) in subsection (e)(1)(A), by striking “the Assistant Secretary for Human Resources and Administration” and inserting “the Secretary”.

**(b) ALIGNMENT OF EEO PROGRAM MANAGERS.**—Such section is further amended by adding at the end the following new subsection: **“(i) In accordance with subsection (b), not later than one year after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall ensure that each Equal Employment Opportunity program manager of the Department at the facility level reports to the head of the Office of Resolution Management, or such successor office established pursuant to subsection (a), with respect to the equal employment functions of the program manager.”.**

**(c) REPORTING HARASSMENT AND EMPLOYMENT DISCRIMINATION COMPLAINTS.**—Subsection (a) of such section is amended— (1) by striking “The Secretary” and inserting “(1) The Secretary”; and (2) by adding at the end the following new paragraph: **“(2) The Secretary shall ensure that the employment discrimination complaint resolution system established under paragraph (1) requires that any manager of the Department who receives a sexual or other harassment or employment discrimination complaint**

reports such complaint to the Office of Resolution Management, or successor office, immediately, or if such immediate reporting is impracticable, not later than two days after the date on which the manager receives the complaint.”.

**(d) TRAINING.**—Subsection (c) of such section is amended— (1) by inserting “(1)” before “The Secretary”; and (2) by adding at the end the following new paragraph: “(2)(A) Beginning not later than 180 days after the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall provide to each employee of the Department mandatory annual training on identifying and addressing sexual and other harassment and employment discrimination, including with respect to processes under the Harassment Prevention Program of the Department, or such successor program. “(B) An employee of the Department who is hired on or after such date shall receive the first such mandatory annual training not later than 60 days after being hired.”.

**(e) HARASSMENT AND EMPLOYMENT DISCRIMINATION POLICIES AND DIRECTIVES.**—The Secretary of Veterans Affairs shall— (1) by not later than the date that is 180 days after the date of the enactment of this Act, and on a regular basis thereafter, review the policies relating to sexual and other harassment and employment discrimination of the Department of Veterans Affairs to ensure that such policies are complete and in accordance with the sexual and other harassment and employment discrimination policies established by the Office of Resolution Management of the Department, or successor office; and (2) by not later than 180 days after the date of the enactment of this Act, issue a final directive and a handbook for the Harassment Prevention Program of the Department.

**(f) SEMIANNUAL REPORTS.**—Not later than 180 days after the date of the enactment of this Act, and semiannually thereafter for one year, the Secretary of Veterans Affairs shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on the progress the Secretary has made in carrying out this section and section 516 of title 38, United States Code, as amended by this section, including with respect to reporting sexual and other harassment and employment discrimination complaints pursuant to subsection (a)(2) of such section 516.

#### **SEC. 408. IMPOSITION OF CAP ON EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS WHO PROVIDE EQUAL EMPLOYMENT OPPORTUNITY COUNSELING.**

- (a) **REIMPOSITION OF CAP.**— (1) **IN GENERAL.**—Section 516 of title 38, United States Code, as amended by section 7(a) of the Responsible Education Mitigating Options and Technical Extensions Act (Public Law 117–76), is further amended— (A) by redesignating subsection (g) as subsection (h); and (B) by inserting after subsection (f) the following new subsection (g): “(g)(1)(A) Except as provided in paragraph (4), beginning on the date of the enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 and ending on the date that is three years after the date of the enactment of such Act, the number of employees of the Department whose duties include equal employment opportunity counseling functions may not exceed 76 fulltime equivalent employees.
- (b) “(B) Except as provided in paragraph (4), beginning on the date that is three years after the date of enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the number of employees of the Department whose duties include equal employment opportunity counseling functions may not exceed 81 fulltime equivalent employees. “(2) Except as provided in paragraph (4), of the 76

full-time equivalent employees set forth in paragraph (1), the number of employees of the Department whose duties include equal employment opportunity counseling functions as well as other unrelated functions may not exceed 40 full-time equivalent employees. “(3) Except as provided in paragraph (4), any employee described in paragraph (2) whose duties include equal employment opportunity counseling functions as well as other unrelated functions may be assigned equal employment opportunity counseling functions only at Department facilities in remote geographic locations. “(4)(A) Beginning on the date that is one year after the date of enactment of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, the Secretary shall promptly notify Congress if, at any point in time, the number of full-time equivalent employees of the Department specified in paragraph (1), whose duties include equal opportunity counseling functions, is insufficient for the Department to meet its required obligations under law. “(B) Notification under subparagraph (A) shall include— “(i) the specific legal obligations relating to employment discrimination, or other matters similar to those covered by regulations prescribed by the Equal Employment Opportunity Commission, that the Department is unable to meet; and “(ii) the total additional number of full-time equivalent employees of the Department that would be needed for the Department to meet such obligations.”. (2) CONFORMING AMENDMENT.— Subsection (b) of section 7 of such Act is hereby repealed. (b) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report that includes the following elements: (1) An accounting of the number of informal stage cases filed with the employment discrimination complaint resolution system established and administered under section 516(a) of title 38, United States Code, disaggregated by— (A) the period beginning on January 1, 2019, and ending on the date of the enactment of this Act; and (B) the three-year period beginning on the date of the enactment of this Act. (2) A comparison of timeliness, with respect to the average time to process, of processing of informal stage cases by such system with respect to— (A) the period beginning on January 1, 2019, and ending on the date of the enactment of this Act; and (B) the three-year period beginning on the date of the enactment of this Act. (3) An accounting of the amounts, times, and quality of informal claims processed by employees of the Department of Veterans Affairs whose duties include only equal employment opportunity counseling functions under section 516 of title 38, United States Code, disaggregated by— (A) the ten-year period ending on the date of the enactment of this Act; and (B) the three-year period beginning on the date of the enactment of this Act. (c) ANNUAL REPORTS.—Not later than one year after the date of the enactment of this Act and once each year thereafter, the Secretary of Veterans Affairs shall make available to the public on an internet website of the Department an annual report that includes, for the year covered by the report, the following: (1) Total number of complaints filed through the employment discrimination complaint resolution system established and administered under subsection (a) of section 516 of title 38, United States Code. (2) Total number of such complaints completed processing by such system in a timely manner. (3) The percentage of all pre-complaint counseling provided under such section that led to resolution without further action. (4) The percentage of all pre-complaint counseling provided under such section that led to resolution via alternative dispute resolution. (5) The percentage of all pre-complaint counseling provided under such section that led to filing of a formal complaint via such system. (6) An accounting of the amounts, times, and quality of informal claims processed by employees of the Department whose duties include equal employment opportunity counseling under such section. (7) An estimate of the required ratio of Department employees whose duties include equal employment opportunity counseling functions relative to the number of full-time equivalent employees in the Department. (d) INDEPENDENT ASSESSMENT.—Not later than 180

days after the first report is made available under subsection (c), the Comptroller General shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives an independent assessment of the ratio reported by the Secretary pursuant to paragraph (7) of such subsection. Such assessment shall include such recommendations as the Secretary may have for improving such ratio and the ability of the Department to provide equal employment opportunity counseling.


# ATTACHMENT D

**Effective Date: 10-31-2017**

Office of Resolution Management (ORM)

| Version | Date       | Description             | Author        |
|---------|------------|-------------------------|---------------|
| 1.0     | 10-31-2017 | Service Level Agreement | Tracey Therit |
|         |            |                         |               |
|         |            |                         |               |

*(By signing below, all Approvers agree to all terms and conditions outlined in this Agreement.)*

| Approvers                | Role                                                 | Signed                                                                              | Approval Date                                                                                                                                     |
|--------------------------|------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| ORM-Harvey W. Johnson    | Deputy Assistant Secretary for Resolution Management |  | October 31, 2017                                                                                                                                  |
| VBA-Robert M. Waltemeyer | Director, Office of Management                       | Robert M. Waltemeyer 713715                                                         | Digitally signed by Robert M. Waltemeyer 713715<br>DN: cn=robert, o=vba, email=robert.waltemeyer@vba.gov, c=us<br>Date: 2018.01.09 14:25:48 -0800 |

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## **1. Agreement Overview**

This Agreement represents a Service Level Agreement ("SLA" or "Agreement") between the Office of Resolution Management (ORM) and the Veterans Benefits Administration (VBA) for the provisioning of Equal Employment Opportunity (EEO), Alternative Dispute Resolution (ADR), Harassment Prevention, External Complaints, and Training services required to support and sustain VBA.<sup>1</sup>

This Agreement outlines the parameters of all EEO, ADR, Harassment Prevention, External Complaints, and Training services covered as they are mutually understood by the primary stakeholders.

## **2. Goals and Objectives**

The purpose of this Agreement is to ensure that the Department of Veterans Affairs (VA) is in compliance with Public Law 105-114, Title 38 Code of Federal Regulations, Chapter 1, Part 2, Section 6, and Equal Employment Opportunity Commission (EEOC) Management Directive 110 regarding agency responsibilities and reporting structure as it relates to EEO functions.

The goal of this Agreement is to define the services VBA will receive from ORM based on annual reimbursements for the period.

The objectives of this Agreement are to ensure clarity and consistency in the experience VBA supervisors and employees receive from ORM as it relates to ORM's five product lines: EEO, ADR, Harassment Prevention, External Complaints, and Training by:

- Providing clear reference to service ownership, accountability, roles and/or responsibilities.
- Presenting a clear, concise, and measurable description of service provision to the customer.
- Matching perceptions of expected service provision with actual service support and delivery.

## **3. Stakeholders**

The following Service Provider and Customer will be used as the basis of the Agreement and represent the primary stakeholders associated with this SLA:

Service Provider: ORM ("Provider")  
Customer: VBA ("Customer")

<sup>1</sup> This Agreement includes all services delegated to ORM. The Agreement does not cover reasonable accommodation, affirmative employment, special emphasis responsibilities, employee engagement, National Diversity Intern Program, Workforce Recruitment Program, Minority Veterans Priority Coordination, and Management Directive 715 reporting delegated to the Office of Diversity and Inclusion.

## 4. Periodic Review

This Agreement is valid from the effective date outlined herein. This Agreement will be reviewed annually or at intervals mutually agreed upon by the parties.

The Business Operations Director ("Document Owner") is responsible for facilitating regular reviews of this document. Contents of this document may be amended as required, provided mutual agreement is obtained from the primary stakeholders and communicated to all affected parties. The Document Owner will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

Business Operations Director: (b) (6), (b) (7)(C)  
Review Period: Annual

## 5. Service Agreement

The following detailed service parameters are the responsibility of the Service Provider in the ongoing support of this Agreement.

### 5.1. Service Scope

The following Services are covered by this Agreement;

- EEO
- ADR
- Harassment Prevention
- External Complaints
- Training

Provider responsibilities and Customer expectations related to each service are outlined in Appendix A.

### 5.2. Customer Requirements

Customer responsibilities and/or requirements in support of this Agreement include:

- Current annual reimbursement to ORM for operating costs
- Realignment of six GS-260 FTEs to serve as VBA's primary points of contact (POC) in ORM for all services defined in this Agreement. Upon realignment, no other 260 series positions will exist in VBA.<sup>2</sup> Employees in St. Louis, MO, Philadelphia, PA, and St. Petersburg, FL will remain at their physical locations.

<sup>2</sup> To comply with Public Law, Title 38 delegations, and EEOC directives and decisions, employees performing employment discrimination complaint resolution functions to include receiving, counseling, investigating, and/or

No additional costs beyond VBA's annual reimbursement to ORM for services are triggered by this SLA.

### **5.3. Customer Assumptions**

Assumptions related to in-scope services and components include:

- The customer will provide a rating for the POC's Customer Service performance element. The customer's rating on this element will count for 75% of the overall element rating and will be included as an attachment to the appraisal.
- POCs in ORM will only be re-directed away from providing services to the customer to cover other ORM needs if additional capacity exists beyond agreed upon services.

### **5.4. Service Provider Requirements**

Service Provider responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with services.
- Meeting mutually agreed upon customer satisfaction measures.

### **5.5. Service Assumptions**

Assumptions related to in-scope services and/or components include:

- Changes to services will be mutually agreed upon and communicated and documented to all stakeholders.

## **6. Service Management**

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services, and related components.

### **6.1. Service Availability and Requests for Services**

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- Telephone support : 7:30 A.M. to 5:00 P.M. Monday – Friday (all time zones)
  - Calls received outside of office hours will be responded to the next business day

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processing allegations of discrimination shall not be subject to the authority, direction, or control of a VA administration official.

- **Email support: Monitored 7:30 A.M. to 5:00 P.M. Monday – Friday (all time zones)**
  - **Emails received outside of office hours will be responded to the next business day**

**Appendix B identifies the ORM District Offices, District Manager, and VBA POC servicing VBA facilities in their jurisdictional area and accountable for providing services on the days and times noted above.**

## Appendix A: Provider Responsibilities and Customer Expectations

### BUSINESS FUNCTION: DISCRIMINATION COMPLAINT PROGRAM ADMINISTRATION

Public Law 105-114, and Title 38, Chapter 1, Part 2, Section 2.6 delegate exclusively to ORM the responsibility for receiving, counseling, investigating, and processing complaints of employment discrimination. Employees performing EEO functions shall not be subject to the authority, direction, or control of a VA administration official. Within VA, there is one EEO Director and the responsibilities and authority of this position are not re-delegated to the administrations. Therefore, ORM staff is responsible for performing all of the functions stipulated in law, regulation, and directive and serving as the custodian of the official EEO record. The role of the administrations is to provide information (documentation, testimony) and proof of compliance with settlements and findings of discrimination.

| Action                                                                                                                                                                                         | Responsibility                                                                                                                            | Metric (Calendar Days)                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Receive initial contacts from VBA applicants, employees, and former employees regarding filing a discrimination complaint.                                                                     | ORM notifies VBA leadership of initial contact.                                                                                           | Notification to VBA leadership <sup>3</sup> within 2 days of initial interview with aggrieved person.          |
| Provide pre-complaint counseling to all VBA applicants, employees, and former employees filing a discrimination complaint.                                                                     | ORM provides counseling or ADR based on aggrieved person's election.                                                                      | Counseling or ADR provided within EEOC regulatory timeframes.                                                  |
| Receive formal filings from VBA applicants, employees, and former employees when pre-complaint is not otherwise resolved.                                                                      | ORM notifies VBA leadership when formal complaint is filed.                                                                               | Notification to VBA leadership within 5 days of receipt of formal filing.                                      |
| Issue procedural determinations on all formal filings.                                                                                                                                         | ORM provides VBA leadership with copy of procedural determination.                                                                        | Procedural determination provided to VBA leadership within 2 days of signature by ORM official.                |
| Obtain documents relevant to the allegations of discrimination raised in the complaint from designated VBA point of contact; e.g., coordinate requests for documents with custodian of record. | VBA custodian of records provides ORM with documentary evidence related to the claims.                                                    | Documents provided within timeframes established in request.                                                   |
| Assign investigator to conduct investigation of accepted claims of discrimination.                                                                                                             | ORM assigns neutral impartial fact finder to develop a complete record from which a third party can determine if discrimination occurred. | Notification to VBA leadership of assigned investigator within 30 days of release of procedural determination. |

<sup>3</sup> VBA leadership is generally defined as the manager one level above the responsible management official (RMO) identified in the EEO complaint.

|                                                                                                                                                                                  |                                                                                                                            |                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Coordinate witness testimony with VBA point of contact; e.g., obtain contact information, schedule interviews.                                                                   | ORM VBA POC provides witnesses contact information.                                                                        | Within 2 days of request for witness information.                                                                                                           |
| Receive request(s) to amend formal complaint.                                                                                                                                    | ORM provides response to request to amend to complainant and VBA.                                                          | Response to amendment provided to VBA leadership within 2 days of signature by ORM official.                                                                |
| Issue report of investigation and advisement of rights to complainant.                                                                                                           | ORM issues report of investigation to complainant.                                                                         | Report of investigation released within EEOC regulatory timeframes.                                                                                         |
| Receive election or non-election form.                                                                                                                                           | ORM transmits file to relevant parties depending on election. ORM notifies VBA leadership of election.                     | Notification to VBA leadership within 5 days of receipt of election or expiration of election period.                                                       |
| Coordinate with the Office of General Counsel if hearing elected; e.g., coordinate requests for documents with custodian of record and obtain contact information for witnesses. | VBA HR provides requested information.                                                                                     | Within 2 days of request for information.                                                                                                                   |
| Obtain space and secure court reporting services as needed for depositions and EEOC hearings.                                                                                    | ORM VBA POC is responsible for securing space and court reporter. Costs covered by ORM.                                    | Within 2 days of notification of deposition or hearing date.                                                                                                |
| Receive final action on complaint from the Office of Employment Discrimination Complaint Adjudication (OEDCA). OEDCA transmits final action to VBA leadership and ORM.           | ORM closes the complaint in case management system.                                                                        | Notification to VBA leadership within 2 days of receipt of final action. Complaint closed in case management system within 2 days of receipt also.          |
| Coordinate with VBA on any final action resulting in a finding of discrimination; e.g., implement relief ordered by OEDCA/EEOC and document compliance.                          | ORM conducts required training, and ORM VBA POC provides compliance report to ORM.                                         | Training completed and compliance report submitted within timeframes established in request.                                                                |
| Receive withdrawal or settlement of complaint of discrimination.                                                                                                                 | ORM closes the complaint in case management system and issues request for documents to monitor compliance with settlement. | Notification to VBA leadership of closed complaint and request for documentation of compliance within 2 days of receipt of withdrawal/finalized settlement. |
| Obtain documents confirming terms of settlement implemented.                                                                                                                     | ORM VBA POC provides proof of compliance with settlement terms.                                                            | Documents provided within timeframes established in request.                                                                                                |

Six VBA GS-260s will be realigned to ORM to perform the duties listed above for compliance purposes. Functions listed as the responsibility of VBA may be performed by a 301, 343, HR official, or other non-260 classified staff.

## **BUSINESS FUNCTION: ALTERNATIVE DISPUTE RESOLUTION PROGRAM SUPPORT**

ORM is delegated Department-wide responsibility for Workplace ADR and the Deputy Assistant Secretary for Resolution Management is VA's Deputy Dispute Resolution Specialist for Workplace ADR. ORM serves as the VA's subject matter expert on ADR and is delegated authority for policy development, oversight, communications, training, and ADR coordination. The role and responsibilities of the administrations with respect to ADR program administration include, identification of settlement official, cooperation throughout the coordination and scheduling of ADR, logistical support in reserving space/video teleconference services, and proof of compliance for any settlement reached.

| Action                                                                                                                                  | Responsibility                                                                                                                                            | Metric (Calendar Days)                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Receive requests for ADR from VBA applicants, employees, and former employees.                                                          | ORM notifies VBA leadership of request and confirms agreement to use ADR.                                                                                 | Notification to VBA leadership within 2 days of receipt of request.                                                                                         |
| Assign neutral to ADR request.                                                                                                          | ORM assigns full-time, contract, or collateral duty neutral to conduct ADR in-person, by phone or video-teleconference, depending on parties' preference. | Neutral assigned within 5 days of receipt of request.                                                                                                       |
| Conduct pre-mediation and coordinate scheduling with all parties.                                                                       | ORM contacts parties prior to session and explains the process and establishes mutually acceptable date for ADR with the participants.                    | Neutral contacts VBA official designated to participate in ADR within 5 days of assignment.                                                                 |
| Notify union of ADR request if requestor's position is covered under the bargaining unit and secure space for ADR session if in-person. | ORM secures neutral location for in-person ADR session and provides required notice to union of formal discussion.                                        | Notification to union provided within 2 days of confirmation of date of ADR session.                                                                        |
| If settlement reached, coordinate review by HR, if applicable, and OGC and secure signatures of all parties.                            | ORM VBA POC coordinates review and secures signatures.                                                                                                    | ORM VBA POC coordinates review within 1 day of settlement drafted.                                                                                          |
| Document all ADR events and upload all ADR documents in case management system.                                                         | ORM maintains accurate ADR record.                                                                                                                        | Systems of records updated within 2 days of new event.                                                                                                      |
| Receive withdrawal or settlement of complaint of discrimination.                                                                        | ORM closes the complaint in case management system and issues request for documents to monitor compliance with settlement.                                | Notification to VBA leadership of closed complaint and request for documentation of compliance within 2 days of receipt of withdrawal/finalized settlement. |
| Obtain documents confirming terms of settlement implemented.                                                                            | ORM VBA POC provides proof of compliance with settlement terms.                                                                                           | Documents provided within timeframes established in request.                                                                                                |

Six VBA GS-260s will be realigned to ORM to perform the duties listed above. Functions listed as the responsibility of VBA may be performed by a 301, 343, HR official, or other non-260 classified staff.

### **BUSINESS FUNCTION: HARASSMENT PREVENTION PROGRAM ADMINISTRATION**

ORM is delegated responsibility for VA's Harassment Prevention Program. This includes policy and oversight for action taken Department-wide when harassment is reported in accordance with the Secretary's EEO Policy. The functions of the Harassment Prevention Program and ORM staff providing policy and oversight are separate and apart from the EEO complaint process and ORM employees who process EEO complaints as required by EEOC. The role and responsibility of the administration is to review each report and take prompt and effective corrective action to prevent recurrence of the harassment. ORM provides technical advice and support to the administrations in responding to reports of harassment and documenting and reporting on the action taken.

| Action                                                                                          | Responsibility                                                                                                        | Metric (Calendar Days)                                                                                         |
|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Receive report of harassment involving VBA official.                                            | ORM receives report through toll-free line or other channels and notifies VBA leadership of allegation of harassment. | Notification to VBA leadership within 2 days of report of harassment.                                          |
| Conduct review of report which may include an informal inquiry or administrative investigation. | VBA with ORM support as requested.                                                                                    | Within 30 days of receipt of report.                                                                           |
| Coordinate request for documents and access to witnesses.                                       | VBA                                                                                                                   | Documents provided within timeframes established in request. Within 2 days of request for witness information. |
| Advise individual reporting harassment and ORM of outcome of review of report of harassment.    | VBA                                                                                                                   | Within 5 days of completion of informal inquiry/administrative investigation.                                  |
| Document all events and upload all documents in case management system.                         | ORM maintains accurate record.                                                                                        | Systems of records updated within 2 days of receipt of new information.                                        |

ORM can assume responsibility for review/investigation of reports of harassment and provide VBA with the evidence gathered to take prompt effective corrective action to prevent recurrence of harassment upon request. Otherwise, the functions listed as the responsibility of VBA may be performed by a 301, 343, HR official, or other non-260 classified staff.

## **BUSINESS FUNCTION: EXTERNAL COMPLAINTS PROGRAM ADMINISTRATION**

ORM is delegated responsibility for VA's External Civil Rights Program. This includes general oversight, coordination, and liaison activities for the external civil rights program (Title VI and Title IX). The role and responsibility of the administration is to investigate and obtain compliance information required under 38 CFR Sections 18a.2 and 18a.3. ORM provides technical advice and support to the administrations in carrying out these responsibilities including documenting and reporting on the action taken.

| Action                                                                                                                                                                                                                                                                               | Responsibility                                                                                                             | Metric (Calendar Days)                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Receive complaint of discrimination from recipient of VBA federally funded or federally assisted program or service.                                                                                                                                                                 | ORM receives complaint and notifies VBA leadership of complaint.                                                           | Notification to VBA leadership within 5 days of assignment to ORM External Complaints Specialist.                                                           |
| Conduct review/investigation of complaint.                                                                                                                                                                                                                                           | VBA                                                                                                                        | Within 30 days of receipt of notification.                                                                                                                  |
| Advise complainant and ORM of outcome of review/investigation.                                                                                                                                                                                                                       | VBA                                                                                                                        | Within 5 days of completion of review/investigation.                                                                                                        |
| Document all events and upload all documents in case management system.                                                                                                                                                                                                              | ORM maintains accurate record.                                                                                             | Systems of records updated within 2 days of receipt of new information.                                                                                     |
| Receive withdrawal or settlement of complaint of discrimination.                                                                                                                                                                                                                     | ORM closes the complaint in case management system and issues request for documents to monitor compliance with settlement. | Notification to VBA leadership of closed complaint and request for documentation of compliance within 2 days of receipt of withdrawal/finalized settlement. |
| Obtain documents confirming terms of settlement implemented.                                                                                                                                                                                                                         | VBA provides proof of compliance with settlement terms.                                                                    | Documents provided within timeframes established in request.                                                                                                |
| Submission of Age Discrimination Act Report to the Department of Health and Human Services (HHS).                                                                                                                                                                                    | ORM responsible for gathering data from VBA and submitting report to HHS.                                                  | ORM VBA POC provides ORM with requested information within established timeframes and ORM submits report to HHS by established deadline.                    |
| Provide training, technical assistance, and compliance reviews in accordance with the enforcement of Title VI, Title IX, Section 504 and similarly worded provisions of various program statutes that prohibit discrimination in programs that receive federal financial assistance. | VBA and ORM                                                                                                                | VBA and ORM work collaboratively to provide training, technical assistance, and compliance reviews. Actions occur within mutually agreed upon timeframes.   |

## BUSINESS FUNCTION: TRAINING SUPPORT

Public Law 105-114 requires the Secretary to ensure that all employees of the Department receive adequate education and training on their EEO responsibilities. As the Department's subject matter expert on the services listed in this SLA, ORM designs and delivers training upon request and as ordered when discrimination is found. The table below outlines the process administrations can follow in securing the services of ORM to provide training.

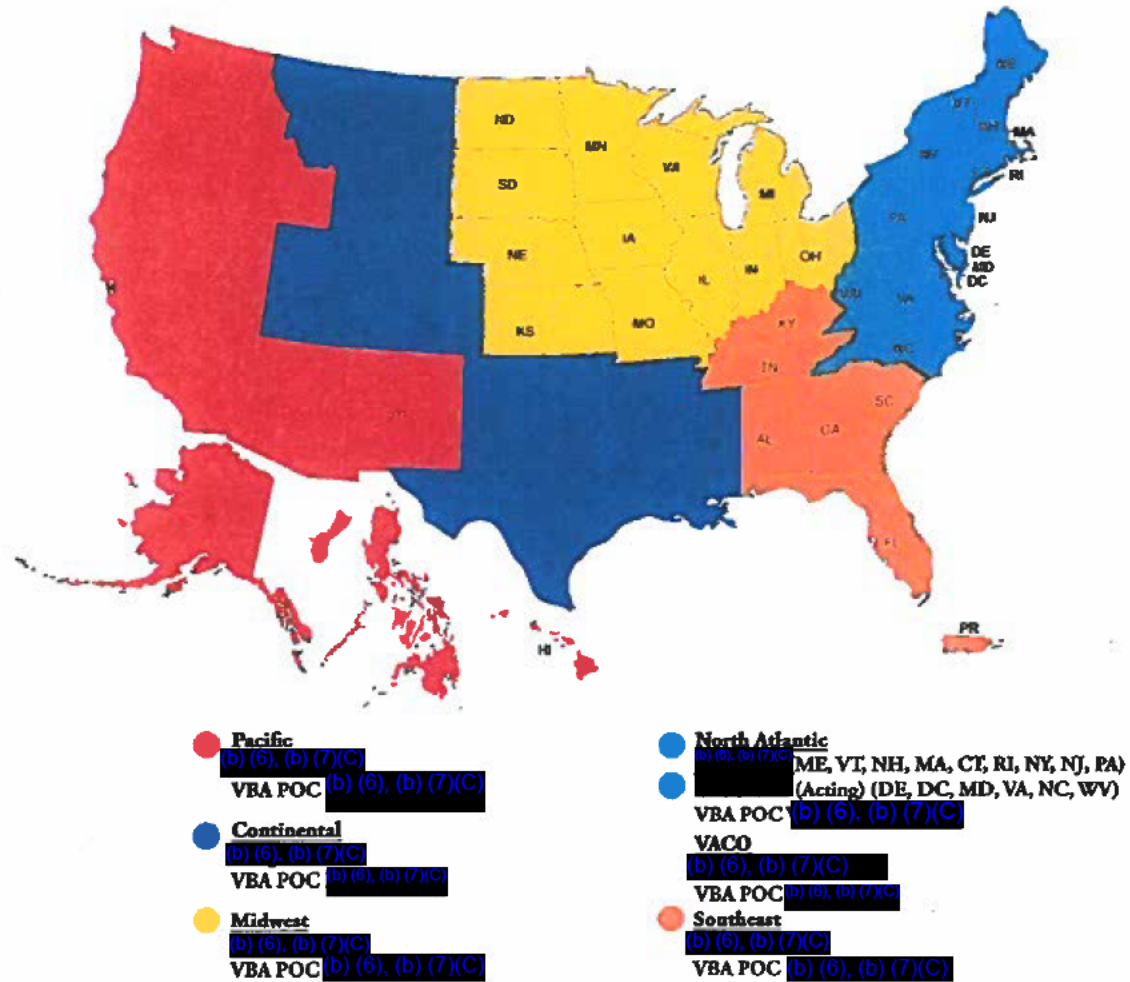
| Action                                                                                                                                                                                                                                           | Responsibility | Metric (Calendar Days)                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------|
| Provide basic training and assist VBA at their request on training based on ORM provided analytics.                                                                                                                                              | ORM            | ORM will schedule training planning call within 2 days of receipt of request. |
| Receive requests for training. ORM training catalog <a href="http://vawww.va.gov/adr/docs/ORM_Course_Catalog_2012.pdf">http://vawww.va.gov/adr/docs/ORM_Course_Catalog_2012.pdf</a> and ADR request form identify types of courses ORM provides. | ORM            | ORM will schedule training planning call within 2 days of receipt of request. |
| Provide bi-weekly new employee orientation briefings on EEO and ADR and training for new supervisors, upon request. Briefing will be provided by phone or in-person as requested.                                                                | ORM            | Training conducted on established dates and locations.                        |
| Provide quarterly Supervisor Training, upon request.                                                                                                                                                                                             | ORM            | Training conducted on established dates and locations.                        |
| Provide space and logistical support for on-site training to include sign-in sheets, IT equipment, and uploading information in the Talent Management System to record registration and course completion.                                       | VBA            | Within mutually agreed upon timeframes.                                       |
| Conduct training and provide evaluation feedback and certificates of completion upon request.                                                                                                                                                    | ORM            | Within mutually agreed upon timeframes.                                       |

## **BUSINESS FUNCTION: TECHNICAL SUPPORT, GUIDANCE, REPORTING**

ORM EEO and ADR specialists, Team Leaders, National Advisors, Assistant District Managers, District Managers, Directors, and Senior Executives are available to the administrations to provide technical support and guidance on the administrative complaint process and all services listed in this SLA. When EEO complaints are before the EEOC, ORM defers to the Office of General Counsel to provide guidance and advice to the administrations. These duties are part of ORM's ongoing responsibilities under 29 CFR 1614.102 and EEOC Management Directive Chapter 1 to identify and eliminate discriminatory practices and ensure the VA achieves the goal of being a model workplace.

| Action                                                                                                                                                                                          | Responsibility | Metric (Calendar Days)                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-----------------------------------------------------------------------------------------------------|
| Provide VBA workforce with access to ORM's Resolution Support Center <a href="http://www.va.gov/orm/RSC.asp">http://www.va.gov/orm/RSC.asp</a> for guidance and advice on work-related matters. | ORM            | RSC available at 888-566-3982 from 8AM-4:30PM in all time zones.                                    |
| Receive request for technical support/guidance from VBA.                                                                                                                                        | ORM            | Respond to request within 2 days.                                                                   |
| Identify and inform VBA leadership of possible discriminatory practice(s).                                                                                                                      | ORM            | Notification to VBA leadership within 2 days of identification.                                     |
| Attend monthly VBA senior managers meeting and conduct overview/briefing of EEO/ADR/Harassment Prevention/External Complaint hot topics, upon request.                                          | ORM            | On established dates.                                                                               |
| Provide monthly, quarterly, and annual reports on VBA data related to all services and VBA customer surveys.                                                                                    | ORM            | By the 10 <sup>th</sup> day of each month, and first month after the end of a quarter, fiscal year. |
| Provide quarterly and annual senior managers report when VBA officials are identified.                                                                                                          | ORM            | Within 45 days of the close of a quarter, calendar year.                                            |
| Provide annual analysis of findings report.                                                                                                                                                     | ORM            | Within 5 days of finalization of report by ORM.                                                     |
| Submit annual form 462 report to EEOC.                                                                                                                                                          | ORM            | By EEOC established deadline.                                                                       |

**Appendix B: ORM DISTRICT OFFICES WITH DISTRICT MANAGER IDENTIFIED**



**Addendum to Service Level Agreement Between VBA and ORM Realignment of EEO,  
ADR, Harassment Prevention, External Complaints, and Training Services**

**FY 2018 Performance Element**

**Customer Service (Critical) (75%)**

Establishes and maintains a high level of communication, coordination, and cooperation with the customer community, management and staff throughout the Veterans Benefits Administration (VBA).

- a. Maintains neutral and respectful communication with the customer.

No more than 2 valid complaints during the rating period where disrespect or lack of neutrality was demonstrated. – Fully Successful

No more than 1 valid complaint during the rating period where disrespect or lack of neutrality was demonstrated. - Exceptional

- b. Responds to customer in accordance with timeframes outlined in the Service Level Agreement.

No more than 4 instances where timeframes were not met during the rating period. – Fully Successful

No more than 2 instances where timeframes were not met during the rating period. – Exceptional

- c. Quality of services delivered to the customer is consistently rated favorably based on survey data.

Customer surveys reflect 75% or higher satisfaction with quality of service provided. – Fully Successful

Customer surveys reflect 85% or higher satisfaction with quality of service provided. – Exceptional