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Comments to Department of Veterans Affairs (VA) Report
OSC File Nos. DI-24-000289 and DI-24-000743 – [REDACTED]

Key Findings and Comments to Agency's Response to Alignment ORM to the Agency Head and the functions performed by EEO Program Managers:

A. Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 (herein Cleland Dole Act), Section 402(b) states ".....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 (ORM) or such successor office established pursuant to subsection (a), with respect to the equal employment functions of the program Manager".

Agency Response: "The Realignment of the EEO Program Managers as required by the Cummings Act and the Appropriations Act is complete based on work completed in 2017".

Whistleblower ("WB") Response: The language in the Cleland Dole Act (signed into law on December 29, 2022) is specific to the reporting structure of the EEO Program Managers and the equal employment functions of the Program Manager. The Department has falsely interpreted the language in the Cleland Dole Act to be specific to the 260¹ occupational series only. There are several employees performing the equal employment functions of the Program Manager within VA.

1. The agency's response in its "summary conclusion" that the employees performing the collateral duty functions will not be moved (see below) is contradicted by its own actions.

"The realignment of the National Cemetery Administration, Veterans Benefits Administration (VBA), an 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 [are] ongoing. The employees perform those functions will not be moved but discussions have occurred regarding how the collateral duty EEO functions will be handled". In October 2017, the Department realigned six full time employees, organizationally titled as, "EEO

¹ The 260 occupational series include positions primarily concerned with developing, administering, evaluating or advising on the Department's internal equal employment opportunity program. The position requires knowledge of EEO regulations and principles; compliance and enforcement skills; administrative, management and consulting skills and knowledge of federal personnel administration. Managers are coordinators of special emphasis programs designed to solve the specialized employment problems of women, minorities, Veterans, Hispanic individuals, persons with disabilities and persons with targeted disabilities and others as they related to federal employment. Most employees in ORM are classified under this job series except for obvious positions (i.e. timekeepers, budget, analysts, etc.)

Program Managers and performing duties classified as 260s. Once the Elijah Cummings and Cleland Dole Act was signed into law, the Department granted the Director, ORM VBA EEO Liaison Office (herein Liaison Office) authorization to begin realigning the EEO functions performed by collateral duty EEO Program Managers. As a result of Liaison Office's effort to comply with the Cleland Dole Act, approximately ten (10) collateral duty EEO Program Managers were realigned through non-competitive or agency directed initiatives. The WB handled all personnel actions for the Director, ORM VBA EEO Liaison Office. As stated during the WB's interview, continued realignment efforts stalled when the former Director, ORM VBA EEO Liaison Office declined the former Deputy Assistant Secretary's sexual advances.

Agency Response: VA acknowledges a conflict of laws governing the organizational placement of its program and is currently reviewing options for realignment of the program, so it does not report to HRA/OSP.

WB Response: By regulations established by Congress, the Equal Employment Opportunity Commission (hereafter Commission) has oversight and monitors federal agencies' EEO programs. In a letter dated February 23, 2018, the Commission notified the former Assistant Secretary for HR&A, of VA's non-compliance with federal regulations (from FY 2002 to 2017) that required ORM to report to the agency head. While VA acknowledged the conflict of laws governing the organizational structure of its EEO program, it failed to timely comply with either provision in the Elijah Cummings Act of 2020 or Cleland Dole Act of 2022. Further, VA did not seek assistance from Congress or the Commission for clarity. (See Congress' business meeting and Hearing). VA's slow-paced drive does not underscore the importance of establishing a model EEO program or eradicating harassment (sexual and non-sexual) within VA.

1. During a meeting on December 9, 2022, the WB noted very pointed violations expressed by Commission representatives to ORM and HRA management officials regarding the lack of progress with reporting structure requirements concerning the Department's EEO Office and other EEO programs. This meeting recaptured the Commission's repeated reminders about (1) EEO Program Managers serving as Harassment Prevention Program Coordinators (2) the misalignment of ORM and (3) the Harassment Prevention Program Office reporting to Director, Eastern Region, Complaints Processing, a violation of VA's own Directive and Handbook 5979. It was during this meeting that one Commission member stated that continued non-compliance would result in *problems within the office.

2. EEOCs concerns during the meeting held on December 9, 2022, came to a swift realization. *In September 2023, the ORM sex scandal was reported to OAWP and Congress. A full Committee [Business Meeting](#) was held on January 11, 2024, and a full Committee Oversight Hearing entitled: ["VA's HR Office: Did Leaders Ignore and Perpetrate Sexual Harassment"?](#) was held on February 14, 2025. Congress also had to address other inappropriate behaviors in this article: ["Disturbing and Disgusting: House Lawmakers investigate rampant sex, harassment, misconduct at Tennessee VA facility"](#)

Agency Response: VA included a Service Level Agreement (SLA) which states 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”. It also referred to those functions of “EEO Liaison work” as providing program direction and guidance in the areas of alternative dispute resolution, affirmative action, special emphasis program management and resolution of discrimination complaints.

WB Response: In March 2023, a follow-up meeting was held with the Commission’s Office of Federal Operations senior managers. The WB noted the apparent absence of ORM senior management officials. During this meeting, the WB made precocious notes regarding the conflict of interest with ORM having EEO Program Managers performing the duties and responsibilities of Harassment Prevention Coordinators. EEOC senior management officials further stated that ORM should return the work of “gathering documents” to Complaints Processing. Their instructions would keep ORM in compliance with EEOCs “ [Model EEO Programs Must Have An Effective Anti-Harassment Program](#)”, 29 CFR 1614.108(b) and MD110, Chapter 2, Section III, Chapter V part A and Chapter 6 where the Commission identifies “information gatherers”. ORMs violation of EEOCs guidance resulted in:

- Employees, not authorized to gather documents for sensitive EEO cases, unknowingly partaking in possible data breaches, pro se and privacy law violations (storing sensitive documents on other electronic platforms).
- EEOPMs being placed in the “line of fire” for managing EEO programs while performing duties that conflict with complaints processing and harassment prevention.

1. The work of the “full time” EEO Program Manager extends beyond the duties noted in the SLA and what was described in the agency’s response. The core duties of the EEO Program Manager are to use EEOCs Management Directive 715 and the six essential elements to establish a model EEO program. The journey to establishing a model EEO program within each Administration takes a collaborative effort and must be fully supported by knowledgeable ORM senior leaders who understand critical work beyond and outside of processing complaints. In essence, the idea is to reduce the number of complaints.

2. EEOC issued Management Directive 715 on October 1, 2003. MD 715 provides [instructions](#), guidelines and standards for federal agencies to develop and maintain effective EEO programs. The MD-715 divides the essential elements of a model EEO program into six categories:

- (A) Demonstrated commitment from agency leadership;
- (B) Integration of EEO into the agency’s strategic mission;
- (C) Management and program accountability;
- (D) Proactive prevention of unlawful discrimination;
- (E) Efficiency; and
- (F) Responsiveness and legal compliance.

*NOTE: In previous years, ORM completed the MD 715 report and confirmed that VA complied with Element B, regarding the “principal EEO official”. This response was not accurate and the MD 715 reports for previous years have since been removed from ORMs website.

Agency Response: VA acknowledged EEOC's concern with VBA's insufficient EEO staff and the misalignment of VBA's EEO reporting structure, that VBA's EEO Director should report to the Agency EEO Director.

WB Response: EEOCs program evaluation revealed that a compliant reporting structure – where the EEO Director reports to the head of the agency – did not exist at the Administration level. A letter dated February 23, 2018, was released to the agency that emphasized this finding. ORM corrected this deficiency and realigned VBA's EEO Director directly under the EEO Director. This action was completed effective October 29, 2017, and noted in the Corrective Action Plan to EEOC. Prior organizational charts created from 2017 to 2021 continued to underscore the importance of VBA's EEO program by showing the reporting structure of the VBA EEO Director under the EEO Director. WB acknowledges and is grateful for the expedited steps ORM has taken to increase staffing levels from 2017 to 2020. These actions by ORM, albeit short-lived, was a fresh start to establishing a model EEO program for VBA.

1. Management Directive 715, states, "the EEO Director is responsible for 'subordinate level components', the department-level EEO Director must provide effective guidance and coordination for the component-level EEO officials, employment programs, including national and regional EEO plans, reports and other matters to improve EEO program efficiency and/or eliminate identified barriers to ensure equal opportunity".
2. Contrary to the guidance in Elements B and C of Management Directive 715, ORM eventually eliminated the Liaison Office's 250K budget, refused to allow the Liaison Office to conduct periodic self-assessments of other Regional Offices' EEO program, limited its ability to conduct a thorough and regular barrier analysis of VBA's workforce; prohibited attendance in VBA and facility level meetings where employment decisions are made (recruitment, personnel actions, technology improvements, etc.), limited staffing, recruitment activities and other resources from the Liaison Office's program and ultimately ordered the Liaison Office to stop all communications with VBA. This presented challenges for the Liaison Office to fully support VBA's EEO Program. Employees resorted to using their own leave and/or funded their own training to meet the requirements in EEOCs MD 715. Initially, one collateral duty EEOPM, realigned under the Liaison Office, used funds from baked sales to fund an EEO program. WB acknowledges that VBA graciously supported our funding requests and formal training needs on several occasions. WB acknowledges that VHA also graciously supported our requests for training.
3. When the inappropriate behaviors of senior management officials began to surface, the VBA EEO Director/Liaison Office was aligned under the Assistant Deputy Assistant Secretary, followed by ORM's Chief of Staff. OAWP investigated the ORM sex scandal and made recommendations for corrective action. The Regional Director, Eastern Region Complaints Processing was delegated to serve as the Acting Director, ORM VBA EEO Liaison Office beginning November 15, 2024. Essentially, the Director, ORM VBA EEO Liaison Office, was reinstated because of a MSBP IRA Order dated February 11, 2025 (CyberFEDS). While the VA reinstated the Director on March 27, 2025, it was in a different position contrary to the MSPB Judge's Order. The agency signed new position descriptions on April 22, 2025, that not only dismantled the Liaison Office but diluted the grade controlling duties

of the 260 positions. The reclassification of the new position descriptions lowered the grade levels of the Liaison Office staff from GS-12s, GS-13s and GS-14 to GS-11s. This decision, in some areas, eliminated the manpower needed to establish a model EEO program for VBA. If the agency had complied with the MSPB Judge’s Order to reinstate the Director to her former position over the VBA EEO Liaison Office, the dismantling of the team, change to lower grade and justification of job duties would have prevented these unfavorable personnel actions.

4. It should be noted that the WB prepared a PowerPoint slide deck along with talking points to showcase the primary and secondary duties performed by the VBA EEO Liaison Office and several critical challenges. The slide deck was shared on August 8, 2024, to the Acting Executive Director/Chief Counsel for OGC then forwarded to the following HR&A and ORM senior management officials:

- (a) Former Assistant Secretary for HRA,
- (b) Attorney-Legal Advisor for the Assistant Secretary for HR&A, (rehired annuitant)
- (c) Former Acting Principal Assistant Secretary for HRA
- (d) Acting Executive Director ORM

Primary Duties:

<p>Primary Duties Classified Title: EEO Specialist 260 Organizational Title: EEO Program Manager</p>
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Veterans Benefits Administrative (VBA) EEO Liaison Office - Directs and manages the Equal Employment Opportunity (EEO) Program for VBA. Review trends, identify barriers, develop affirmative action plan to advance EEO and ensure equal opportunity within the respective Regional Offices. Ensures compliance with 29 CFR 1614.102 by recommending to the respective Executive Director, training requirements, goals, objectives, and strategies to determine any systemic problems in recruiting, hiring and promoting targeted groups. Research and develop affirmative action and strategic plans, goals and objectives to resolve systematic issues. Ensures compliance with 29 CFR 1614.102 (Special Emphasis), Management Directive 110 and Management Directive 715 and identifies any existing policies practices, actions, procedures that violates laws, rules regulations that support equal opportunity. Assists the Executive Director in planning, developing, and establishing a model EEO program by measuring and evaluating the ROs performance efficiency against EEOCs Management Directive 715. Uses EEOCs six essential elements to maintain a model EEO program.

Conduct studies/analysis on the utilization of underrepresented groups within the workplace, identifying obstacles & outlining alternative solutions to identified problems. Provides guidance and training to VBA RO employees, managers and leaders to enhance a climate of fair and equitable treatment of employees and improve the representation of groups with low participation. Closely monitors strategies, goals, objectives, policies and practices to eradicate employment discrimination and eliminate barriers that impede upon the recruitment of certain targeted groups.

Secondary Duties:

<p>Secondary Courtesy Tasks (*Conflicts of Interests) Classified Title: EEO Specialist Organizational Title: EEO Program Manager</p>
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- *Harassment Prevention Program Coordination (ORMDI Complaints Processing)
- Establish Case Files / Scheduling / Notifications (ORMDI Complaints Processing)
- ADR Coordination (OCHCO)
- *Discovery / Admissions / Scheduling (OGC)
- *Title VI External Complaints (ORMDI Complaints Processing)

Recommendation: Remove the delegation of these clerical tasks and establish positions within these offices that would support the administrative/clerical duties. These duties and responsibilities can view EEOPMs as biased.

5. VA’s Manpower Office completed a review of the Liaison Office’s staffing levels and organizational structure. The Manpower Team shared their findings with the Director, VBA EEO Liaison Office and the WB. The former Acting Executive Director/OGC Chief Counsel² prepared an organizational chart which outlined the separation of complaints processing functions from the agency’s EEO program. The WB attended a meeting where the Acting Executive Director/OGC Chief Counsel for ORM publicly advised that, “no one (form the ORM VBA EEO Liaison Office) would be aligned under ORMs Complaints Processing”. Ultimately, Manpower Management concurred with the organizational structure of ORM, noting it was the most efficient and economical use of resources to meet the mission.

² Public Law 105.114 Sec. 101 § 516(b)(1) requires employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary. Since ORM realigned under the agency head, the title of the EEO Director was changed to “Executive Directive” and has been used interchangeably in the agency’s and WB’s response.

6. EEOC's Office of Federal Operations provided input toward the Cleland Dole Act. One intent of this Act was to ensure the Department realigned the functions of the EEO program manager to the "head of ORM". As previously stated, the agency acknowledged receipt of EEOCs program evaluation report and aligned VBA's EEO Director and the EEO staff directly under the EEO Director. However, ORM and OGC moved forward with signing an organizational chart that was contrary to EEOCs guidance and Cleland Dole Act.

7. When asked, the current EEO Director could not confirm if ORM management officials consulted with the Commission prior to taking the change to lower grade personnel action against the VBA EEO Liaison Office. Therefore, the current EEO Director relied solely on the OGC's interpretation of the Cleland Dole Act that EEO Program Managers did not need to report to the "head of ORM". A misinterpretation of EEOCs MD 110 and MD 715 led to VA being misaligned for over 20 years. Since progress has been halted, and misinterpretations takes precedence over consulting with Congress and/or the Commission, the Liaison Office was realigned under Complaints Processing, performing duties that violate EEOCs guidance. The change to lower grades was effective June 29, 2025.

8. In follow-up e-mails to the staff, the current EEO Director stated that the reclassification of the EEO Program Manager position description was necessary because the "duties were unclear". There was much confusion and questions surrounding the work of EEO Program Managers and performing duties that were either a violation or a conflict of interest. **ORM senior leaders put the EEO Program Managers at risk by implementing unlawful work orders.** These duties were noted in the WB's slide deck and included: performing OGC paralegal duties (admissions, discovery), harassment prevention coordinator duties, OCHCO's EEO ADR program coordinators, compliance duties, gathering documents for complaints processing, etc. The work of the EEO Program Manager became the "clerical hub" for all other offices. If offices take responsibility for their own work and implement measures for strategic planning, monitoring, tracking, identifying problems, perhaps barriers could be identified within their own operations. EEO Program Managers could then focus on work processes that would reduce EEO complaints for the agency.

9. GAO investigated the Commission and in June 2024 issued their report (GAO 24-105874), *"Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies"*. The Commission is the primary federal agency that enforces all federal laws that prohibit employment discrimination. In their report, GAO found that agencies must assess their own EEO programs, identify deficiencies, and develop plans to address them. Agencies can do this by completing an annual report that includes a checklist based on EEOC criteria for operating a model EEO program. VA failed to assess *its own office (ORM)* according to the MD 715 report. GAO Report 24-105874 lists several agencies in GAO's investigation report of EEOC. The Department of Veterans Affairs is listed eight times for separate issues under the same or different GAO investigation reports.

10. On page 7 of GAO 24-105874, it references "EEOCs Management Directive 110 provides federal agencies with policies, procedures, and guidance on the processing of employment discrimination complaints, and the organization and structure of the federal EEO program offices.

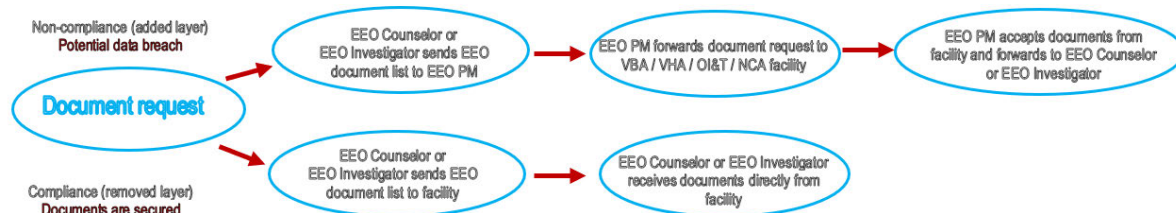
11. One important aspect ORM desperately needs is the immediate need of at least two attorney-advisors with a civil rights and employment law background (see recommendation in MD 110). There are federal agencies that implement these best practices which hold agencies accountable. OGC should be far removed from ORM's EEO program as this presents a conflict of interest with reviewing policies and organizational structure.

12. ORM has a great staff of EEO Counselors and EEO Investigators who have excellent investigation skills. I believe ORM should survey the VA's offices who perform investigative work to determine if the grade levels of ORM Investigators match the skillset needed for the work at hand. The Department of Justice properly utilizes the 1860 EEO occupational series for their GS-13 EEO Investigators. Currently, ORM classifies their EEO Investigators as 260s and this position starts at a GS-11.

13. It is important to note that ORM directed its attention on its Complaints Processing Program Office rather than "proactive prevention". For example, ORM recently updated the EEO critical element in the performance standards for managers and supervisors that would support complaints processing. However, the standards did not include language to secure a commitment to working with designated EEO Program Managers to establish a model EEO program that would reduce EEO complaints, eradicate sexual harassment and sexual assault. This commitment would redirect much needed resources to VA's mission: providing services to our Nation's Veterans.

14. EEOC has issued rules, regulations, orders and instructions governing the federal sector EEO complaint process. Agencies are required to complete investigations of complaints within 180 days of filing a formal complaint. The "timeliness" of ORM's EEO complaints is captured in [ORM's No Fear Act Complaints Data Library](#). ORM Complaints Processing Office has maintained an antiquated call center process for employees to initiate EEO complaints for the last 18 years. Other federal agencies, external to VA, have advanced their informal EEO complaint process to strictly electronic. Some private organizations utilize the benefits of artificial intelligence to produce clean and accurate Fact-Finding Reports and/or Reports of Investigations (ROIs).

15. One contributing factor to not ORM not meeting its complaints processing timeliness as outlined in the [No Fear Act](#) since FY 2022 is the added layer of requesting and gathering documents for EEO complaints. See figure below:



14. The WB concurs with the agency's response that, "VBA worked with the VA office reporting to its EEO Director to identify EEO Program Manager positions for realignment. It is important to note that VA's administrations always stood ready to comply with laws supporting EEO.

B. Equal Employment Opportunity Commission completed their 2018 assessment of VBA's EEO Program, and determined, among other things, that employees performing EEO functions were subject to the authority, direction, and control of the Director of the facility with respect to those EEO functions. VBA has several offices aligned under its Central Office. Additionally, there are 57 Regional Offices with employees under different job titles volunteering to perform equal employment functions of an EEO Program Manager.

Agency Response: EEOC's staffing concerns stemmed from its recommendation that VA appoint a full-time EEO Manager for all offices with more than 600 employees.

WB Response: EEOC began its evaluation of VBA's EEO Program in late 2016. The WB participated in two separate four (4) hour recorded interview sessions with EEOC attorneys. A physical walk through was necessary to confirm that the WB was not directly reporting to ORM's Complaints Processing Office or performing EEO investigative work. The Commission's final report resulted in 21 findings. The Department made corrections prior to the release of the final report.

1. U.S. Equal Employment Opportunity Commission, Office of Field Operations, Final Report, Program Evaluation of the U.S. Department of Veterans Affairs, Veterans Benefits Administration (herein EEOC's assessment) (January 2018) - EEOC's staffing concerns did not prompt the Department to follow through with EEOC's recommendation to appoint a full time EEO manager for all offices with more than 600 employees. VA's PACT Act recruitment initiatives increased VBA's employee population from 25,798 in FY 2023 to over 35,304 (Est) in FY 2024. While the Elijah Cummings Act and Cleland Dole Act supersedes EEOC's recommendation, the recruitment initiative alone should have prompted the Department to comply with law if advancing EEO is priority.

2. GAO Report 20-387. "Sexual Harassment: Inconsistent and Incomplete Policies and Information Hinder VA's Efforts to Protect Employees", was released in June 2020. The investigation included an observation of the misaligned EEO Director and EEO Program Manager on its website as a "priority recommendation". Specifically, it appears as follows; "to implement GAO's recommendation, VA needs to complete the EEO Program Manager realignment at VBA and VHA to help ensure there is not potential conflict of interests.

3. According to GAO's website, priority open recommendations warrant priority attention from heads of key departments or agencies because their implementation could save large amounts of money; improve congressional or executive branch decision-making on major issues; eliminate mismanagement, fraud, and abuse or ensure that programs comply with laws and funds are legally spent, among other benefits.

4. The EEO program is an integral part of the EEO framework. As stated above, ORM made the decision to minimize the work of “proactive prevention” and “eliminate discrimination” from the administration by dismantling the VBA EEO Liaison Office.

Agency Response: The WB was asked why VA was not complying with the Cummings Act and the Appropriations Act of 2023 regarding VBA’s EEO Program Managers, among other questions.

WB Response: While the WB was asked this question, the WB can only speculate which would lack factual grounding and could be misleading. This would not be fair to the agency. Rather, it would be appropriate for the “interviewer” to present the long standing non-compliance issues that were investigated by GAO and identified by EEOC to the proper VA officials.

Agency Response: Agency stated that OAWP “heavily” investigated the WB’s allegations, and the investigation resulted in an extensive report issued in late January 2024.

WB Response: WB acknowledges that OAWP investigated allegations and was in receipt of the unredacted OAWP report.

Harassment Prevention Program (HPP) Office was improperly aligned under the Director, Eastern Region Director, Complaints Processing and violated its own policy as soon as its policy was published on March 21, 2022. The policy states as follows on page 3:

“In 2016, EEOC mandated that all federal agencies establish a stand-alone Harassment Prevention Office. The Office of Resolution Management, Diversity and Inclusion (ORMDI) established the Anti-Harassment Prevention Office later changed to the Harassment Prevention Program (HPP) Office”.

The OAWP Report did not address several serious concerns in its investigation report:

1. ORM did not have a Harassment Prevention Coordinator when the VA Handbook 5979 was finalized on March 21, 2022.
2. ORM did not produce an effective or adequate anti-harassment policy (Handbook 5979) until six years after the HPP Office was established in 2016. (VA Directive and VA Handbook 5979 were eventually removed from any forward-facing VA websites.)
3. ORM did not inform ORM employees that the US Postal Service was the designated office for reporting sexual harassment complaints, according to the testimony of former Assistant Secretary for HRA/OSP during a full Committee Oversight Hearing entitled: ["VA's HR Office: Did Leaders Ignore and Perpetrate Sexual Harassment"?](#) held on February 14, 2025.
4. OAWP did not address reasons why ORM employees were turned away from reporting sexual harassment to ORMDI's Complaints Processing Office.
5. VA Handbook 5979 did not include specific duties of the Harassment Prevention Program Coordinator.
6. CMR report was changed to reflect accurate and updated language regarding the completion of the alignment of the EEO program management functions.

7. OAWP investigation did not open a portal, as did Congress and at the suggestion of WB, so other employees can make a safe disclosure or report of sexual harassment during the investigation. There are other employees who were sexually harassed by the same predator.
8. ORM employees did not have a written policy or reporting procedures to report sexual harassment. WBs had no choice but to go to OAWP despite the OIG report released in 2019.

NOTE: ORM did not assign a Harassment Prevention Program Coordinator until May 24, 2024, two years and two months after the VA Handbook 5979 was finally published and eight months after the ORM sex scandal was reported. The individual appointed to serve as the Harassment Prevention Coordinate for ORM is an ORM employee with a leadership pipeline to the Acting Executive Director. If Public Law 105.114 § 516.(a) directs the *“VA Secretary to take steps to ensure that the EEO complaints processing system is administered in an objective, fair and effective manner and in a manner that is perceived by employees and other interested parties as being objective, fair and effective”*, the harassment process for ORM employees should mimic the same system/process. In essence, the ORM senior management official believed it was a “good practice” to have ORM employees report sensitive harassment allegations to one of their co-workers.

Agency Response: The WB’s allegation that VA does not have a separate written policy or HPP process form ORMDI employees to report allegations of sexual harassment, VA-wide policy found in VA Directive 5979, Harassment Prevention Policy and VA Handbook 5979, Harassment Prevention Program Procedures, applies equally to ORMDI employees.

WB Response: During a mandatory Prevention of Sexual Harassment Training session for ORM managers on February 29, 2024, the Acting Deputy Assistant Secretary for ORM confirmed that, she is aware the ORM does not have written reporting procedures for ORM employees. Lastly, during an ORM Town Hall on May 14, 2024, it was confirmed that a policy did not exist for ORM employees. In an e-mail dated May 15, 2024, from the Acting Deputy Assistant Secretary for ORM, it was confirmed that the office was working to amend VA Directive and Handbook 5979 to include written reporting procedures for ORM employees.

1. ORM aligned an entire office and changed its title without congressional approval. Then, spent millions of dollars of congressional funds on contracts for a program it was not authorized to have according to Public Law 105.114, Sec. 101 § 516. ORM did not think it was important enough to contract services to ensure employees have the basic guard rails in place to protect them from sexual predators or contract services to ensure VA has critical language in a desperately needed VA Directive or VA Handbook (anti-harassment policy) that would prevent sexual harassment and sexual assault. However, ORM believed it was more important to disband a VBA EEO office responsible for establishing a model EEO program based on EEOC’s Six Essential Element and evaluating progress using the MD-715.

2. ORM did remove “Diversity and Inclusion” from its title. This now complies with the provisions in Public Law 105.114, Sec. 101§ 516.

3. ORM senior leaders and managers travelled to various facilities, to review programs and promote complaints processing when ORM failed to make compliance with federal laws and EEOC guidance its foundation. There was no return on investment, no reports presented that showed critical work was done to promote and effective EEO program or prevent harassment (non-sexual and sexual) within VA.

Quick Reference: Violations and Failure to comply with EEOC Guidance Concerning Gathering EEO Documents:

1. The Department disregarded EEOC's concerns that EEO functions should not be subjected to the authority, direction and control of the agency's facility director. When ORM failed to complete the realignment of the remaining EEO functions, their decisions created the following harmful violations:

a. Management Directive 110 Chapter 2, III – EEO Counselors are referred to as “information gatherers” and receives mandatory training on gathering basic information to establish the case file and understand matters from the aggrieved parties. The Department has violated this portion of MD 110 by requiring EEO Program Managers and collateral duty EEO Program Managers to perform this function.

b. Management Directive 110 Chapter 6, V - Describes the mandatory training requirements for investigative techniques and one role of an investigator is gathering and analysis of evidence. The Department has violated this portion of MD 110 by requiring collateral duty EEO Program Managers to perform this function.

c. Privacy Violations – ORMs Complaints Processing: One requirement of Public Law 105.114, Sec. 101.516(b)(1) is that employees performing employment discrimination complaint resolution functions shall not be subject to the authority, direction, and control of the Director of the facility with respect to those functions. There are over 40 + employees throughout VBA who assist ORM's Complaints Processing Office with gathering documents for informal and formal EEO investigations³. These employees are under the control of their facility Director and were not hired to perform complaints processing duties, specifically gathering documents. Employees serving as collateral duty EEO Program Managers should not be aware of their co-workers' EEO status or have carte blanche access to contents in their EEO complaint.

³ The work of the EEO Investigators is assigned to the 1860 EEO Investigator Series which covers positions that supervise, lead, gather documents or perform work to investigate issues and situations involving violations of equal employment, equal opportunity, and accessibility laws and regulations to eliminate illegal discrimination. The work requires knowledge of investigative techniques, including interviewing, following leads, researching records, reconstructing events and analyzing facts and statistical evidence. ORM does not have EEO Investigators under the 1860 series. Therefore, employees performing investigatory work are not logically or correctly defined according to OPM's Classification Guide. The misclassification and lack of position management within ORM minimizes structure and creates confusion with duties, responsibilities and compliance. The WB presented this misclassification of EEO Counselors and EEO Investigators to ORM and HR&A senior management officials several times between 2021 through 2024. Only the EEO Program Managers' position description was reviewed and changed.

d. Data Breach – The CFR defines data breach as, among other things, unauthorized access to, other than an unauthorized access incidental to the scope of employment, data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. EEO case information could have PII information such as dates of births, social security numbers, disability information, sexual harassment, etc.

e. SORN Concerns – Collateral duty EEO Program Managers are gathering case files for EEO complaints as a third party and saving EEO data on various platforms to include shared drives, SharePoint sites and personal hard drives. Public Law 105.114 does not allow this delegation.

f. Service Level Agreement – as it pertains to document and information collection violates privacy laws to include data breaches and SORN concerns. ORM's Complaints Processing Offices should be responsible for the tasks of gathering and certifying information as complete and sufficient for investigation.

2. The Department disregarded their responsibility to effectively control, monitor and track evidence needed for EEO complaints. Gathering and certifying documents for an EEO investigation is a crucial part of the discrimination process. When ORM delegated this responsibility to EEO Program Managers and collateral duty EEO Program Managers, the complaints processing function invited vulnerabilities, delays, sanctions, data breaches, and integrity concerns as document requests are not controlled by ORM's Complaints Processing and according to Public Law 105.114, Sec. 101.516(b)(1) and MD 110. Further, it subjected crucial evidence to be back under the authority, direction and control of the agency's facility director since EEO Program Managers, in some cases, reported to the Director. (See OGC's opinion dated March 26, 1999).

Recommendation: ORM's Complaints Processing Office needs to utilize a sophisticated electronic process that would allow RMOs to upload documents to a secure site rather than store sensitive documents on unsecure electronic platforms. Sending documents through e-mails is not effective. ORM management should reconsider the proposal presented over five years ago by ORM's Director EEO Systems/Business Operations to understand ideas that would streamline the complaints process. This office had an excellent plan for the makings of a "yourEEO" platform.

Key Conclusions: Legal Content and Historical References Regarding EEO Director Reporting Structure:

1. Equal Employment Opportunity Process in the Department of Veterans Affairs", Title I, Public Law 105.114 – On November 21, 1997, Congress established the Equal Employment Process in the Department of Veterans Affairs to encourage the timely and fair resolution of concerns and complaints. Public Law 105.114 describes the equal employment responsibilities the Secretary shall provide in relation to the employment discrimination complaint resolution system within the agency. The House Report accompanying Public Law 105.114 contains the following description of Congressional intent:

“The complaint process should be completely free and independent of undue influence, and the appearance thereof, from supervisors, line managers or directors (see OGC opinion dated March 26, 1999)”.

2. 29 C.F.R. Part 1614—Federal Sector Equal Employment Opportunity (effective November 9, 1999), states that the EEO Director shall report to the immediate supervision of the agency head. VA completed the realignment of ORM to the VA Secretary’s office effective January 26, 2025, when the whistleblower received the Notification of Personnel Action (SF-50). However, on [GAO-20-387](#) recommendation page, it references the alignment was completed on October 6, 2024. (20+ years)

3. EEOC’s Management Directive 110, Chapter III, B – The EEO Director Must Report Directly to the Agency Head – Commission regulations require that the EEO Director “be under the immediate supervision of the agency head.” The purpose of this requirement is to ensure that the EEO Director has the access and authority to ensure that the agency truly considers the elimination of workplace discrimination to be a fundamental aspect of the agency’s mission.

4. EEOC’s Management Directive 110, Chapter IV, A – the EEO functions must be kept separate from the personnel functions to maintain the integrity of the EEO investigative and decision-making processes.

5. Management Directive 715 B.1.a (developed in 2003) - agency’s response to compliance indicator, “is the agency head the immediate supervisor of the person (“EEO Director”) who has day-to-day control over the EEO Office according to 29 C.F.R. 1614.102(b)(4) was falsely affirmed in its Management Directive 715 Reports for 2019 through 2023.

5. U.S. Equal Employment Opportunity Commission, Office of Field Operations, Final Report, Program Evaluation of the U.S. Department of Veterans Affairs, Veterans Benefits Administration (January 2018) – OFO conducted an informational interview with the former EEO Director in February 2016 and noted of greatest concern that the reporting structure of the EEO office is not in compliance with regulations, specifically, the VBA EEO program Director does not report directly to the agency head which impacts the effectiveness of the program.

6. Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020, Sec. 401 (1)(A) Each agency shall be responsible for the fair and impartial processing and resolution of complaints of employment discrimination....(2) establish a model Equal Employment Opportunity Program that – (A) is not under the control, either structurally or practically, of the agency’s Office of Human Capital or Office of the General Counsel (or the equivalent)

7. Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, Section 402(a)(2) “the Secretary 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.

8. GAO Report 20-387. “Sexual Harassment: Inconsistent and Incomplete Policies and Information Hinder VA’s Efforts to Protect Employees”, was released in June 2020 and listed the misalignment of the EEO Director. On their website, this finding is listed as a “priority recommendation”. Findings listed as priority recommendations can save money, help Congress make decisions and substantially improve or transform government programs or agencies.

Misaligned Harassment Prevention Program Office

1. **Management Directive 715** - agency’s must affirmed their response to compliance indicator, “has the agency established a firewall between the Anti-Harassment Coordinator and the EEO Director?”

2. In **Horkan v. U.S. Postal Service, EEOC Appeal No. 01976837 (2000)**, EEOC found discrimination because, “there was no evidence of a strong anti-harassment policy that was uniformly enforced throughout the facility and there appeared to be no clearly defined and effective complaint process for employees with allegations of harassment.

3. **Horton v. Department of Housing and Urban Development, EEOC Appeal No. 07A40014** EEOC found discrimination and that the record did not contain any evidence to show that the agency had an anti-harassment policy or an established procedure for reporting harassment.

4. **EEOC’s “Model EEO Program Must Have An Effective Anti-Harassment Program”, (f)** Ensure that the investigation process is prompt, thorough, and impartial. In this regard, agencies should develop complaint procedures that are separate from the EEO process and address all claims of harassment irrespective of whether the alleged victim files and EEO complaint.

5. **VA Handbook 5979, Harassment Prevention Program (HPP) Procedures – 3. Background**, “In 2016, EEOC mandated that all Federal agencies establish a stand-alone Harassment Prevention office. The Office of Resolution Management Diversity & Inclusion (ORMDI) established the Anti-Harassment Prevention Office later changed to the Harassment Prevention Program (HPP) office.

6. **Management Directive 715 C.2.a.3** – agency must establish a firewall between the Anti-Harassment Coordinator and the EEO Director.

/s/ [REDACTED]

[REDACTED]

VA Supervisory EEO Specialist