

**EQUAL EMPLOYMENT OPPORTUNITY  
DISCRIMINATION COMPLAINTS PROCESS**

1. **REASON FOR ISSUE:** To revise the Department of Veterans Affairs (VA) Equal Employment Opportunity (EEO) Discrimination Complaints policy, formerly contained in VA Manual MP-7, Part I, Chapters 1 and 3.
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** 38 United States Code 516, as enacted in Title I, Public Law 105-114, 105<sup>th</sup> Congress, November 21, 1997, directs the Secretary to provide that the employment discrimination complaint resolution system be established and administered in a fair, objective manner that encourages timely and fair resolution. As a result in 1997 the Office of Resolution Management (ORM) was established. This directive sets forth new policies and responsibilities for the processing of EEO discrimination complaints; and delegates ORM employees to facilitate efficient and timely processing of EEO complaints.
3. **RESPONSIBLE OFFICE:** The Office of the Deputy Assistant Secretary for Resolution Management (08) is responsible for this Directive.
4. **RELATED HANDBOOKS:** VA Handbook 5977, EEO Discrimination Complaint Procedures.
5. **RESCISSIONS:** VA MP-7, Equal Employment Opportunity in the Department of Veterans Affairs, Part I, Internal Equal Employment Opportunity Program, Chapter 3, Discrimination Complaints, December 14, 1984, and Chapter 1, Equal Employment Opportunity General Provisions, and Internal Equal Employment Opportunity Program and Chapter 2, Affirmative Action Program are rescinded by VA Directive 5975.

**CERTIFIED BY:**

/S/  
Robert T. Howard  
Assistant Secretary for  
Information and Technology

**BY DIRECTION OF THE  
SECRETARY OF VETERANS  
AFFAIRS:**

/S/  
R. Allen Pittman  
Assistant Secretary for  
Human Resources and Administration

Distribution: Electronic



## DISCRIMINATION COMPLAINTS

**1. PURPOSE.** This directive establishes Department of Veterans Affairs (VA) policy for processing Equal Employment Opportunity (EEO) complaints of discrimination. It implements Federal law and regulations of the Equal Employment Opportunity Commission (EEOC) at part 1614, title 29, Code of Federal Regulations (CFR), that prohibit discrimination based on race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal for filing a charge of discrimination, participating in an investigation, or having opposed prohibited discrimination. Sexual and non-sexual harassment based on the above categories is also prohibited. This regulation will be revised to reflect changes made by the EEOC in its regulations and/or through the issuance of new or revised directives. This policy applies to all VA employees, applicants for employment, and former employees.

### 2. POLICY

a. VA employees, applicants for employment, and former employees shall not be discriminated against based on race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal for filing a charge of discrimination, participating in an investigation, or having opposed prohibited discrimination. Sexual and non-sexual harassment based on the above categories is also prohibited.

b. VA employees, applicants for employment, and former employees will be afforded the right to file a complaint of discrimination in accordance with the provisions set out in 29 CFR §1614.

c. The Office of Resolution Management will provide timely and quality EEO complaint processing services to all complainants. Complaints will be processed promptly with integrity, trust and impartiality.

d. Complainants, their representatives, and all witnesses shall be free from restraint, interference, coercion, discrimination, and reprisal at all stages in the presentation and processing of a discrimination complaint, including the pre-complaint counseling stage. Allegations of reprisal in discrimination complaints, like EEO complaints themselves, should be brought to the attention of a VA ORM EEO counselor. Alternately, individuals who believe they have been a victim of whistleblower EEO retaliation may report it to the VA's Office of the Inspector General or the United States Office of Special Counsel. Refer to VA Handbook, Appendix C for information regarding Other Grievance and Administrative Processes.

e. Complaints will be resolved at the earliest possible stage. Early resolution of complaints is encouraged in order to achieve better employee relations, cut administrative costs, and avoid prolonged litigation. ORM will actively seek to assist in resolving EEO disputes at the lowest level possible by explaining and offering mediation to the complainant and responding management official(s). If the parties agree to mediate, they will be referred to the ADR coordinator.

f. This Directive does not affect the rights that are granted to unions that have exclusive recognition in the VA. Further, this Directive is not intended to affect the rights of an employee from exercising the option to file:

(1) A discrimination complaint under this regulation.

(2) A grievance under a negotiated procedure.

(3) An appeal under the appellate provisions of the Merit System Protection Board (MSPB) regulations.

(4) A complaint with the Office of Special Counsel (OSC).

(5) A complaint with the Office of the Inspector General (OIG).

(6) Any other administrative procedure.

g. Sufficient resources, in terms of personnel and funds, will be made available at all levels in the VA to ensure the success of its VA's EEO Discrimination Complaints Process.

### 3. RESPONSIBILITIES

a. **Human Resources and Administration (HR&A).** The Assistant Secretary for (HR&A) is designated the Director of EEO for VA, and is the principal advisor to the Secretary on EEO policies, programs, and plans.

b. **Office of Resolution Management (ORM).** The complaint resolution process is administered through the Veterans Affairs Central Office (VACO) Deputy Assistant Secretary for Resolution Management (DAS/RM) Office and field offices geographically situated throughout the country. Each office is comprised of the following positions: Regional EEO Officer/Field Manager, Administrative Officer, Intake Specialists, EEO Investigators, EEO Counselors, Investigator/Intake (C2) Counselor/Investigator (C1), and Program Assistants. This group of subject-matter-experts provides seamless and comprehensive EEO complaint processing services. ORM's organizational chart may be found on ORM's website at <http://vaww.va.gov/orm>.

(1) **Function.** ORM manages the informal and formal EEO complaint process. All functions performed by ORM are guided by EEOC regulations. These discrimination complaint processing services include:

(a) Conducting informal counseling on allegations of discrimination.

(b) Serving as a mediator within VA and serving as a mediator in the shared neutral program for other Federal agencies.

(c) Acknowledging receipt of formal complaints of discrimination.

(d) Issuing procedural determinations.

(e) Managing the formal EEO investigation process to include conducting compensatory damage investigations.

(f) Releasing the investigative file and advisement of complainant's right to proceed in the administrative process. This may include forwarding the investigative files to EEOC for a hearing or to Office of Employment Discrimination Complaint Adjudication (OEDCA) for a Final Agency Decision (FAD).

(g) Monitoring compliance with OEDCA's or EEOC's decisions. The DAS/RM will notify the appropriate Department official in situations where facilities and/or organizational components resist or fail to comply with these decisions.

(h) Issuing decisions on allegations regarding breach of settlement agreements.

(i) Recommending to the Assistant Secretary for HR&A the need for a rapid response team on matters solely related to alleged egregious acts of discrimination in which a senior level manager is the responding management official.

(j) Providing Congress with quarterly reports on discrimination complaints alleged against senior managers within the VA.

(k) Providing Root Cause Analysis (RCA) quarterly reports to field facilities. The RCA identifies the possible root cause or the underlying reason(s) for workplace disputes that may not be discriminatory in nature. The RCA is provided to Under Secretaries and is also available on the World Wide Web at <http://vaww.va.gov/orm/>.

(l) Posting quarterly statistical data as required by Title III, Section 301, Public Law 107-174 of the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (The NO FEAR Act of 2002).

(2) **Organizational Autonomy and Functional Independence.** Pursuant to 38 USC 512 and 516 the Deputy Assistant Secretary for ORM has authority to implement and manage the EEOC regulatory requirements and procedures, in this Handbook and related 5977 Directive.

(3) **Mission.** The ORM's mission is to provide timely and quality EEO complaint processing services to VA employees, former employees and applicants for employment. ORM will foster a discrimination-free work environment through early resolution, education, training, and prevention methods.

(4) **Commitment.** ORM will encourage employees to use mediation to help resolve workplace conflicts as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. ORM employees will explain the mediation process and offer mediation to the complainant and responding management

official(s). If the parties agree to mediate, they will be referred to an ADR coordinator. ORM will cooperate with union partners. ORM supports VA's corporate goal of creating and maintaining a high-performing workforce and is fully committed to ensuring fairness, integrity, and trust throughout the counseling, investigation, and resolution of EEO complaints.

**(5) Customer Service/Due Professional Care Standards.** ORM is committed to providing quality customer service. ORM employees will conduct themselves, in a highly professional manner at all times. ORM employees are prohibited from socializing with individuals involved in a complaint and will avoid the appearance of compromising the integrity of the EEO complaint processing system. Any conduct of an ORM employee that is believed to be inappropriate can be reported, in writing, to the ORM Regional EEO Officer. The Regional EEO Officer will investigate the matter and take corrective and/or disciplinary action where appropriate. ORM employees will provide the best possible service to VA and its employees. ORM employees will comply with all applicable Ethics in Government regulations and ensure that their conduct is consistent with ORM's Due Professional Care Standards. ORM employees will apply competent skills, exercise sound judgment and exhibit professional demeanor in performing counseling, investigation and complaint intake duties. The exercise of due professional care requires independence, professional proficiency, planning, and quality outcome. ORM's Customer Service/Professionalism Standards require that ORM staff will:

(a) Provide accurate and timely information to employees, applicants and former employees, witnesses, as well as responding management officials as to their rights and responsibilities in regard to the EEO process.

(b) Listen to, understand and document concerns of employment discrimination on the part of employees, applicants and former employees.

(c) Guarantee anonymity during the EEO counseling stage, unless a waiver of anonymity is secured.

(d) Provide timely notices to involved parties throughout the EEO complaint process.

(e) Process EEO complaints in a fair, objective and timely manner.

(f) Provide procedural review of EEO complaints in accordance with provisions of 29 CFR §1614.

(g) Provide thorough and competent investigations of all EEO complaints.

(h) Treat all customers with dignity.

(i) Assist in efforts to resolve all complaints of employment discrimination at the lowest possible level.

(j) Keep employees, applicants and former employees advised of the status of their complaint by adequately communicating with them.

(6) **Conflicts of Interest.** In order for ORM to ensure fairness, integrity, and trust in the processing of EEO complaints, the following procedures on how to address ex-parte communication and conflicts of interest must be followed. These procedures are applicable both during and after the discrimination complaint process.

(a) In any case where an ORM employee believes that he/she has, or may have, a conflict of interest with respect to an assigned case(s), or otherwise believes that there are facts or circumstances that might create the appearance of a conflict, the employee will immediately report the matter to the Regional EEO Officer/Field Manager. The Regional EEO Officer will inquire into the matter and determine whether the case(s) in question should be reassigned to another employee.

(b) If the aggrieved person identifies a perceived conflict of interest concerning the processing of the complaint or any alleged conflict of interest, this matter must be referred to the Regional EEO Officer for appropriate disposition.

(c) If a conflict of interest is discovered after the issuance of a counselor's report, investigative report, or procedural determination, the Regional EEO Officer will investigate the matter, and take appropriate action, which may include rescission of the report or determination. When appropriate, disciplinary action will be taken against the individual who failed to disclose the conflict.

(d) If the complainant or agency representative imposes a conflict of interest with his or her official or collateral duties, the Regional EEO Officer will give the representative notice of the possible conflict and afford the individual an opportunity to respond. The Regional EEO Officer will investigate the matter, including the arguments of interested parties, and forward all documentation to the Chief Operating Officer (COO) who will issue a decision on the matter.

(e) If an ORM employee files a complaint of discrimination, OEDCA will conduct the procedural review to determine if the complaint is acceptable for investigation. If the complaint is accepted for investigation, the investigation will be conducted by a contract investigator.

#### **(7) ORM Principal Roles and Responsibilities**

(a) **Deputy Assistant Secretary for Resolution Management (DAS/RM).** The DAS/RM serves as an advisor to the Assistant Secretary for HR&A with respect to EEO complaint matters. The DAS/RM coordinates the development of VA's resolution management programs and initiatives in accordance with EEOC regulations. The DAS/RM has been delegated authority to supervise and control the operation of the administrative EEO discrimination complaint processing system within the V A. Pursuant to 38 USC 516 38 USC 512, and 38 CFR, Parts 2 and 15, the DAS/RM will exercise exclusive authority to establish and modify discrimination complaint processing procedures. The DAS/RM administers the VA's discrimination complaint process in a manner that ensures prompt, equitable, and efficient processing of discrimination complaints. The DAS/RM formulates and implements department-wide policies and procedures to ensure the integrity, effectiveness, and impartiality

of the complaint system. The DAS/RM is responsible for ensuring sufficient resources are allocated to achieve ORM's objectives. The DAS/RM works closely with VA management officials in resolving EEO complaint issues and raising awareness of management responsibility in this area. The DAS/RM will provide technical assistance and guidance to management and employees on all aspects of EEO complaint processing and recommend solutions to matters giving rise to discrimination complaints. The DAS/RM will utilize departmental data to conduct special studies, research, and analysis in an effort to enhance the EEO complaint program. The DAS/RM will provide executive leadership over ORM, its offices, and employees. The DAS/RM has oversight responsibilities for all ORM field operations, decisions on breaches of settlement agreement claims, compliance enforcement activities and investigations of compensatory damage claims. The DAS/RM has direct oversight over the operations of the Chief Operating Officer, Human Resource Manager, Budget Officer, Quality Assurance Manager, Enterprise Manager, External Affairs Program Manager and the Alternative Dispute Resolution Managers.

(b) **Chief Operating Officer (COO).** The COO serves as the principal advisor to DAS/RM in formulating and implementing department-wide policies and procedures to ensure the integrity, effectiveness, and impartiality of the complaint processing system. The COO has oversight over the operations of ORM field offices, ORM's Regional EEO Officer/Manager, Chief, Policy and Compliance, Customer Service Manager, Chief, Information Technology Support, and Learning Resource Officer. The COO will manage ORM's field operations. The COO issues decisions on allowing or disqualifying representatives. The COO will determine ORM program goals and objectives including identification of field program requirements and monitoring of accomplishments. The COO monitors the effectiveness of the complaint processing system, provides technical guidance and program management advice to the agency and ORM management. The COO will assist in the development and implementation of procedures, standards, and guidelines related to complaint processing and the development of training for EEO counselors, EEO investigators, and other complaint processing specialists. The COO provides direction to ORM strategy and positive problem solving approaches to accomplishing mission objectives and departmental management priorities.

(c) **Budget Officer.** The Budget Officer manages the budget operations for ORM in Headquarters and field operations areas. The primary responsibilities include budget formulation, execution, justification and presentation. The Budget Officer serves as ORM's Publication Control Officer (PCO). The Budget Officer will review, ensure adequate funding is available, approve, and order all printing and publications for ORM.

(d) **Human Resource (HR) Manager.** The HR Manager serves as the principal advisor to the DAS/RM and COO on all human resources related matters, including employee relations matters. The HR Manager is the Position Management Coordinator for ORM. This includes coordinating with the Health Revenue Center (HRC) and VA Central Office (VACO) in executing personnel actions and activities as it relates to position management, classification, and recruitment and placement activities. The HR Manager is responsible for ensuring policies and procedures are in place to ensure consistency in HR Programs.



(e) **Quality Assurance (QA) Manager.** The QA Manager is responsible for ORM's Quality Assurance Program. The QA Manager assesses and provides reports to the DAS/RM regarding how ORM field offices process complaints of discrimination. The QA Manager evaluates each field office to ensure complaints are processed in accordance with EEOC and ORM guidelines. The QA Manager assesses each field office's quality, timeliness, strengths and weaknesses and makes recommendations to the DAS/RM to ensure discrimination complaints are processed properly and consistently within ORM.

(f) **Enterprise Office/Organizational Climate Assessment Program EO/OCAP) Manager.** The EO/OCAP Manager is responsible for ORM's Enterprise and Organizational Climate Assessment Program (OCAP). The EO/OCAP Manager focuses on identifying ORM's best practices and establishes creative ways of sharing ORM's best practices with other Federal agencies. The EO/OCAP Manager coordinates with other Federal agencies to provide a full range of administrative services and ensures that Federal laws and regulatory documents are properly completed. The EO/OCAP Manager services may range from EEO training, counseling, investigation, mediation and other areas where ORM is proficient. The EO/OCAP Manager supervises OCAP and assists the VA in early resolution and complaint prevention. The EO/OCAP Manager measures employee satisfaction in the workplace by conducting surveys, focus groups, interviews, review of complaints, grievances, human resource and EEO data. The EO/OCAP Manager identifies significant systemic patterns, trends and problems in the work environment and provides the DAS/RM an Assessment Report, which is distributed and used by appropriate VA officials to improve VA's work environment.

(g) **External Affairs Program Manager.** The External Affairs Program Manager serves as the agency liaison to the Department of Justice for external complaints filed against the agency under Title VI of the Civil Rights Act of 1964 and other similar statutes, such as Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and various Presidential Executive Orders. The External Affairs Program Manager disseminates and coordinates implementation of EEO Presidential Executive Orders within VA. The External Affairs Program Manager also serves as ORM's Public Affairs Officer and Freedom of Information Act Officer. The External Affairs Program Manager advises the DAS, COO, and Regional EEO Officer/Field Manager on public affairs issues relating to the media and special interest group contacts. The External Affairs Program Manager provides guidance to ORM employees regarding The Freedom of Information Act under 5 U.S.C. §552, as amended by Public Law Number 104-231, 110 Statute 3048. The External Public Affairs Officers assists the DAS and COO with presentation and development of speeches, and coordinates the publication and dissemination of ORM's annual report, monthly newsletter, and quarterly complaint update.

(h) **Alternative Dispute Resolution (ADR) Manager.** The ADR Manager is responsible for implementing ORM's policies and directives regarding workplace ADR within VA. The ADR Manager interfaces with various VA organizations and coordinates efforts to maintain oversight and promote the use of ADR within the Department. The ADR Manager serves on the VA-ADR Steering Committee; a.k.a. Council established pursuant to VA Directive 5978, Alternative Dispute Resolution, and works collaboratively with other ADR groups to coordinate and optimize the use of ADR resources. The ADR Manager works with ORM's Learning

Resources Officer to develop ORM's ADR training, to coordinate training with ADR coordinators for the Administrations and Staff Offices, and to develop ADR marketing strategies. The ADR Manager works in conjunction with ORM's Learning Resources Officer to assist with the design and development of the Administration and Staff Offices ADR programs. The ADR Manager is responsible for tracking, reporting, and monitoring the current quantity and quality of VA's workplace ADR activities. The ADR Manager identifies key issues affecting the use of ADR, assesses mediation participation, cost savings, and provides the DAS/RM an Assessment Report, which is distributed to appropriate VA officials. The ADR Manager reports directly to the DAS/RM.

(i) **Regional EEO Officer/Field Manager.** The Regional EEO Officer/Field Manager is responsible for the full scope of EEO complaint processing and operations within the assigned geographic area and reports directly to the COO. The Regional EEO Officer formulates and directs organizational operations and serves as the principal ORM spokesperson in his/her service area. The Regional EEO Officer/Field Manager works closely with VA management officials in raising awareness of their responsibilities and facilitates achievement of the objectives of the discrimination complaint program. The Regional EEO Officer/Field Manager has authority to make final agency procedural decisions to accept or dismiss in whole or in part, EEO complaints filed by employees, former employees, and applicants for employment. The Regional EEO Officer/Field Manager is responsible for ensuring sufficient resources are allocated to achieve ORM's objectives within his/her jurisdiction and supervises ORM personnel assigned to the geographical area.

(j) **Equal Employment Opportunity Program Manager (EEOPM).** Serves as principal advisor to the DAS/RM on all ORM EEO related matters. This includes managing the processing of ORM's employees EEO complaints, and updating and monitoring ORM's Affirmative Action Plan and Program. The EEOPM continuously promotes ADR.

(k) **Administrative Officer (AO).** The AO serves as a non-supervisory assistant to the Regional EEO Officer/Field Manager. The AO also serves as a technical office advisor and quality control officer for complaint processing. The AO provides administrative advice, assistance, and direction to ensure the smooth processing of administrative issues. The AO may serve as Acting Field Manager in the absence of the Regional EEO Officer/Field Manager.

(l) **Intake Specialist.** The intake specialist has major oversight responsibilities for the processing of formal complaints of discrimination in a specified geographical location. The intake specialist is responsible for acknowledging receipt of formal complaints, preparing procedural decisions, releasing investigation files, issuing the advisement of rights letter to complainants, and responding to correspondence and EEOC hearing requests. The intake specialist has regular communication with management officials, EEO/Diversity Program Managers/Liaison/Specialist and employees, and is responsible for resolving issues relating to processing complaints of discrimination.

(m) **EEO Investigator.** The EEO investigator is responsible for investigating accepted claims of prohibited employment discrimination. In this role, the EEO investigator is authorized

to take statements from witnesses under oath without a pledge of confidence, gather pertinent documents and records, and conduct whatever inquiry is necessary. Upon completion of the investigation, the EEO investigator compiles an investigative file and prepares an investigative report, summarizing all relevant facts so a decision-maker can determine the relative likelihood that prohibited discrimination was or was not a motivating factor relevant to the issues under investigation.

(n) **EEO Counselor.** The EEO counselor is responsible for providing counseling services to employees, former employees and applicants for VA employment who believe they have been subjected to employment discrimination. The EEO counselor is responsible for providing information on the complaint process to the aggrieved individual, attempting informal resolution, collecting sufficient information to frame the claim(s) and basis(es), conducting an inquiry for the purpose of jurisdictional questions, and seeks resolution of disputes at the lowest possible level. The EEO Counselor gathers information and affords both the aggrieved person and VA an opportunity to achieve an informal and mutually acceptable resolution of the matter. The EEO counselor is also responsible for educating the aggrieved individuals on the ADR process, as well as advising aggrieved individuals of other forums where they can pursue their concerns, i.e., Special Counsel, grievance process, Merit System Protection Board, etc. The EEO counselor prepares an EEO Counselor's Report for the Regional EEO Officer at the conclusion of every counseling episode.

(o) **EEO Program Assistant.** The EEO program assistant provides administrative support to the Regional EEO Officer/Field Manager and field office staff. Duties include tracking and mailing correspondence, monitoring fund control points, and travel expenses, greeting visitors, answering the telephone and distributing mail. Program Assistants are also responsible for distributing and monitoring controlled correspondence to ensure appropriate and timely action.

(p) **Chief Policy and Compliance.** The Chief Policy and Compliance has responsibility for developing internal policies and procedures for processing complaints of discrimination, the compilation of data, and the preparation of reports (such as the root cause). The Chief prepares quarterly and annual reports required by Public Law No. 105-114, for the Secretary's signature to the Congressional Veterans Affairs Committees. The Chief monitors agency compliance with the OEDCA or the Equal Employment Opportunity Commission. The Chief reviews and prepares decisions for breach of settlement agreement claims. The Chief supervises compensatory damage investigations, resolves spin-off complaints, and conducts a preliminary inquiry into age discrimination claims when a notice of intent to sue has been served on the agency. The Chief evaluates OEDCA and EEOC remand decisions to discern patterns or trends and provide guidance to ORM Field Offices.

(q) **Directive Management Officer (DMO).** The DMO reports directly to the Chief, Policy and Compliance. The DMO develops, controls, reviews, publishes, distributes and maintains ORM directives, handbooks, policy, and Directives Management System (DMS). The DMO provides advice and assistance to personnel within ORM on developing, coordinating, reviewing, approving, and maintaining DMS documents. The DMO will establish and maintain a DMS functional number system that is compatible with the VA's DMS. The DMO will manage the review, comment and concurrence process and all DMS documents within ORM.

(r) **Customer Service Manager.** The Customer Service Program Manager evaluates workload statistics, customer service surveys and focus groups outcomes to define internal and external ORM's customer service goals and performance standards. This evaluation may be targeted towards a specific region, field office or situation. The Customer Service Program Manager is responsible for developing detailed plans, goals, and objectives for short and long-range implementation and administration of a complete, comprehensive, and consistent internal and external Customer Service Program. The Customer Service Program Manager provides the DAS/RM an Assessment Report, which is distributed to appropriate VA officials. The Customer Service Manager provides EEO policy guidance, advisory assistance, and support to VA managers in the development of strategic planning for applying customer service principles to core business areas.

(s) **Information and Technology (IT) Manager.** The IT Manager serves as technical advisor to the DAS on IT issues affecting ORM. The IT Manager plans, evaluates, develops, operates and maintains ORM's automated voice, video teleconferencing, and IT systems. The IT Manager provides technical oversight, formulates policy on IT systems and develops effective, timely, cost-efficient and innovative program plans and operating systems. The IT Manager evaluates the effectiveness of ORM's IT administrative policies, procedures, management practices, and recommends appropriate adjustments or alternative methods. The IT Manager keeps the DAS, COO, and ORM field offices advised of significant IT activities impacting ORM and coordinates its activities with Headquarters.

(t) **Learning Resources Officer.** The Learning Resources Officer serves as VA's and ORM's key official for all national EEO training programs that focus on the EEO complaint resolution process. The Learning Resources Officer is responsible for program administration, project planning, conducting needs and task analysis, designing course curricula, facilitating the development of content, product marketing, training delivery, to include determining composition of faculty, and program evaluation.

### **c. Office of Employment Discrimination Complaints Adjudication (OEDCA) Responsibilities**

(1) Issues final agency decisions (FAD) for individual and class action complaints that did not go to EEOC for hearing.

(2) Issues VA's final agency action, within forty (40) calendar days of receipt of an EEOC's hearing decision.

(3) Issues VA's FAD's on compensatory damages.

(4) Issues VA's FAD's on attorney fees, in consultation with Office of General Counsel, concerning the reasonableness of an attorney's hourly rate for the geographic location involved.

(5) Initiates VA's follow-up reviews for possible disciplinary action in sustained intentional discrimination and retaliation complaints.

(6) Remands complaints to ORM for supplemental investigation and, where administratively appropriate, remands complaints for procedural decisions.

(7) Issues the procedural decision on complaints of discrimination filed by ORM employees when bases for dismissal may exist in whole or in part.

(8) Issues the FAD, to include breach of settlement claims where the complainant is an ORM employee, and other cases where complaint processing efficiency will be best served by OEDCA.

**d. Office of General Counsel's (OGC) Responsibilities.** The OGC assists the Secretary and the Assistant Secretary for Human Resources and Administration in conducting follow-up reviews of cases where there has been a finding of discrimination. The OGC represents VA at EEOC hearings, in administrative appeals of final agency decisions or orders and requests for reconsideration of EEOC decisions. The OGC assists the United States Attorney in defending lawsuits filed against the VA and advises VA officials on EEO related matters and issues formal opinions relating to the VA's EEO program. The OGC consults with OEDCA concerning the reasonableness of an attorney's hourly rate for cases where there is a finding of discrimination and the payment of attorney fees has been granted.

**e. Office of Inspector General (OIG).** As specified in the Memorandum of Understanding dated August 22, 2006, between the Office of General Counsel and the Office of Inspector General, OIG may serve as the VA representative where an EEO complaint has been filed against the VA by an OIG employee. OIG assists the Secretary and the Assistant Secretary for Human Resources and Administration in conducting follow-up reviews of cases where there has been a finding of discrimination. OIG represents the VA at EEOC hearings, administrative appeals of final agency decisions or final actions, and requests for reconsideration of EEOC decisions. OIG assists the United States Attorney in defending lawsuits filed against the VA, advising VA officials on EEO related matters, and consulting with OEDCA concerning the reasonableness of an attorney's hourly rate for cases where there is a finding of discrimination and the payment of attorney fees has been granted.

**f. Under Secretaries, Assistant Secretaries, and Other Key Officials.** Under Secretaries, Assistant Secretaries, and Other Key Officials are responsible for eliminating discriminatory policies and practices, and maintaining a discrimination-free workplace. They will take an active role to resolve EEO workplace disputes. They will publicize and permanently post on official bulletin boards, the name, telephone number, and location of the regional ORM Field Office and the time limits for contacting an EEO counselor, Union, and MSPB with allegations of prohibited discrimination. They will ensure compliance with orders issued by the OEDCA, EEOC, and EEO related cases from the Merit Systems Protection Board, Labor Arbitrators, and the Federal Labor Relations Authority. They will appoint an EEO Program Manager/Liaison/Specialist. This could be designated at a local level, centralized level and may be a full-time, part-time or collateral duty basis, as appropriate, consistent with the needs, and the availability of resources. They will

designate an ADR Coordinator who will take an active role in attempting to resolve workplace disputes through ADR in accordance with VA Directive 5798, Alternative Dispute Resolution. Each Administration and staff office is required to implement its own ADR program; establish policies that facilitate the appropriate use of ADR, especially mediation, to help resolve workplace conflicts; ensure that the mediation option is available to all VA employees for all appropriate workplace conflicts; and designate ADR Coordinators to have primary responsibility for developing the ADR program within the organizational element. The ADR coordinators will be responsible for all ADR activities, to include where possible, providing assistance in resolving workplace disputes that allege discrimination through ADR. Each ADR Coordinator should take an active role in identifying disputes within their organizations and resolving those disputes at the lowest organization level practicable with the least cost in time and other resources.

**g. EEO/Diversity Program Manager/Liaison/Specialist.** Each organizational entity within VA will identify an EEO Program Manager/Liaison/Specialist. The designation can be at the local level, centralized level and on a full-time, part-time or collateral duty basis, consistent with the needs, and the availability of resources. The role of the EEO Program Manager/Liaison is vital in support of ORM's mission. It is important that each under secretary/facility director designate a staff person to serve in this capacity, who will provide assistance in efforts to resolve claims during the informal stage, and after the filing of formal complaints of discrimination. ORM employees work in conjunction with the EEO Program Manager/Liaison in obtaining facility assistance during EEO complaint processing and coordinating EEOC hearings. The EEO Program Manager/Liaison will monitor local compliance with settlement agreements and orders issued by the OEDCA, EEOC, and EEO related cases from the Merit Systems Protection Board, Labor Arbitrators, and the Federal Labor Relations Authority, as well as ADR agreements. The EEO Program Manager/Liaison will notify management if compliance falters. When compliance action is generated at the agency or appeal level as a result of compliance orders or breach of settlement determinations, there is a joint responsibility between the appropriate management level and ORM's Chief Policy and Compliance Officer for bringing the action to closure.

**h. Dispute Resolution Specialist (DRS).** The Assistant Secretary for Human Resources and Administration is designated VA's Dispute Resolution Specialist (DRS). The DRS has primary responsibility for oversight and to promote the appropriate use of ADR throughout VA, Chair the VA-ADR Steering Committee, coordinate resources made available through the VA-ADR Steering Committee and assist with their design, development, implementation and assessment of the VA-ADR Program. BCA monitors VA's ADR effort and reports annually to the Secretary and Deputy Secretary on VA's ADR effort and the activities of the VA-ADR Steering Committee.

**i. VA-ADR Steering Committee.** The VA-ADR Steering Committee shall determine appropriate plans of action to implement Federal and Department-level ADR initiatives and assist in executing those plans. These individuals consist of representatives of VA Administrations and staff offices that have applications for ADR, as well as Labor. Members of the VA-ADR Steering Committee and their designees are primarily responsible for advocating and facilitating ADR and mediation use throughout the Department, facilitating the exchange of ADR information and resources among various VA components; and coordinating

implementing and assessing Department-wide ADR initiatives. The VA-ADR Steering Committee performs all responsibilities as outline in VA Directive 5798, Alternative Dispute Resolution.

j. **Alternative Dispute Resolution (ADR) Coordinator.** Each organizational entity within VA will have an ADR Coordinator who is responsible for interfacing with ADR activities throughout the organization. The ADR Coordinator will ensure that the mediation option is available to all VA employees for all appropriate workplace conflicts. He or she will ensure that informed decisions can be made by all VA employees on ADR and the mediation option, and that all VA employees have access to appropriate information and instruction that will provide a basic understanding of mediator and the program available at their facility. He or she will encourage all VA employees to use conflict avoidance, early conflict resolution, mediation, and other ADR techniques to help resolve workplace conflicts. The ADR Coordinator performs all responsibilities as outlined in VA Directive 5798, Alternative Dispute Resolution.

k. **Management Officials and Supervisors.** Managers and supervisors will provide equal opportunity to all employees within their operations by promoting an environment free of discrimination. They will not reprise against, coerce, restrain or interfere with an employee's rights to use the EEO complaint process; and will cooperate with EEO officials and Administrative Judges by providing, upon request, information in connection with the processing of an administrative complaint.

l. **Employees.** Employees at all levels are responsible for providing support to the overall equal employment program as appropriate in the performance of their official duties. They will treat all individuals, with whom they deal with, in a fair and equitable manner without discrimination. They will cooperate with EEO officials and Administrative Judges by providing, upon request, information in connection with the administrative processing of an EEO complaint.

#### 4. REFERENCES

a. **Age Discrimination in Employment Act of 1967**, as amended, 29 USC 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.

b. **The Administrative Dispute Resolution Act of 1996**, (ADRA), 5 U.S.C. 571-584.

c. **Americans with Disabilities Act of 1990**, 42 USC 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.

d. **Architectural Barriers Act**, 42 USC 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.

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

f. **Department of Justice (DOJ), The Freedom of Information Act 5 USC 552**, as amended by Public Law No. 104-231, 110 Stat.3048.

g. **Equal Employment Opportunity Commission (EEOC), 29 CFR Part §1614, Federal Sector Equal Employment Opportunity**, November 9, 1999. <http://www.eeoc.gov>

h. **Equal Employment Opportunity Commission (EEOC), Equal Employment Opportunity Management Directive for 29 CFR Part §1614 (EEO-MD-110)**, November 9, 1999. <http://www.eeoc.gov>

i. **Equal Employment Opportunity Commission (EEOC), Equal Employment Opportunity Management Directive 715**, October 1, 2003. <http://www.eeoc.gov>

j. **Equal Employment Opportunity Commission (EEOC), Instructions to Federal Agencies for Equal Employment Opportunity Management Directive 715 (EEO-MD-715)**, March 31, 2004

k. **Equal Employment Opportunity Commission (EEOC), Equal Pay and Compensation Discrimination**, September 20, 2001. <http://www.eeoc.gov>

l. **Equal Employment Opportunity Commission (EEOC), Facts about Compensation Discrimination**, May 11, 2000. <http://www.eeoc.gov>

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

n. **Executive Order 12067, Agency and EEOC Authority and Responsibility**, transferred the functions of the Equal Employment Opportunity Coordinating Council to the Equal Employment Opportunity Commission and delineated the EEOC's responsibility for developing uniform standards, guidelines, and policies for promoting and furthering equal employment opportunity in the government.

o. **Executive Order 12106, Transfer of Certain Equal Employment Enforcement Functions**, amends Executive Order 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 Equal Employment Opportunity Commission and made the EEOC responsible for directing and furthering the implementation of equal employment opportunity policy.



p. **Executive Order 13087, Sexual Orientation**, provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation.

q. **Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information**, is self-descriptive.

r. **Executive Order 13152, Addendum to E. O 11478 Equal Employment Opportunity in Federal Government, Status as a Parent**, provides a uniform policy for the Federal Government to prohibit discrimination based on status as a parent.

s. **Executive Order 13160, Nondiscrimination on the Basis of Race, Gender (Sex), Color, National Origin, Disability, Religion, Age (40 years and over), Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs**.

t. **Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation**, is self-descriptive.

u. **General Accounting Office (GAO), What is GAO, Where is GAO.** <http://www.gao.gov/>

v. **Merit Systems Protection Board (MSPB), Questions and Answers about Appeals.** [www.mspb.gov](http://www.mspb.gov)

w. **Notification and Federal Employee Antidiscrimination and Retaliation (No Fear) Act of 2002**, 5 USC 2301 note, 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 website.

x. **Office of Personnel Management, Position Classification Appeals**, June 1998. <http://www.opm.gov/>

y. **Office of Special Counsel (OSC), Your Rights as a Federal Employee.** <http://www.osc.gov>

z. **Office of Special Counsel (OSC), How to File a Complaint Alleging a Violation of the Hatch Act.** <http://www.osc.gov>

aa. **Pregnancy Discrimination Act of 1978, Public Law Number 95-955**

bb. **Rehabilitation Act of 1973**, as amended, 29 USC 791, 793, 794(a) in Section 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 accommodation"

to the physical or mental limitations of otherwise qualified disabled employees, such as providing special equipment or modifying the job.

cc. **Whistleblowers Protection Act of 1989, Public Law 101-12, as amended by Public Law 103-424, October 29, 1994**

dd. **VA Directive 5975, Diversity Management and Equal Employment Opportunity**

ee. **VA Directive 5975.1 Processing Reasonable Accommodations by Employees and Applicants with Disabilities**

ff. **VA Handbook 5975.1, Processing Reasonable Accommodations by Employees and Applicants with Disabilities**

gg. **VA Directive 5978, Alternative Dispute Resolution**

hh. **VA FY 1998-2003 Strategic Plan, General Goal 10.**

ii. **VA, Office of Employment Discrimination Complaint Adjudication (OEDCA), A Guide to Investigating Employment Discrimination Complaints, August 1999.**

jj. **VA, Office of Resolution Management, A Plan for Transformation Guide, September 1997.**

kk. **VA, Office of Resolution Management, EEO Counselors Manual, September 1997.**

ll. **VA, Office of Resolution Management, Standard Operating Procedures, November 2001.**

mm. **VA MP-4, Part V, Chapter 1**

nn. **VA, Office of Financial Policy Bulletin 03GA1.04, June 9, 2003**

oo. **38 CFR, Part 2, Section 2.6 (h), (i), (j), and (k), Secretary's delegations of authority to certain officials, January 9, 2002.**

pp. **38 CFR, Parts 2 and 15, Delegations of Authority, Equal Employment Opportunity (EEO) Responsibilities, January 24, 2002.**

qq. **38 USC 512, Secretary's Delegations of Authority to Certain Officials**

rr. **38 USC 516, Authority and Duties of the Secretary, Equal Employment Responsibilities, as enacted in Title I, Public Law 105-114, 105<sup>th</sup> Congress, November 21, 1997.**