

DIVERSITY MANAGEMENT AND EQUAL EMPLOYMENT OPPORTUNITY

1. REASON FOR ISSUE: To revise Department of Veterans Affairs' (VA) equal employment opportunity (EEO) policy and guidance, formerly contained in VA Manual MP-7, part I, chapter 1, Equal Employment Opportunity General Provisions, and chapter 2, Affirmative Action Program.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This directive provides the policies, program requirements, and responsibilities for conducting the VA Diversity Management and Equal Employment Opportunity program. The major changes are:

a. The race and ethnicity categories have been changed by the Office of Management and Budget. Hispanic or Latino origin is now treated as ethnicity, separate from race. Native Hawaiian and Other Pacific Islander is a new race category, separate from Asian American. Respondents are free to self-identify in more than one race category.

b. Federal agency affirmative employment guidance has been revised by the U.S. Equal Employment Opportunity Commission (EEOC) in Management Directive 715 (MD-715). MD-715 supersedes the previous guidance on affirmative employment for women and minorities, and the previous guidance on affirmative employment for people with disabilities.

c. VA has established goals in the Department's strategic plan, guidance for diversity issues in succession planning, and Department-wide diversity plans published in the annual EEO Program Report required by EEOC.

d. VA has established an online workforce diversity data system which allows a stronger analytic foundation to the various diversity and EEO programs, and a largely automated production of the EEO Report and other required reports.

e. The White House has issued various Executive Orders which have been incorporated into the guidance.

3. RESPONSIBLE OFFICE: Office of Diversity Management and Equal Employment Opportunity.

4. RELATED DIRECTIVE: VA Handbook 5975.1, Processing Requests for Reasonable Accommodation by Employees and Applicants With Disabilities; and VA Handbook 5975.2, Diversity and Equal Employment Opportunity Program Evaluation.

5. RESCISSIONS: MP-7, Part I, Chapter 1, Equal Employment Opportunity General Provisions, and Chapter 2, Affirmative Action Program.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
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DIVERSITY MANAGEMENT AND EQUAL EMPLOYMENT OPPORTUNITY

1. PURPOSE. This directive sets forth Department-wide policy for VA's Diversity Management and Equal Employment Opportunity program, a coordinated effort to combine required programs and management action to acquire, develop, and retain a high-performance workforce reflective of our Nation's diversity and the veterans we serve.

a. Equal employment opportunity (EEO) is established by laws which are shaped into programs by regulatory agencies such as the U.S. Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM). These programs are designed to prevent unlawful discrimination on the basis of race, ethnicity, color, gender, disability, age, or religion, and retaliation for filing discrimination claims or other protected activity. These programs also require the prevention of sexual harassment and prevention of a hostile work environment. In general, EEO is Government-initiated, legally driven, and quantitative.

b. Special Emphasis Programs (SEPs) and related special observances are established by White House Initiatives (WHIs) and Executive Orders (EOs). They are designed to increase awareness of diverse groups and address issues of individual groups. They may expand coverage for preventing discrimination in areas such as sexual orientation and genetic information; however, their scope is generally well beyond the prevention of employment discrimination, covering education, minority business enterprise, outreach and recruitment, and contractor job listings. In contrast to the broad focus of EEO, these programs tend to be narrow in focus, providing data reporting rather than enforcement, and promoting awareness.

c. Diversity management goes beyond the above programs to develop a workplace that allows all employees to perform at their individual best. Diversity management helps to reduce EEO complaints and may improve retention by improving communication and acceptance of individual differences, and by removing institutional barriers that inhibit individuals from advancing. It develops a supportive work climate for all employees and customers and is attentive to the community's diversity. In contrast to EEO, diversity management is voluntary, productivity driven, qualitative, opportunity-focused, proactive, and promotes leveraging of differences to better achieve results.

d. EEO, SEPs, and diversity management must be vigorously pursued in VA to enhance our ability to serve veterans. The diversity and EEO programs help to promote a wider recruitment pool, which should lead to better selections and to employees able to relate to the full range of veterans. These programs help to promote fair and respectful treatment of employees, which leads to greater productivity and a better work product. Better decisions are made when more

viewpoints are considered in the formulation. And the involvement of the full range of the community leads to more responsiveness to community needs which in turn leads to better support of VA and our mission.

2. POLICY

a. VA's EEO program is committed to ensuring that all employees and applicants for employment have equality of opportunity in the Federal workplace. Specifically, the policy of VA is to:

- (1) Provide equal opportunity in employment for all qualified persons.
- (2) Allow program accessibility so that employees can fully apply all of their talents in carrying out VA's mission.
- (3) Prohibit discrimination in employment because of race, national origin, gender, age, color, religion, disability, sexual orientation, parental status, or reprisal for engaging in protected activity.
- (4) Maintain a work environment that is free of harassment or reprisal for engaging in protected activity.
- (5) Promote a positive, continuing affirmative employment program designed to eradicate barriers to employment.
- (6) Eliminate barriers to full participation of the Nation's workforce.
- (7) Manage the diversity of the work environment by improving communication and the acceptance of individual differences, and by removing institutional and attitudinal barriers that inhibit individuals from advancing as far as their talents will take them.

b. VA's Diversity Management program is committed to building a workplace collaboration of cultures to enhance the support provided to veterans. Differences in experience, education, geography, language and perspective are treated as value-added contributions rather than distractions. Diversity programs may include outreach to the community and affinity groups to find how better to serve veterans of various demographics and how better to find qualified employment candidates. Diversity initiatives may address a wide range of employee workplace concerns and workforce trends.

c. VA is committed to establishing a model EEO program that is free from program deficiencies and free from barriers to full participation by every group. This is accomplished by reviewing EEO program practices to ensure there are no program deficiencies.

d. VA is committed to eliminating or reducing limited English proficiency (LEP) as a barrier. VA incorporates four important elements of a language assistance plan: assessment of LEP populations and language needs, language assistance plan, training, and monitoring.

e. VA is committed to the effective use of alternative dispute resolution (ADR) to resolve disputes. Management and employees are encouraged to use ADR to help resolve workplace conflicts as early as feasible at the lowest organizational level.

f. These commitments are realized by a variety of means, including:

- (1) Establishing EEO and diversity policies and guidance.
- (2) Developing and coordinating EEO and diversity plans and the related metrics, and integrating these efforts into agency strategic plans.
- (3) Developing EEO and diversity programs, for example, in support of various groups by race, national origin, gender, and disability.
- (4) Advocacy of EEO, diversity, ADR and LEP programs.
- (5) Reviewing management and human resource (HR) policy, practices, results, and survey data.
- (6) Training managers, supervisors, employees, and EEO and diversity staff.
- (7) Outreach to employees and outside affinity groups regarding EEO and diversity topics.
- (8) Developing an EEO and diversity workforce data system to provide the factual foundation needed for identifying problems and tracking solutions.

g. Nothing in this directive should be taken to promote or authorize race- or gender-conscious human resources decisions. All HR decisions are to be made on the sole basis of merit.

3. RESPONSIBILITIES

a. **Secretary of Veterans Affairs.** The Secretary of Veterans Affairs will:

- (1) Demonstrate commitment to equality of opportunity and access to programs for all employees and applicants for employment, and communicate this commitment through the ranks.
- (2) Make diversity and EEO an integral part of VA's strategic mission.

(3) Issue an annual policy statement to all VA employees prohibiting discrimination, affirming the value of diversity and EEO and ensuring the enforcement of these program requirements by management.

(4) Annually certify that VA is in full compliance with Federal law, EOs and regulations – including those issued by OPM, EEOC, and the WHI Offices – based on a robust evaluation of Administration submissions and program accomplishments by the Director of EEO, and ensure that final judgments from EEOC and other adjudicatory bodies are tracked and fully implemented.

b. **Director of EEO.** The Assistant Secretary for Human Resources and Administration is designated the Director of EEO for VA and is the principal advisor to the Secretary on EEO policies, programs, and plans. The Director of EEO will:

(1) Coordinate implementation of the Department's diversity and EEO program.

(2) Establish effective diversity and EEO programs.

(3) Keep employees well informed of diversity and EEO policies.

(4) Establish Department-wide plans as frameworks for coordinating diversity and EEO efforts in Administrations and Staff Offices, and require tracking of the accomplishment of those plans and appropriate corrective actions.

(5) Review the Administrations' annual Statements of Certification, self-assessments, and accomplishment of EEO, and report to the Secretary any inaccuracies or shortcomings.

(6) Ensure that VA has adequate workforce data systems and accurate data for effective analyses of recruitment, applicant flow, representation, personnel actions, and training.

(7) Ensure that an annual evaluation is conducted of EEO program effectiveness and actual progress toward the elimination of barriers to equal opportunity.

(8) Direct the outreach to national and local non-governmental affinity groups and professional groups for recruitment and for identifying group concerns that VA may need to address.

NOTE: The legislation establishing the Office of Resolution Management specifically authorized this function (and by extension, DM&EEO) to be directed by a Deputy Assistant Secretary, an exception to the legislative guidance that the EEO office should report directly to the head of the organization. The legislation did not extend this exception to the Administrations.

c. **Deputy Assistant Secretary (DAS) for Diversity Management and Equal Employment Opportunity (DM&EEO).** The DAS for DM&EEO is the principal advisor to the Director of EEO on diversity and EEO policies, programs, and plans. The DAS for DM&EEO will:

- (1) Develop Department-wide policy and guidance for diversity and EEO programs to accomplish the responsibilities enumerated above.
- (2) Provide technical guidance and oversight on all aspects of diversity and EEO management and recommend solutions to matters which may give rise to EEO discrimination complaints.
- (3) Develop affirmative programs in diversity management and EEO, and establish SEPs (e.g., Federal Women's Program, various WHI programs) for addressing special employment issues, reaching out to national and local non-governmental affinity groups, and meeting the needs of individual protected groups.
- (4) Develop Department-wide frameworks and high level goals for the various EEO plans, and develop metrics for monitoring progress toward accomplishing these plans.
- (5) Establish a diversity and EEO self-assessment program and related audits, including climate surveys.
- (6) Designate the organizational level to which diversity management and EEO requirements apply.
- (7) Using employee surveys and other data, identify issues and locations that may become the source of EEO complaints and work with management to alleviate these issues.
- (8) Evaluate the effectiveness of diversity program implementation and affirmative employment achievements at the Administration and Staff Office levels and, in coordination with the Administrations, at field facilities, based on the full range of available data. Identify any specific diversity and EEO program issues, notify the Director of EEO and the Administrations as these issues are identified, and periodically notify the Director on the status of resolving these issues.
- (9) Review Departmental HR policies, practices, and results to identify anomalies. HR practices include efforts in outreach, recruiting, hiring, training, transfers, reassignments, promotions, awards, benefits, separations, retention, HR policies, technical operations and management policy, practices, and results. Work closely with the DAS for Human Resources Management and Labor Relations (HRM&LR) to determine if identified anomalies are in fact causing a

disproportionate burden on specific groups, and identify alternatives that promote equal opportunity.

(10) Direct the development of automated, online workforce EEO and diversity data reports and establish the format for other related automated VA reports. Provide diversity and EEO reports and analyses to management as requested.

(11) Identify the competencies required of EEO managers, EEO staff, and SEP managers, any required annual EEO training requirements, and the core online training programs.

(12) Establish EEO training standards and identify or develop training programs for online distribution. Review Administrations' EEO training programs to ensure that VA standards are being met.

(13) Direct the development of all diversity and EEO reports required by OPM, EEOC, WHIs or pursuant to EOs. Program emphasis, however, is on meeting VA's internal diversity and EEO needs.

d. **DAS for Resolution Management (ORM).** The DAS for ORM will:

(1) Provide EEO discrimination complaint processing services to VA employees, applicants for employment, and former employees. Complaint processing services include counseling, investigation, and procedural final agency decisions.

(2) Ensure compliance on final decisions, appellant review, and matters relating to settlement, including breach of settlements, and fully investigate claims for compensatory damages.

(3) Maintain oversight responsibility for the Departments External Civil Rights Program which ensures compliance with Title VI and Title IX of the Civil Rights Act.

(4) Assist the Administrations in designing and implementing mediation programs at their facilities. This includes developing mediation policies and referral programs; developing marketing strategies; providing mediation skills and awareness training to supervisors and employees.

(5) Provide ADR training programs to ensure a cadre of trained mediators who are available to mediate disputes throughout VA using a variety of approaches to early intervention and dispute resolution.

(6) Establish an Organizational Climate Assessment Program (OCAP) to help VA managers measure employee satisfaction in the workplace.

(7) Identify and monitor complaint root cause data and provide facilities with information specific to their organizations to help identify deficiencies and develop interventions designed to address the underlying causes of workplace disputes.

(8) Compile informal and formal complaint trend data and provide facilities with comparison charts of EEO activity by fiscal year.

e. DAS for Human Resources Management (HRM). The DAS for HRM will:

(1) Coordinate with the DAS for DM&EEO to ensure that HR practices are consistent with the principles of EEO and do not have an adverse impact on individual protected groups.

(2) Ensure that adequate systems for collecting recruitment, applicant, employment, and training data are maintained to support the Department's diversity and EEO program needs, and that DM&EEO is provided appropriate data extracts to meet their program needs.

(3) Collaborate with the DAS for DM&EEO to eliminate barriers in recruitment, special hiring authorities, and internship programs.

f. Under Secretaries, Assistant Secretaries, Other Key Officials, and Field Facility Directors. These individuals will:

(1) Recruit, develop, and retain a competent, committed, and diverse workforce that provides high quality service to veterans and their families.

(2) Advocate for equality of opportunity for all employees and applicants for employment and ensure that program managers and HR staff take affirmative steps to manage the diversity of the workplace by not allowing harassment, by supporting the acceptance of diversity, and by treating all employees with dignity and respect.

(3) Provide for the evaluation of management officials' individual and organizational performance in diversity management and implementation of EEO plans. Make the contributions to the diversity and EEO program an important element in the assessment of managerial performance. When necessary, take appropriate action to ensure accomplishment of EEO plans.

(4) Maintain an EEO program organizational chart and procedures which explain how organizational components of VA establish their own local programs and submit annual reports in compliance with guidance from the Director of EEO and the regulatory agencies. Publicize and permanently post on official bulletin boards the name, telephone number, and location of the EEO staff.

- (5) Provide diversity and EEO staff full access to top management, including the opportunity to present diversity and EEO updates on a regular basis.
- (6) Involve diversity and EEO staff in developing and reviewing policies and practices affecting recruitment, promotions, training, awards, succession planning, and workforce climate.
- (7) Ensure sufficient resources are allocated to equal opportunity, diversity, and affirmative employment programs, including resources to conduct training, conduct barrier analysis, coordinate the accomplishment of the various EEO plans, complete required EEO reports accurately and timely, and participate in EEO audits of other facilities if called upon.
- (8) Ensure that EEO managers, Special Emphasis Program Managers (SEPMs), employees, managers, and supervisors at all levels are properly trained in their diversity and EEO responsibilities.
- (9) Ensure that their facilities conduct an annual self-assessment of EEO program effectiveness, and develop and implement plans to achieve a model EEO program.
- (10) Ensure that their facilities review their required workforce data tables to identify possible triggers and analyze anomalies to determine what is driving them and what alternatives are available to eliminate the uneven impact.
- (11) Ensure that their facilities include underrepresented groups in recruiting and conduct recruitment of veterans and persons with targeted disabilities.
- (12) Ensure that management officials are knowledgeable of this directive and of their responsibilities for active diversity and EEO management, including supporting the diversity aspects of the VA workforce planning system, and the timely accomplishment of the required VA EEO plans within their organization.
- (13) Ensure that HR staff, EEO staff, and managers work cooperatively and closely to accomplish the facility EEO Plans.
- (14) Meet with the facility EEO manager, HR manager, and top officials to ensure that annual facility self-assessments are completed accurately and that an effective plan is developed to reach model EEO program status. Monitor the progress in accomplishing that plan, taking corrective actions as needed.
- (15) Meet with the facility EEO manager to ensure that facility workforce data is fully analyzed to identify any triggers, and with the EEO and HR managers to ensure close cooperation in identifying the causes of these triggers and appropriate alternatives to practices that result in a disproportionate burden on specific groups.

(16) Ensure that managers and HR staff make reasonable accommodations for disabilities, pregnancy, family needs, and religious needs.

(17) Designate an ADR coordinator, establish ADR policies that facilitate the appropriate use of ADR techniques to help resolve workplace conflicts and implement appropriate ADR programs that make the option of mediation available to all VA employees; ensure that employees are aware of this program and that managers and HR staff take an active role in attempting to resolve disputes through ADR before they reach the formal stage and actively prevent the conditions that may cause them.

(18) Ensure that each organizational entity has designated an onsite EEO manager. The EEO manager may be full-time, part-time, or collateral duty, and may be shared with another nearby VA facility; however, the EEO manager must be well trained in EEO and diversity and able to devote sufficient time to perform all required functions.

(19) Manage the diversity of the work environment by improving communication and the acceptance of individual differences, and by removing institutional barriers that inhibit individuals from advancing.

(20) As required by EEOC's MD-715, the Under Secretary for each Administration shall submit an annual Statement of Certification attesting that all of the provisions of MD-715 have been implemented within their respective Administration. The Under Secretary will ensure that required data and reports are submitted timely and in the format specified, and that the plans are coordinated at the Administration level to focus attention on the most pressing issues.

g. Diversity and EEO Staff. Depending on facility size and the diversity and EEO workload, the staff may consist of a full time EEO program manager, a collateral duty EEO program manager, SEPMs, a Disability Program Manager, an ADR coordinator, and support staff. The program staff will:

(1) Be knowledgeable about where to refer employees regarding career progression, performance appraisal systems, merit promotion procedures, position management, upward mobility, harassment, resolution of issues causing workplace stress, and assistance in writing individual development plans and in identifying advancement opportunities.

(2) Perform the duties regarding EEO complaints specified in appropriate VA directives. Serve as the technical expert for processing complaints which are not covered by the Office of Resolution Management (ORM), such as, but not limited to, EO 13187, which prohibits discrimination based on sexual orientation, and EO 13160, which prohibits discrimination in federally conducted education and training programs.

(3) Be knowledgeable of VA's workforce data system, which may be accessed through VA's Intranet at <<http://vssc.med.va.gov/>>.

(4) Analyze the applicant flow, selections, terminations, promotions and related trends in upward mobility and the leadership pipeline to identify trends that appear to affect groups disproportionately; inform management of any anomalies; work with managers and HR staff to identify the specific causes of the disparities and to develop plans for any needed corrections in policy or practice.

(5) Analyze hiring and separation trends to project recruitment needs and coordinate with HR staff to include these projections into the workforce plan. Monitor the accomplishment of those plans and report the results to the facility director, recommending corrective measures if needed.

(6) Identify recruitment sources of potential candidates from groups whose representation is below that of the Relevant Civilian Labor Force (RCLF). Sources may include, but cannot be limited to, graduating students from specific schools, affinity groups, advertising outlets for specific communities, contacts with professional associations, and cooperation with distant offices with more proximity to the underrepresented groups.

(7) Educate managers, supervisors, and employees about EEO and diversity issues. Recommend ways to manage the diversity of the work environment by improving communication and the acceptance of individual differences, and by removing institutional and attitudinal barriers that inhibit individuals from advancing.

(8) Monitor local compliance with settlement agreements and orders issued by the Office of Employment Discrimination Complaints and Adjudication, EEOC, and EEO-related cases from the Merit Systems Protection Board, labor arbitrators, and the Federal Labor Relations Authority, as well as ADR agreements. Monitor the accomplishment of those plans and report the results to the facility director, recommending corrective measures if needed.

(9) Serve as the technical advisor to SEPMS.

(10) Prepare the required annual EEO reports (e.g., in response to OPM, EEOC, and WHI requirements) in the format prescribed by the Office of DM&EEO, ensuring that the issues identified above are included in the objectives for implementing VA diversity and EEO plans. Track the progress of the accomplishment of these plans, taking corrective action as needed.

h. **Special Emphasis Program Managers (SEPMs).** SEPMs are required at each field facility for the following mandated programs: Hispanic Employment Program (HEP), Federal Women's Program (FWP), and the Disability Program. Facilities are also encouraged to appoint SEPMs for Blacks/African Americans,

Asian Americans, American Indians/Alaska Natives, and Native Hawaiians and Other Pacific Islanders. SEPMS should have an addendum to their position description which allows them to spend 20 percent of their work time on SEP functions. SEPMS will:

(1) Coordinate with the local community support system for the designated group (non-governmental affinity organizations, veterans service organizations, institutions of higher education, and Federal, State, and local government organizations) to better serve our Nation's veterans by seeking qualified candidates for VA positions, identifying areas where VA can be more responsive to affinity group issues, and promoting VA name recognition by informing groups of the VA services available to them.

(2) Maintain contact with employees of the designated group to identify any barriers or other workplace, health, development, education, or veteran support issues experienced by the group. Advise the EEO program manager on the issues and barriers. Assist HR staff and the facility director in identifying solutions to the issues.

(3) Serve as the technical advisor for the designated group's issues to the EEO manager and management officials through the effective use of VA's workforce data systems.

(4) Identify training opportunities available through the VA Learning University (VALU), other VA sources, and affinity groups and provide this information to members of the designated group. Conduct training, open to all employees, supporting upward mobility, employment initiatives, and communication.

(5) Assist in the planning of recruitment efforts and, as needed, attend conferences and career/job fairs. Assist in developing sources for recruitment, placement and training in support of identified objectives.

(6) Assist the diversity and EEO manager/specialist in observances for designated groups, when conducted.

i. **Disability Program Manager.** The Disability Program Manager will have the same responsibilities as those identified for the SEPMS, as well as the following:

(1) Is knowledgeable of section 504 of the Rehabilitation Act of 1973.

(2) Coordinates with the VA Office of Facilities Management and the U.S. Access Board to ensure facilities are in compliance with Access Board regulations.

(3) Coordinates with the safety officer, supervisors and management officials with processing requests for reasonable accommodation; interprets related regulations and statutes; recommends sound HR management practices for people with disabilities; reviews existing policies and procedures; identifies barriers and recommends appropriate changes.

(4) Assists in developing the reasonable accommodation policy and providing advice to supervisors, employees, and others regarding acceptable solutions.

(5) Assists in maintaining a mechanism for tracking and reporting requests for reasonable accommodation and the disposition of those requests in accordance with VA regulations.

(6) Becomes familiar with resources for American Sign Language, language translation, and the Federal Relay Service.

(7) As necessary, conducts an internal review and analysis of the effects of all current and proposed policies, practices, procedures, conditions and potential barriers that directly or indirectly relate to the employment of individuals with disabilities. Recommends appropriate alternatives and monitors the progress of solutions.

(8) Establishes partnership agreements with disability affinity groups in an effort to increase the employment of persons with targeted disabilities at VA.

j. **Selective Placement Coordinator.** The Selective Placement Coordinator assists veterans and people with targeted disabilities to successfully work with the VA and OPM employment process. The Selective Placement Coordinator will:

(1) Have technical knowledge of the HR special hiring authorities and the process for applying for positions under those authorities.

(2) Be familiar with the VA vacancies in their geographic area.

(3) Work with veterans and people with targeted disabilities to identify appropriate vacancies and prepare responsive applications. Their work with applicants should be continuing rather than simply a referral to other resources.

(4) Work with selecting officials and managers to use the special hiring authorities, as appropriate, and advocate their use.

k. **Management Officials and Supervisors.** Management officials and supervisors will:

(1) Be trained in EEO and diversity programs and principles.

(2) Ensure that all HR procedures and practices within their operations are based on merit and free from discrimination. Conduct organizational self-evaluations to identify any barriers to equal opportunity and take actions to eliminate those barriers.

(3) Actively seek out VA employees who have potential for development and make them aware of opportunities in training, reassignment, career development, coaching, mentoring, and other means for improved employee utilization, without regard to race, ethnicity, color, gender, disability, age, or religion.

(4) Initiate and support action to eliminate barriers to recruitment, particularly if there is underrepresentation in an occupation with a vacancy.

(5) Support employees under their supervision who have collateral duty EEO responsibilities by documenting such duties in their official position description, adjusting work schedules and workloads as necessary, and by ensuring that they are free to carry out their respective responsibilities and attend necessary training without adversely affecting their performance appraisals.

l. **Employees.** Employees at all levels are responsible for providing support to the overall EEO program as may be appropriate in the performance of their official duties. They will treat all individuals with whom they deal in a fair and equitable manner without discrimination or harassment.

m. **Diversity and EEO Advisory Committees.** A VA diversity advisory council will be established at the Department level. Similar committees at the Administration level will also be established and will be encouraged at the facility level. This committee should represent all major service components and should include women, people with disabilities, members of minority groups, and union members. The facility director has final authority for approving this committee. The committee will advise and assist EEO officials in the development, implementation and evaluation of the diversity and EEO program.

4. REFERENCES

a. Statutes

(1) **Age Discrimination in Employment Act of 1967**, as amended, 29 U.S.C. § 621-634, protects employees and job applicants who are 40 years of age or older from discrimination based on age with respect to any term, condition, or privilege of employment—including but not limited to hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

(2) **Americans with Disabilities Act of 1990**, 42 U.S.C. § 12101 et seq., prohibits private and public employers, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application

procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.

(3) **Architectural Barriers Act**, 42 U.S.C. 4151 et seq., is enforced by the Architectural and Transportation Barriers Compliance Board and requires that buildings and facilities be accessible to people with disabilities if they were constructed or altered by or on behalf of the Federal Government or with certain Federal funds, or leased to the Government, after 1968.

(4) **The Civil Rights Act of 1964**, as amended, 42 U.S.C. § 2000e et seq., is the major Federal law prohibiting discrimination in employment. Title VII prohibits discrimination based on race, sex, color, religion or national origin, and covers all areas of the employee-employer relationship, from advertising open positions through termination or retirement.

(a) Sections 703 and 704 identify unlawful discriminatory employment practices.

(b) Section 703(k) sets forth the criteria for establishing a claim of unlawful adverse impact.

(c) Section 705 establishes the Equal Employment Opportunity Commission.

(d) Section 715 establishes the EEOC as the lead agency for "developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among ...various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies...."

(e) Section 717 requires that personnel actions be free from discrimination on the basis of race, sex, color, national origin, and religion and that agencies establish affirmative programs of equal employment opportunity.

(5) **Equal Pay Act of 1963**, 29 U.S.C. § 206(d), prohibits employers from discriminating on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions.

(6) **Notification and Federal Employee Antidiscrimination and Retaliation (No Fear) Act of 2002**, 5 U.S.C. 2301, holds agencies fiscally responsible if they lose or settle EEO discrimination and whistleblower protection cases filed in U.S. District Court, requires a comprehensive study to determine the best Executive branch practices relating to disciplinary actions for employees who violate discrimination or whistleblower protection laws, requires yearly reporting of an analysis of discrimination and whistleblower cases, and requires that quarterly updates of this analysis be posted on the agency Web site.

(7) **Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 791, 793, 794(a) in sections 503 and 504, prohibits discrimination against the disabled and requires institutions to take affirmative action to hire and promote qualified disabled persons. Institutions are required to recruit and consider disabled persons for vacant positions, and must make "reasonable accommodations" to the physical or mental limitations of otherwise qualified disabled employees, such as providing special equipment or modifying the job.

(a) Section 501 requires each covered agency to establish an Affirmative Action Program plan for the hiring, placement, and advancement of individuals with disabilities. Section 501(g) of the Act incorporates the legal standards of title I of the Americans with Disabilities Act (42 U.S.C. § 12111 et seq.) for complaints alleging "nonaffirmative action employment discrimination" and the provisions of sections 501 through 504, and 510, of the ADA (42 U.S.C. §§ 12201-12204 and 12210) "as such sections relate to employment."

(b) Section 508 requires agencies to provide Federal employees with disabilities access to information and data that is comparable to the access provided to Federal employees without disabilities.

(8) **Civil Rights Act of 1991**, 42 U.S.C. § 1981a, an amendment to the 1964 Act, establishes that employers were henceforth liable, in the form of compensatory damages for pain and suffering, for intentional acts of discrimination and unlawful harassment. Prior to this amendment, no compensatory damages were permitted under Title VII of the Civil Rights Act of 1964 and only equitable relief was permitted.

b. Regulations

(1) **Management Directive 715 (MD-715)**, issued by EEOC and effective October 1, 2003, provides policy guidance and standards for equal employment programs under section 717 of title VII and for affirmative action programs under section 501 of the Rehabilitation Act, and sets forth general reporting requirements. MD-715 supersedes EEOC MD-712, -713, -714 and related interpretative memoranda.

(2) **Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity**, published in the Federal Register on October 30, 1997, by the Office of Management and Budget, defines the categories of race and ethnicity for the collection of data for the 2000 Census and for Federal agencies.

(3) **5 Code of Federal Regulations (CFR) § 213.3102(t),(u)**, gives Federal agencies special appointing authority governing employment of individuals who are mentally retarded (t) and those with severe physical handicaps (u) under schedule A and excepted appointment.

(4) **5 CFR § 213.3102 (gg)** gives Federal agencies special appointing authority governing persons with psychiatric disabilities. Under this provision such employees may be converted to competitive status after completion of two years of satisfactory service in their excepted positions.

(5) **5 CFR § 213.3202(11)** OPM special appointing authority for employment of readers, interpreters, and personal assistants for employees with disabilities.

(6) **5 CFR § 315.709** authorizes employees with severe physical disabilities and mental retardation to convert to competitive status after completion of two years of satisfactory service in their excepted positions.

(7) **5 CFR, Part 720, Subpart B**, establishes the Federal Equal Opportunity Recruitment Program (FEORP) in the OPM as an important recruiting initiative designed to eliminate underrepresentation of minorities and women in the Federal service. It was established and assigned to OPM by the Civil Service Reform Act of 1978 (5 U.S.C. 7201).

(8) **5 CFR, Part 720, Subpart C**, and also 38 U.S.C. section 4214, establishes the Disabled Veteran Affirmative Action Program (DVAAP) in OPM, and requires that agencies submit DVAAP accomplishment reports to OPM describing their efforts to promote the maximum employment and job advancement opportunities for disabled veterans as well as certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement, including a signed statement that the agency has an up-to-date DVAAP plan.

(9) **29 CFR, Part 1604**, contains guidelines on discrimination based on gender.

(10) **29 CFR, Part 1606**, contains guidelines on discrimination based on national origin.

(11) **29 CFR, Part 1607**, contains the uniform guidelines of employee selection procedures. This guidance explains the policies, principles, and procedures for determining when a "selection procedure" has an unlawful impact on the hiring, promotion, or other employment opportunities of members of any race, sex, or ethnic group.

(12) **29 CFR, Part 1614**, establishes Federal sector EEO. It provides policies and regulations for the Government's obligation to promote equal employment opportunity and to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or disability.

(13) **29 CFR § 1614.601** requires each agency to establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability of its employees. 1614.601(b) states that data on race, national origin and sex should be collected by voluntary self identification. Subsection (e)

states that an agency shall not establish a quota for the employment of persons based on race, color, religion, sex, or national origin. Subsection (g) states that an agency shall report to the Commission on employment by race, national origin, sex, and disability in the form, and at such times, as the Commission may require.

(14) **29 CFR, Part 1690**, sets forth procedures for the prescribed coordination between the EEOC and other Federal agencies having responsibility for enforcement of statutes, regulations, Executive Orders, and policies which require equal employment opportunity without regard to race, color, national origin, sex, religion, age or disability.

c. **Executive Orders (EO)**. These are official documents, numbered consecutively, through which the President of the United States manages the operations of the Federal Government. The text of new EOs appears in the daily Federal Register. EOs are published in the sequential editions of title 3 of the Code of Federal Regulations, and also maintained by the National Archives.

(1) **EO 11478, Equal Employment Opportunity in the Federal Government**, as amended, requires each agency to establish and maintain an affirmative program of equal employment opportunity for all employees and applicants for employment. It is the responsibility of each agency head to provide sufficient resources to administer the program effectively, assure that recruitment activities reach all sources of job candidates, utilize the present skills of each employee and provide maximum opportunity to enhance their skills and advance in accordance with their abilities, provide training to managers and supervisors to assure their understanding and implementation of these policies, assure cooperation with schools and public and private groups to improve conditions which affect employability, and provide a system for periodically evaluating the effectiveness of carrying out this order.

(2) **EO 11625, National Program for Minority Business Enterprise**, requires coordination of the plans, programs, and operations of the Federal Government to facilitate the establishment, preservation, and strengthening of minority business enterprise.

(3) **EO 11701, Requirements of Laws Relating to Federal Contractor Job Listings**, requires that agencies, prime contractors and subcontractors on Federal contracts shall list job openings with the public Employment Service to give hiring preference to recently separated veterans.

(4) **EO 12067, Agency and EEOC Authority and Responsibility**, transferred the functions of the Equal Employment Opportunity Coordinating Council to the EEOC and delineated the EEOCs responsibility for developing uniform standards, guidelines, and policies for promoting and furthering equal employment opportunity in the government.

(5) **EO 12106, Transfer of Certain Equal Employment Enforcement Functions**, amends EO 11478 to include in its coverage non-discrimination based on age and disability. The order also transferred Federal equal employment opportunity enforcement authority to the EEOC and made the EEOC responsible for directing and furthering the implementation of equal employment opportunity policy.

(6) **EO 12250, Leadership and Coordination of Nondiscrimination Laws**, requires agencies to issue appropriate implementing directives for nondiscrimination.

(7) **EO 13078, Increasing Employment of Adults with Disabilities**, as amended, established the National Task Force on Employment of Adults with Disabilities (now called the Presidential Task Force). The purpose of the Task Force is to implement a national policy to effect gainful employment of adults with disabilities, including employment in the Federal Government.

(8) **EO 13087, Sexual Orientation**, provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation.

(9) **EO 13125, Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs** (addendum to E.O. 11478), requires agencies to prepare a plan and document its efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where Asian Americans and Pacific Islanders may be underserved.

(10) **EO 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information**, prohibits discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. Protected information includes information about an individual's genetic tests, about the genetic tests of an individual's family members, and about the occurrence of a disease or medical condition in family members of the individual.

(11) **EO 13152, Status as a Parent** (addendum to EO 11478), provides a uniform policy for the Federal Government to prohibit discrimination based on status as a parent.

(12) **EO 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs**, includes formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

(13) **EO 13162, Federal Career Intern Program**, is to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs. "Career intern" is a generic term, and agencies may use other titles as appropriate.

(14) **EO 13163, Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government**, addresses this issue at all levels and occupations in the Federal Government.

(15) **EO 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation**, promotes a model Federal workplace that provides reasonable accommodation for (a) individuals with disabilities in the application process for Federal employment; (b) Federal employees with disabilities to perform the essential functions of a position; and (c) Federal employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

(16) **EO 13171, Hispanic Employment in the Federal Government**, requires each agency to maintain a program for the recruitment and career development of Hispanics in Federal employment, removing any systematic barriers.

(17) **EO 13187, The President's Disability Employment Partnership Board**, which establishes and provides the functions of the President's Disability Employment Board.

(18) **EO 13230, Educational Excellence for Hispanics**, requires agencies to provide appropriate information requested by the White House initiative, including efforts for Hispanic Americans to increase their participation in Federal education programs and in educational institutions, and the measurable impact of these efforts.

(19) **EO 13256, Historically Black Colleges and Universities (HBCUs)**, requires agencies to submit an annual plan documenting their effort to increase the ability of HBCUs to participate in Federally-sponsored programs.

(20) **EO 13270, Tribal Colleges and Universities (TCUs)**, requires each agency to develop and implement a three-year plan, including measurable objectives to increase the capacity of tribal colleges to compete for grants and other Federal resources, increase high quality education consistent with the No Child Left Behind Act of 2001, preserve tribal languages and cultural traditions, and provide innovative approaches to link tribal colleges with other education programs.

(21) **EO 13339, Increasing Opportunity and Improving Quality of Life of Asian Americans and Pacific Islanders**, requires agencies to appoint a senior

official to manage the program, report directly to the agency head, and act as liaison to the initiative. Agencies shall provide any information requested by the working group. Agencies shall prepare a plan to improve the quality of life for this group by increasing participation in Federal programs, increasing public-sector involvement in improving their health and well being, and by fostering public health research for them.

(22) **EO 13166, Improving Access to Services for Persons with Limited English Proficiency**, requires agencies to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP)

5. DEFINITIONS

a. **Affinity Group:** A non-governmental organization dedicated to advancing Federal employment, training, individual development, fair treatment, and full participation of a specific demographic group. Such organizations include: Federally Employed Women, National Association of Hispanic Federal Executives, Blacks in Government, Federal Asian Pacific American Council, etc.

b. **Affirmative Employment:** Positive steps taken by an employer toward greater employment opportunities for underrepresented groups and the qualified disabled. The focus is on outreach and special programs to increase the recruitment pool for occupations in which the nationwide representation of underrepresented groups is currently below their representation in the relevant civilian labor force. The means for accomplishing this now focus on the removal of barriers, not only physical barriers, providing accommodations to individuals with disabilities, and making documents and meetings accessible to individuals with disabilities, but more generally to eliminating management practices or processes that may inhibit full participation by various groups.

c. **Applicant Flow Data:** Information reflecting characteristics of the pool of individuals applying for an employment opportunity.

d. **Barrier:** An organizational policy, principle, practice, or condition that limits or tends to limit employment opportunities for members of a particular gender, race, ethnicity, national origin, or disability status.

e. **Civilian Labor Force (CLF):** The sum of persons 16 years of age and over who are employed or are unemployed and seeking work in the United States, other than members of the armed forces.

f. **Disability:** For the purpose of statistics, the number of employees in the workforce who have indicated having a disability on an OPM Standard Form 256. For all other purposes, the definition contained in 29 C.F.R. § 1630.2 applies.

g. **Diversity and EEO Staff:** A generic term for the diversity and EEO program manager, liaison, or specialist, SEPMs, disability program manager, and needed support staff. The diversity and EEO staff may be at a local or centralized level and may be full-time, part-time, or collateral duty, consistent with the workload and availability of resources.

h. **Diversity Management:** The strategy that embraces demographic changes in a respectful, equitable organization that seeks to recruit and retain the best talent. Diversity should be inclusive in the pipeline of talent development. Diversity of thought and expression should be at all levels within an organization.

i. **Employees:** Members of the agency's permanent or temporary workforce, whether full- or part-time and whether in competitive or excepted service positions. For reporting to EEOC, the workforce generally does not include employees in intermittent status, non-pay status, medical residents, or Manila residents.

j. **Equal Employment Opportunity (EEO):** Refers to the legal requirements for assuring that management and personnel practices are conducted in a non-discriminatory manner and without bias against employees or job applicants. It also prohibits harassment and a hostile work environment. EEO is not a guarantee of employment for anyone. Under EEO law, only job-related factors can be used to determine whether an individual is qualified for a particular job.

k. **Goal:** An identifiable objective set by an agency to address or eliminate barriers to equal employment opportunity or to address the lingering effects of past discrimination. A goal is set for recruitment and management purposes and is not a quota. A goal does not authorize race- or gender-conscious hiring decisions or consideration of race or gender when making personnel decisions.

l. **Model EEO Program:** A program meeting all of the criteria identified in MD-715.

m. **National Origin:** Now called ethnicity in MD-715, refers to Hispanic or Latino heritage.

n. **Observances:** Executive or Congressionally mandated calendar events designated to recognize the historical contributions and current achievements and issues of a specific demographic group in our society, such as Black History Month. Supporting activities may include workshops, round-table discussions, employee development training, subject-matter guest speakers, and programs to enhance cross-cultural awareness.

o. **Personnel Practices:** A term used in this directive to refer to recruitment, hiring, training, transfers, reassignments, promotions, awards, benefits,

separations, retention, personnel policies, technical operations and management practices.

p. **Protected Class or Protected Group:** A group of persons covered by laws prohibiting discrimination. Only groups protected by the following laws may participate in the Federal EEO process: title VII of the Civil Rights Act of 1964 (prohibits discrimination based upon race, color, religion, sex, national origin, and retaliation), the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963 (covers gender based wage discrimination), and the Rehabilitation Act of 1973 (prohibits discrimination because of an individual's disability). The basis of an EEO complaint refers to the individual's protected status (i.e., race, color, religion, sex, national origin, age, disability, or retaliation). Each complaint must include at least one basis and identify one employment practice challenged.

q. **Race and Ethnicity:** Ethnicity refers to Hispanic or Latino origin. Single race categories include White, American Indian and Alaska Native, Asian American, Black or African American, and Native Hawaiian or Other Pacific Islander. Individuals may self-identify in more than one race category. In some computer-generated tables there is not room to write out the entire title, although it is implied.

r. **Reasonable Accommodation:** Any modification or adjustment to the work environment, or to the manner or circumstances under which work is customarily performed, that enables a qualified individual with a disability to perform the essential functions of a position or enjoy equal benefits and privileges of employment as are enjoyed by similarly situated individuals without a disability.

s. **Relevant Civilian Labor Force (RCLF):** A subset of the CLF in a particular occupation designated by the Census Bureau to correspond with OPM jobs, according to the EEOC crosswalk of Census and OPM occupations. The data is used to determine if an agency proportion of any demographic group by race, ethnicity, or gender is below the proportion in the corresponding occupation of the CLF.

t. **Section 501 Program:** The affirmative program plan that each agency is required to maintain under section 501 of the Rehabilitation Act to provide individuals with disabilities adequate hiring, placement, and advancement opportunities.

u. **Section 717 Program:** The affirmative program of equal employment opportunity that each agency is required to maintain for all employees and applicants for employment under section 717 of title VII of the Civil Rights Act of 1964.

v. **Self Assessment:** Part G of EEOC MD-715, which requires that this survey be completed yearly by the facility director, HR chief, diversity and EEO

staff, and program managers. This is to be the basis for the facility plan to reach “model EEO program” status.

w. **Special Emphasis Programs:** Programs focused on the issues of a specific demographic group in an endeavor to eliminate barriers and discriminatory practices, to identify and resolve underrepresentation and underutilization of that group, and to improve cross-cultural awareness. Three special emphasis programs are specifically required by regulation: Hispanic Employment Program (HEP); Federal Women’s Program (FWP); and People with Disabilities Program (PWDP). Programs for other demographic groups are appropriate also. Participation in these programs shall be open to all employees.

x. **Special Appointing Authority:** Merit system hiring authorities that allow some flexibility useful for overcoming underrepresentation, including noncompetitive and excepted service appointments.

y. **Targeted Disabilities:** Disabilities that the Federal Government, as a matter of policy, has identified for special emphasis in affirmative action programs. They are deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and distortion of limb or spine. There are no RCLF standards for targeted disabilities because the categories used in the Census does not track with these categories.

z. **Underrepresentation:** Representation of employees in a demographic group in a specific occupation which is below their representation in the RCLF.

aa. **White House Initiatives:** Diversity programs established by Executive orders.

bb. **Workforce Planning System:** A comprehensive and coherent approach to facilitate the strategic management of human resources, incorporating workforce, succession, and other human capital plans, diversity and leadership analysis, and alignment of this system with other key management processes including information systems, assessment and accountability measures.