

“The Gateway to Fairness, Integrity and Trust”

Standard Operating
Procedures
for the
Office of Resolution Management

May 1999

OFFICE OF RESOLUTION MANAGEMENT (ORM)
STANDARD OPERATING PROCEDURES GUIDE

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1. INTRODUCTION

Purpose of this Document

The purpose of this document is to provide a ready reference for management and employees of the Department of Veterans Affairs (VA) on the Office of Resolution Management's (ORM) standard operating procedures. Although there may be slight variations in the operations of each ORM field office, resulting from our attempt to be responsive to local needs, the basic philosophy and operating concepts are the same for all offices. We encourage users of this document to contact their local ORM field office for more detailed information regarding individual operations. Refer to Appendix A for the contact person and telephone number of the ORM field office servicing your area.

Background

ORM provides Equal Employment Opportunity (EEO) discrimination complaint processing services that include counseling, mediation, investigation, and procedural review/final agency determinations. ORM also provides compliance oversight functions on Office of Employment Discrimination Complaints Adjudication (OEDCA) decisions, appellate EEOC decisions and matters relating to settlements. ORM makes the final agency decisions on breach of settlement claims. These responsibilities are accomplished through a nationwide network of twelve ORM field offices and eleven satellite offices employing nearly 252 full-time EEO professionals. Under the leadership of a Deputy Assistant Secretary for Resolution Management, ORM reports to the Assistant Secretary for Human Resources and Administration. An organizational chart is included as Appendix B.

The primary contact number for ORM is its national 1-888-RES-EEO1 (1-888-737-3361) toll-free line. To a lesser extent, contacts also may occur in person (where there is an ORM presence) and through written correspondence. The role of the EEO Program Manager at each facility is vital to ORM. It is important that each field facility has a staff person who will assist in the complaint process by providing assistance in an effort to resolve allegations during the informal stage, and to resolve formal complaints of discrimination. ORM employees will work in conjunction with the program manager/liaison to obtain facility assistance during EEO complaint processing and coordinate EEOC hearings with administrative judges. Additionally, when compliance action is generated at the agency or appeal level as a result of compliance orders or breach of settlements, there is a joint responsibility for bringing the action to closure between the appropriate management level and the Office of the Director of Operations for ORM.

Detail of ORM Responsibilities

- Manages the **informal** EEO complaint process, including the selection of full-time counselors, approving the use and nominations of a facility's collateral duty counselors, attempting resolution, and training of full-time and collateral duty counselors, when appropriate.
- Receives and acknowledges receipt of formal complaints of discrimination.
- Issues procedural determinations as to whether individual and class complaints should be accepted or dismissed pursuant to the Equal Employment Opportunity Commission's (EEOC's) governing regulations codified at 29 C.F.R. Part 1614. Dismissals of a complaint or portion of a complaint will constitute a Final Agency Decision appealable in accordance with EEOC's regulations.
- Manages the formal EEO investigation process, to include selecting and training EEO Investigators, paying the costs for such training, paying the costs of transcription services, receiving investigation reports from Investigators, transmitting the investigative file and the "Advisement of Rights letter" to the complainant and a copy of the investigative report to the facility director.
- Receives the complainant's response to the Section 108(f) Advisement of Rights letter.
- Forwards the complainant's request for a hearing to EEOC, or if the complainant does not request a hearing, forwards a complete copy of the investigative file to OEDCA for issuance of a Final Agency Decision on the substantive merits of the complaint.
- Monitors compliance with OEDCA's or EEOC's findings of discrimination or reprisal, and monitoring follow-up procedures to ensure that corrective action is taken.
- Issues final agency decisions on a complainant's claim that the Department has failed to comply with the remedial relief ordered in a final decision, or that the Department has breached a settlement agreement, pursuant to procedures contained in EEOC's regulations codified at 29 C.F.R. Part 1614.
- Makes recommendations to the Assistant Secretary for Human Resources and Administration on the need for a rapid response team on matters solely related to egregious acts of discrimination where a senior level manager is the responsible management official.

- Serves as a member of Rapid Response Teams.
- Determines root causes of perceived discrimination where there is a recommended finding of “no” discrimination or settlement of a complaint.
- Provides Congress with quarterly and annual reports on discrimination complaint processing within the Department.

OEDCA’s Responsibilities

- Receives requests from ORM for issuance of a Final Agency Decision without a hearing where the complainant has waived the right to a hearing, either affirmatively or by failing to respond to the Section 108(f) notice.
- Conducts an initial review of a complaint file to determine if it is properly before OEDCA for a Final Agency Decision and, if not, to remand it to ORM with instructions regarding any further processing required before a Final Agency Decision may be issued.
- Remands a complaint to ORM for supplemental investigation when it is determined that the initial investigation was inadequate or incomplete.
- Remands a complaint or issues in a complaint to ORM when a procedural dismissal rather than a merit decision is required, or OEDCA may make the procedural decision where it is determined that complaint processing efficiency is best served by doing so.
- Issues the Department’s final decisions on the substantive merits of employment discrimination complaints. Final Agency Decisions will be based on the evidence contained in the investigative file and if applicable, the hearing transcript and exhibits provided by an EEOC-appointed administrative judge.
- Awards equitable relief (e.g., back pay, reinstatement, promotion, restoration of benefits, etc.) in cases where the complainant is a prevailing party.
- Issues the Department’s final decision on a complainant’s entitlement to compensatory damages in cases where the complainant is a prevailing party.
- Issues the Department’s final decision on a complainant’s entitlement to attorney fees in cases where the complainant is a prevailing party. (OEDCA will consult with the Office of General Counsel (OGC) concerning the reasonableness of an attorney’s hourly rate for the geographic location involved.)

- Provides the Office of General Counsel with copies of decisions, complaint files, or other necessary information relating to OGC's responsibilities to represent the Department in administrative appeals to EEOC from a Final Agency Decision, litigation, and post-decision follow-up cases where disciplinary action is being considered.
- Issues final agency procedural acceptability decision and the final agency decision on Breach of Settlement claims where the complainant is an ORM employee.

OGC Responsibilities

- Consults with OEDCA concerning the reasonableness of an attorney's hourly rate in attorney fee cases.
- Assists the Secretary and the Assistant Secretary for Human Resources and Administration in conducting a follow-up review of cases where there has been a finding of discrimination or retaliation.
- Represents management at hearings conducted by EEOC administrative judges.
- Represents the Department in administrative appeals to EEOC of final agency decisions.
- Represents the Department in requests for reconsideration with EEOC by or on behalf of complainants.
- Represents the Department in filing requests for reconsideration with EEOC on behalf of the Department.
- Assists the United States Attorney in defending lawsuits filed against the Department.
- Advises VA Central Office and field line managers on EEO-related matters.
- Advises and issues formal opinions relating to the Department's EEO program.

Mission

*The Office of Resolution Management (ORM) will provide timely and high quality Equal Employment Opportunity (EEO) complaint processing service to Department of Veterans Affairs (VA) employees, former employees, and applicants for employment. ORM staff will actively seek to assist in resolving concerns of employment discrimination at the lowest possible level. We will cooperate with our union partners. We support VA's corporate goal of creating and maintaining a high-performing workforce and are fully committed to ensuring **fairness, integrity and trust** throughout the counseling, investigation, and resolution of any EEO complaint.*

Vision

ORM will be the best in government in the timely and confidential processing of all EEO complaints while remaining sensitive and compassionate to all we serve. We will seek to gain our customers' trust and confidence in the complaint resolution management process.

Customer Service Standards

ORM employees are committed to understanding the concept of customer service and VA's commitment to providing quality customer service and the importance of customer service as it relates to processing complaints of discrimination. ORM employees are responsible for being fully aware of who our customers are and the need to interact with them in a positive and professional manner. Relationships with customers are to contribute positively to the effective accomplishment of ORM's organizational goals. Appendix D describes in detail ORM's Customer Service Standards.

Due Professional Care

Due professional care means that each ORM employee 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.**

Functional Independence

- To ensure functional independence, all ORM employees will comply with the requirements and procedures set forth in 29 C.F.R. Part 1614 and this standard operating procedures guide.
- At all stages of the administrative complaints process, the Office of Resolution Management is responsible for its decisions and will not be required to further justify those decisions.
- ORM shall exercise exclusive authority, control, and discretion in determining the means and methods of EEO complaint investigations within the Department.

Conflicts of Interest

In order for ORM to ensure fairness, integrity, and trust in the processing of EEO complaints, the following procedures regarding ex parte communication and conflicts of interest will be applicable both during and subsequent to the discrimination complaint process:

- In any case where an ORM employee believes that he or 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 ORM Field Manager. The Field Manager will inquire into the matter and determine whether the case in question should be reassigned to another employee.
- If the aggrieved party identifies to the ORM Field Office that there is a perceived conflict of interest concerning the processing of the complaint or any alleged conflict of interest, this matter must be referred to the Director of Field Operations for appropriate disposition.
- If a conflict of interest is discovered after the issuance of a counselor's report, investigative report, or procedural determination, the ORM Field Manager will investigate the matter, and take appropriate action, which may include rescission of the report or determination and disciplinary action (when appropriate) taken against the individual who failed to disclose the conflict.
- When an ORM employee's involvement in processing an EEO complaint has been completed, that employee will not discuss or communicate his/her views or opinions regarding the procedural or substantive aspects or merits of the complaint with any person or employee from any other component of the Department

- ORM employees with EEO complaint responsibilities will not engage in any ex parte communications from any source that attempts to influence any substantive or procedural actions that the employee must take with respect to the processing of an EEO complaint under consideration.
- Any attempt at such communication noted above will be reported to the ORM Field Manager in writing, immediately. The report will identify the individual attempting the communication, the reason for the communication, and the case involved. If the contact was from a VA official, the report will also note the official's title, organization, and location.

Professional Conduct

- ORM employees must conduct themselves in a highly professional manner.
- ORM employees are prohibited from socializing with individuals involved in a complaint and must avoid the appearance of compromising the integrity of the case. Any conduct of an ORM employee that a Facility Director believes is inappropriate must be reported in writing to the ORM Field Manager. The Field Manager will investigate the matter and take appropriate corrective and/or disciplinary action.
- ORM employees will follow all applicable Ethics in Government regulations and ensure that their conduct is consistent with ORM's Due Professional Care standards.

Operating Structure and Principal Responsibilities and Duties of ORM Staff

Operating Structure

ORM Field Offices are organized into teams, structured to provide continuity and quality service that fulfill our Mission. Each team is composed of an Intake Specialist (Team Leader), an EEO Counselor(s) and an EEO Investigator(s). This team structure allows a group of subject-matter-experts to provide seamless and comprehensive EEO complaint processing services. In most cases, ORM field offices assign a team to specific facilities, based on workload considerations and geographic location, to which they provide a full continuum of EEO complaint processing. There are occasions, however, when work assignments, dictated by workload and other considerations, cross team lines. Teams and/or team members may also be rotated periodically at the discretion of the local Field Manager. Upon request, the Field Manager will provide specific information on the ORM field office servicing a particular field facility. Field Managers' names, telephone numbers, and pagers are also contained in Appendix A. Appendix C demonstrates the Field organization chart.

Principal Responsibilities & Duties of ORM Staff

Deputy Assistant Secretary/ORM: The Deputy Assistant Secretary for Resolution Management administers the Department's discrimination complaint process in a manner that ensures prompt, equitable, and efficient processing of discrimination complaints. The Deputy Assistant Secretary works closely with VA management officials in resolving EEO complaint issues and coordinates the development of VA's Resolution Management programs and initiatives with the Equal Employment Opportunity Commission (EEOC) and other external agencies.

Director of Field Operations: The Director of Operations assists the Deputy Assistant Secretary for Resolution Management in formulating and implementing department-wide policies and procedures to ensure the integrity, effectiveness and impartiality of the complaint system. The Director will be responsible for review of all breach of settlement agreement claims and will prepare recommended final agency decisions for the signature of the DAS. The Director is also responsible for all compliance enforcement activities resulting from decisions of OEDCA or the EEOC and for the supervision of the investigations of compensatory damage claims. The Director has oversight of all ORM field operations.

Field Manager/Regional EEO Officer: The Field Manager is the Regional EEO Officer and he/she is responsible for the full scope of EEO complaint processing and operations within the assigned geographic area. The Field Manager formulates and directs organizational requirements, goals and objectives and serves as the principal ORM spokesperson in his/her service area. The Field Manager has delegated authority to make final agency decisions on the procedural acceptability of EEO complaints filed against the Department.

Intake Specialist/Team Leader: The staff in these positions are responsible for receiving complaints of discrimination, collecting and assembling complaint files, and supplementing the files with additional evidence and information. Intake Specialists are responsible for preparing acceptability determinations (formerly performed by the Office of General Counsel), that either accept the complaint allegations for investigation or dismiss for failure to meet procedural requirements established by the EEOC. Intake Specialists are also designated as Team Leaders within ORM and as such guide and supervise the day-to-day work of EEO Counselors and Investigators. Intake Specialists facilitate regular communication with field facility program managers/liaisons and are responsible for resolving issues relating to processing complaints of discrimination and/or visits by ORM team members.

EEO Counselor: The primary responsibility of EEO Counselors is to counsel employees, former employees and applicants who believe they have been discriminated against by field facilities, inform the aggrieved person about the EEO process, acquire and research information as it relates to the issues involved, facilitate resolution of the complaint at the lowest possible level, and produce a written report for the purpose of processing a formal complaint of discrimination. The EEO Counselor works with both management and the aggrieved person to provide a channel through which informal resolution of matters giving rise to allegations of discrimination can take place.

EEO Investigator: EEO Investigators are responsible for investigating accepted complaints of prohibited discrimination. The 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 Investigator must prepare a report, which summarizes and includes all relevant and material facts.

Informal Complaint Process

Initial Contact

EEO Counselors staff the 1-888-RES-EEO1 (1-888-737-3361) toll-free line during normal business hours, 8:00 a.m. to 4:30 p.m. The counseling is currently centralized to ORM and the aggrieved party is not afforded the election of a “*counselor of choice*”. The ORM counselors are EEO specialists who are available to take basic preliminary information. The preliminary information gathered during first contact includes: (a) name of caller, (b) VA facility where the person is employed, (c) position and grade, (d) telephone at which person can be reached, (e) home telephone number and address of caller, (f) social security number (the SSN is required if the individual wishes to use the telephonic system in order to find out the status of his/her complaint), and (g) any other pertinent information the aggrieved wishes to provide. Depending on workload the preliminary information may be assigned to another ORM counselor for further processing. EEO counseling occurs on the spot or within two (2) business days of the initial contact. In an emergent situation or if an EEO Counselor is not available, an Intake Specialist will speak with the aggrieved individual and take the basic preliminary information. For walk-ins, the telephone protocol is duplicated as in-person counseling. Contact through the toll-free line constitutes the date of initial contact pursuant to section 1614.105(a)(1).

For allegations of sexual harassment made either through the toll-free line, or by a walk-in, or at any other juncture in the process, the EEO Counselor immediately attempts to gather as much information as possible about the allegation. Moreover, the EEO Counselor informs the aggrieved party that ORM is required to inform senior management officials of any allegation of sexual harassment. However, in instances of sexual harassment, as with any other cases where the aggrieved exercises his/her right to anonymity, the right to remain anonymous outweighs all other considerations.

The EEO Counseling Process

Except for logistical changes necessitated by centralizing the Department's EEO complaint processing under ORM, **the actual counseling process remains the same as it was under the jurisdiction of the individual VA field offices.** The EEOC regulations (29 CFR 1614) still govern the entire EEO complaint process and guide the actions of ORM staff. As such, the informal counseling process is composed of five sequential phases: (1) *Review of EEO Procedures with Aggrieved Party*, (2) *Review of the Allegations with the Aggrieved Party*, (3) *Follow-up Fact-finding with all Parties Involved*, (4) *Resolution* and (5) *the Final Interview*.

A. Review of EEO Counseling Procedures

The EEO Counselor reviews the counseling procedures with the aggrieved party and obtains or provides specific complaint information pertaining to the following.

- Initial Notice ("Notice of Rights and Responsibilities") to the aggrieved party. (For telephonic initial interviews, the EEO Counselor verbally goes over the information in the "Notice of Rights and Responsibilities" with the aggrieved party and informs the person that the "Notice of Rights and Responsibilities" will be sent by fax or certified and regular mail.)
- Determines if the aggrieved party wishes to waive anonymity and, if so, obtains a written waiver of anonymity by fax or mail.
- Determines if the aggrieved person wishes to use the local ADR/mediation program (where available).
- Explains to the aggrieved party his or her right to representation. If a representative is appointed, the aggrieved must designate that person in writing.

B. Review of Allegations

At this stage, the EEO Counselor obtains information regarding the allegations from the aggrieved party. Specifically, the EEO Counselor collects information on:

- The issues and the date of occurrence of each issue.
- The basis of each issue.
- Requests an explanation for obvious procedural matters as it relates to issues expressed with counselors (i.e., contacting an EEO Counselor more than 45 days after date of occurrence; filing a union grievance or an MSPB appeal, etc.)
- Determines who the aggrieved party believes is responsible for the alleged discrimination.
- Determines who the aggrieved party believes may have information about the alleged discrimination.
- Determines from the aggrieved party what would resolve the concerns of employment discrimination (i.e., the corrective action).

After collecting this information, the EEO Counselor, in consultation with the Intake Specialist, determines whether the case warrants an on-site interview. Factors considered in making this determination are the concerns of the aggrieved party, number of issues, complexity of issues, whether extensive review of documentation is required, whether there is an allegation of sexual harassment, whether the complaint is against a member of the senior management team, and workload considerations.

If an on-site visit is appropriate, the EEO Counselor may contact the EEO program manager/liaison at the facility to arrange the meeting. The counselor requests a private office with a telephone to conduct the EEO counseling. Additionally, for non-anonymous cases, the Regional EEO Officer transmits to the Facility Director the "Notice of Counseling" letter to inform him/her that an employee at the facility has contacted ORM for counseling. This letter contains specific information concerning the issues raised, the basis of the allegation, the service in which the complaint arose, the resolution sought, and the person named as the Responsible Management Official (RMO).

C. Follow-up Fact Finding – The EEO Counselor

In the fact-finding phase, the EEO Counselor may contact the EEO program manager/liaison to arrange to:

- Speak to witnesses to the alleged discrimination.
- Speak with any person the aggrieved party believes may have information about the alleged discrimination. If the person has relevant information concerning the issues raised, he/she should be interviewed. However, if some persons noted by the aggrieved would simply provide unduly, repetitious information, they need not be interviewed. But their names should be noted in the counselor's report.
- Review and obtain copies of all pertinent documentation or statistical data.
- Inform the RMO of allegations; allow him/her to (1) Respond to each assertion; (2) Suggest witnesses and documents; and (3) Possible resolution of the allegations.

D. Resolution

During the resolution phase, the EEO Counselor works with the aggrieved party and management to attempt to resolve the matter at the lowest possible level. All resolutions must be in the form of a written settlement agreement and signed by the aggrieved and facility director.

E. Final Interview

The EEO Counselor must conduct a Final Interview during which the counselor will communicate to the aggrieved all of the information developed by the counselor relating to the issues raised by the aggrieved. The counselor will give to the aggrieved party a "Notice of Right to File A Discrimination Complaint" along with a VAF 4939 by the 30th day from initial contact with ORM. The counselor will obtain a dated copy of the notice signed by the aggrieved and include it in the file.

Formal Complaints Process

Upon receipt of a formal EEO complaint, the Field Manager transmits a “Notice of Receipt of Discrimination Complaint” to the complainant and a “Notice of Receipt of Discrimination Complaint” to the Facility Director. This acknowledges receipt of the complaint and advises both parties of processing procedures. The acknowledgment letter to the Facility Director will have a copy of the formal complaint attached. The Notice of Receipt to the complainant will include as an enclosure, a copy of the counselor’s report.

Acceptability Determination

The designated Intake Specialist/Team Leader will review the formal complaint and make a recommended acceptability determination to the ORM Field Manager. If additional information is needed in order to make this determination, an attempt will be made to obtain the additional information from the complainant and/or the field facility. Upon receipt of the requested information, or after 15 calendar days from the date the complainant and/or facility received the request for additional information and have failed to provide same, the Intake Specialist proceeds with the recommended acceptability determination by either accepting the complaint in whole or in part or dismissing in whole or in part, pursuant to 29 CFR 1614.107, “Dismissal of Complaints.”

Upon completion of the acceptability determination where a complaint will be accepted, in whole or in part, the Field Manager transmits “Letter of the Acceptance of Discrimination Complaint” to the complainant and a “Letter of the Acceptance of a Discrimination Complaint – Facility” to the Facility Director. The acceptance letter to the Facility Director will have a copy of the acceptance letter to the complainant attached.

If the acceptability determination results in a Final Agency Decision dismissing issue(s) in the complaint or dismissing the entire complaint, the ORM Field Manager or designee will review and sign a “Letter of Final Agency Decision” (with attached Appeal Rights) to the complainant.

Assignment of Investigator/Investigation

An accepted EEO complaint is assigned to an Investigator for investigation. As an initial step, the Investigator reviews the administrative complaint file to determine appropriate theories of discrimination pertinent to the case. The ORM Field Manager sends the “Letter of Assignment of Investigator-Complainant” and “Letter of Assignment of Investigator – Facility” to the complainant and Facility Director respectively.

The Investigator contacts the EEO Program Manager/Liaison person at the facility to:

- Determine dates to conduct actual investigation.

- Discuss witness scheduling and arrange for the EEO manager/liaison to schedule witnesses as per Investigator's schedule as nearly as possible.
- Identify support needed.
- Identify court reporting or transcription services that must be obtained and follow-up on same. *(NOTE: Facility Program Manager may assist ORM in determining court reporting and/or transcription services available. However, the EEO Investigator will contract for the appropriate service through the ORM field office prior to conducting the actual investigation.)*
- Request a private office with telephone and of a size appropriate to the needs of the particular investigation.
- Request a Personal Computer, printer and access to a copier.
- Request relevant documents and a list of all witnesses known to the facility.

EEO Investigators may conduct an investigation by one of four means: On-Site Investigations (most frequently used), Desk Investigations, Video-Conferencing Investigations and Fact-Finding Investigations. The ORM field office will determine the method of investigation to be employed based on the complexity of the case, and the number of witnesses.

Review and Distribution of Investigative File

Upon completion of the investigation, the Investigator retains custody of all copies of the investigative file and returns them to the servicing ORM field office. The Intake Specialist, or other subject matter expert, to whom the complaint is assigned performs a technical review of the investigative file before the file is released to the complainant.

Advisement of Rights

When the technical review is completed, the Field Manager forwards a sanitized investigative file to the complainant and/or his/her representative accompanied by the "Letter of Advisement of Rights." This letter instructs complainant of his/her right to request an EEOC hearing or a Final Agency Decision by the VA's Office Employment Discrimination Complaint Adjudication (OEDCA). The Facility Director is forwarded a sanitized Investigative Report, with a "Letter Advising Facility of Completion of Investigation." An Office of General Counsel legal opinion (Appendix E) establishes what complaint information is releasable to the Facility Director and the investigative report is transmitted to the Facility Director.

Request for EEOC Hearing

Upon receipt of the complainant's request for a hearing the Intake Specialist prepares a "Referral of Discrimination Complaint for EEOC Hearing". This letter transfers the investigative file to the Equal Employment Opportunity Commission. At the same time, the Intake Specialist generates a "Letter of Appointment of Agency Representative" to the Facility Director, with a copy of the complainant's request for hearing. The Facility Director will determine what individual will be appointed to serve as Agency Representative assigned to the case. The use of Regional Counsel as Agency Representative may vary, per ORM Field Area, depending on availability and complexity of the case. Once the Facility Director identifies the Agency Representative, the Intake Specialist forwards the complete Investigative File to the Agency Representative. The scheduling of EEOC hearing activity rests with EEOC and the respondent facility. **(Note: A**

complainant may request a hearing at any time after 180 days have elapsed from the filing of the complaint).

Request for Final Agency Decision

When a complainant requests a Final Agency Decision, either affirmatively within 30 calendar days of receipt of “Advisement of Rights Letter,” by failure to request a hearing in a timely fashion, or by failure to respond at all, the Field Manager sends a “Letter of Referral of the Complaint for Final Agency Decision” and transmits the investigative file to OEDCA for further processing. Since OEDCA, by regulation, must decide a case within 60 days of receiving notice of complainant’s request for an immediate decision, or on the 31st day, when a complainant fails to respond, investigative files must be ***immediately*** forwarded to OEDCA whenever these events occur.

Settlement Agreements

ORM staff is committed to assisting aggrieved parties, complainants and management in resolving allegations of employment discrimination and EEO complaints at the lowest level possible. Allegations of employment discrimination and EEO complaints will be settled with formal settlement agreements that clearly spell out the terms and conditions of the settlement agreed upon by the parties.

If management and complainant agree to settlement of a matter, ORM Counselors, Investigators, and/or Intake Specialists will provide, upon request, a sample format for written settlement agreement. This may occur at any stage during the informal EEO counseling or the formal EEO complaint processing. The Facility Director or his/her designee must sign settlement agreements. As it relates to Canteen Service, the National Cemeteries, the National Canteen Director or the National Cemetery Area Director must sign settlement agreements, respectively.

In certain instances, the ORM Field Manager or designee may advise the VA facility that settlement of an EEO matter is highly advisable. Such a recommendation would be made in cases where it appears that a decision on the merits of the case would result in a finding of discrimination and in cases where adverse publicity might result against the Department.

Alternative Dispute Resolution (ADR)

An aggrieved party may, at the time of the initial interview with the EEO Counselor (or at any time during the first 30 days of EEO counseling prior to issuance of the “Notice of Right to File an EEO Complaint”), elect to enter the ADR process provided by VA through the local facility or through any ADR program developed by ORM. If the aggrieved party and management agree to utilize the ADR process, the EEO counseling process is extended, up to 90 days in total, as specified in 29 CFR 1614.105 (f). On or before the 90th day of the EEO counseling period, if the matter has

not been resolved, the EEO Counselor shall provide the aggrieved individual with a "Notice or Right to File a EEO Complaint."

Other ORM Initiatives

Collateral EEO Counselors

Public Law 105-114, which establishes the Office of Resolution Management, allows for the appointment of up to 40 FTEE as collateral duty counselors at VA facilities that are more than 70 miles away from the nearest ORM Office. ORM has identified over 100 facilities that met this criterion. However, present workload information is insufficient to determine whether collateral duty counselors are necessary to delivering timely EEO complaint processing services to these distant facilities. The decision to appoint collateral counselors will be held in abeyance until March 2000 at which point sufficient workload data will exist to help guide this decision.

Rapid Response Teams

Rapid Response Teams are chartered in response to serious allegations of misconduct made against Senior Managers. Senior managers are defined as members of the Senior Executive Service, Associate and Assistant Directors and Chiefs of staff at VHA facilities, other heads of VA facilities, and other positions centralized to the Secretary. Determining whether a given allegation is sufficiently egregious to charter a Rapid Response Team depends on whether the allegation (a) would warrant suspension or more severe action if substantiated; (b) cause concern about potential to patients, employees, visitors or government property; (c) involve sexual harassment; or (d) attract significant Congressional and/or media interest.

Rapid Response Teams are initiated by the Head of the affected organization, in consultation with the Assistant Secretary for Human Resources and Administration, and the Office of General Counsel (OGC). These teams are comprised of a representative from the OGC, normally a representative from the Office of Human Resources Management, or a subject-matter-expert, and a representative from the affected organization. The organization representative will typically not be from the office, network, or region where the senior manager is assigned unless approved. If the allegation involves discrimination, a representative from the Office of Resolution Management will also be assigned to the team.

Concluding Comments

Although the establishment of ORM and a new complaint process removes the designation as EEO Officer from the Facility Directors and certain headquarters' executives, there remains a fundamental set of expectations and responsibilities. VA executives are accountable for fostering a workplace free of discrimination, honoring diversity, minimizing systemic problems, empowering employees, promoting open communication, and demanding high standards of supervisory, management, and employee behavior.

ORM simply processes complaints of discrimination; we exist on the back-end. Our challenge to each employee, employee representative, supervisor, manager and executive is to eliminate the need for ORM to exist by eradicating discrimination at any and all levels within the organization.

Collectively, we must ensure that we do not direct common workplace disputes, grievances, or other issues that do not involve discrimination into the EEO process. Discrimination complaint processing is not a "make-it-fit" system. EEO is for those individuals who believe that they are the victims of unlawful discrimination. Using the discrimination complaint process as an alternative to other processes erodes and undermines the integrity of the EEO system. Not every issue involves discrimination. ORM asks each and every management and labor official to use partnership, alternative dispute resolution, or negotiated grievance procedures to resolve such issues. In doing so, we contribute to ensuring that VA creates and maintains a high performing workforce and we maximize the wise use of taxpayer dollars.

In the end, we will succeed or fail based on the willingness of each VA employee and supervisor to practice fairness, respect, and tolerance.

/s/
VENTRIS C. GIBSON
Deputy Assistant Secretary
for Resolution Management

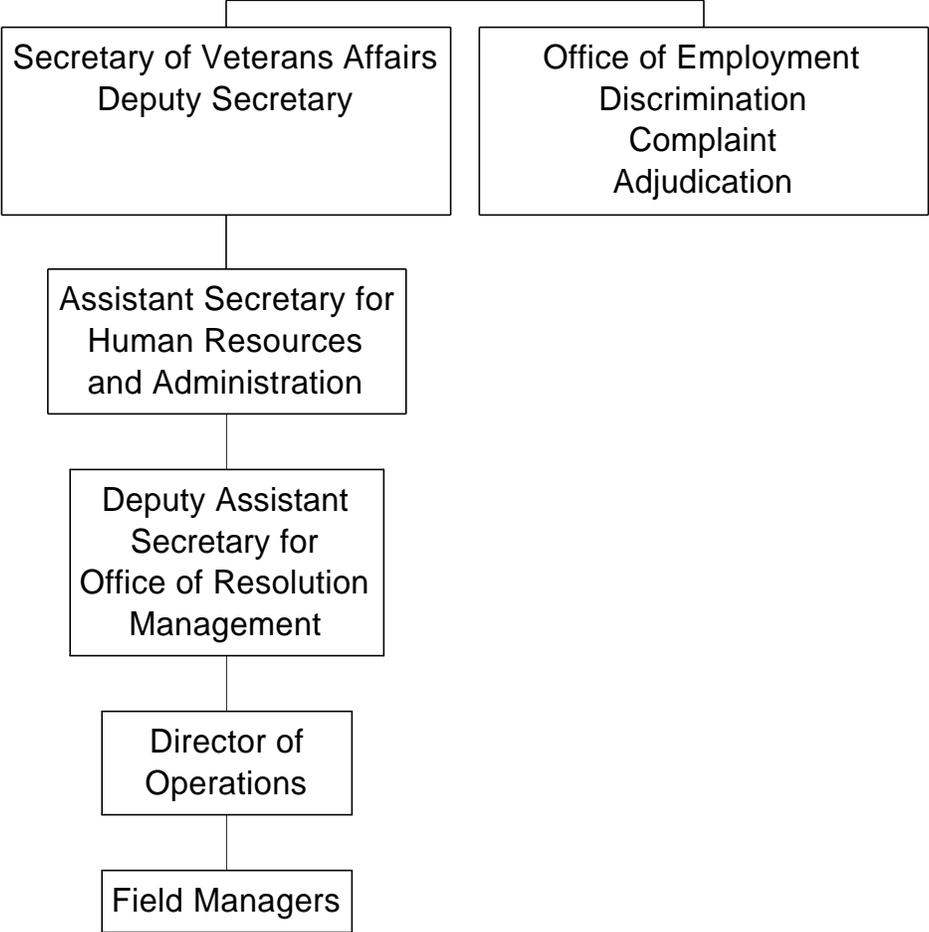
Appendix A

Field Managers Names and Telephone Numbers

Field Office	Field Manager	Telephone
Bay Pines	Malcolm Porter	727-319-1193
Bedford	Bill Low	781-687-2673
Cleveland	Tywanna Halstead	440-717-2852
Hines	Joan Hanson	708-531-7068
Houston	Paul Crain	713-794-7756
Leavenworth	Charlotte A. Jones	913-758-6966
Little Rock	Austin B. Lewis	501-378-5102
Los Angeles	Dennis Callahan	310-268-3586
Lyons	Rosa C. Franco	908-580-3515
Palo Alto	Mary Ellen Garcia	650-617-2740
Vancouver	James Foster	360-905-1788
Washington, DC	Peggy Joyner	202-691-3480

Appendix B

Organizational Chart



Appendix C

Field Organizational Chart



Appendix D

Customer Service Standards require that ORM staff will:

- Provide accurate and timely information to employees, applicants and former employees as well as responsible management officials as to their rights and responsibilities in regard to the EEO process.
- Listen to, understand and document concerns of employment discrimination on the part of employees, applicants and former employees.
- Guarantee anonymity unless a waiver of anonymity is secured during the EEO counseling.
- Provide timely notices to employees, applicants and former employees during the EEO counseling process.
- Process EEO complaints in a fair, objective and timely manner.
- Provide timely procedural review of EEO complaints in accordance with provisions of 29 CFR 1614.
- Provide thorough and competent investigations of all EEO complaints.
- Treat all customers with dignity.
- Maintain impartiality throughout the EEO process.
- Assist in efforts to resolve all complaints of employment discrimination at the lowest possible level.
- Keep employees, applicants and former employees advised of the status of their complaint by adequately communicating with them.

Appendix E

VA OPGC ADV 5-99

Department of Veterans Affairs

Memorandum

Date: March 26, 1999
From: General Counsel (02)
Subj: Request for Legal Opinion on Releasing Information from EEO Files
To: Deputy Assistant Secretary for Resolution Management (08)

ISSUES:

- I. To what extent is ORM authorized to release information from EEO complaint files to VA management, responsible management officials (RMOs), complainants, and VA attorneys?
- II. Must the Office of Resolution Management (ORM) provide an EEO complainant with a copy of the investigative file, when VA and the complainant have entered into a settlement agreement during the investigation of the complaint?

DISCUSSION:

1. This is in response to your written request for legal advice on four matters affecting policy decisions to be made by the Office of Resolution Management (ORM). This opinion will discuss only the two matters concerning release of information; a second opinion will consider the questions about Alternative Dispute Resolution and background investigations.

I. RELEASE OF INFORMATION TO VA EMPLOYEES

2. The first information-law issue concerns the extent to which ORM employees are authorized to discuss EEO cases with, and release information to, VA management, responsible management officials, and complainants. We are also including a discussion of releasing these files to VA attorneys, since recently we have received a number of questions in that regard from the field.
3. As background to this matter, in the early 1990's, the House Veterans' affairs Oversight and Investigating Subcommittee began inquiring into cases of sexual harassment in VA facilities.

Subsequently, VA implemented a “zero tolerance” policy against sexual harassment, and promised to improve its equal employment opportunity system. The Subcommittee reinvestigated the problem of sexual harassment in 1997, and Deputy Assistant Secretary for Resolution Management (08) concluded that VA needed to make additional, organizational changes to address problems. Congress accordingly enacted legislation entitled, “Equal Opportunity Process in the Department of Veterans Affairs” (the EEO Act), Title I, Pub. L. No. 105-114 (Nov. 21, 1997). The House Report accompanying the EEO Act contains this description of Congressional intent:

... [I]t is critical for VA to establish and maintain an EEO complaint resolution and adjudication system that is both in fact and in the perception of VA employees fair, impartial and objective. The complaint process should be completely free and independent of undue influence and the appearance thereof, from supervisors, line managers or directors. Objectivity and fairness should permeate the complaint process, from its initial informal stages through the Department’s final agency decisions. Accordingly, the Committee has concluded that the processing of unlawful discrimination complaints should occur outside the particular facility where the alleged discriminatory conduct was said to have arisen...

H.R. Rep. No. 292, 105th Cong., 1st Sess., at 5 (1997).
[Emphasis added.]

4. Thus, in deciding what disclosures are authorized, VA must be mindful of clear Congressional concerns that VA insulate management from the process, in order to ensure fairness and to avoid discouraging employees from filing complaints due to fear of reprisal. Disclosures must strike a proper balance between the legitimate needs of management and other s for information from those files, and the legislative mandate for a new EEO system in VA that requires an independent body to process EEO complaints outside of the facility where the conduct allegedly occurred. Furthermore, disclosures must be consistent with EEOC guidance and the Privacy Act. Both balance the personal privacy right of the complainant against possible disclosures to management and other VA employees. These three factors can be considered within the framework of the “need to know” exception to the Privacy Act.
5. The Privacy Act, 5 U.S.C. § 552a, applies to any records about an individual which are retrieved by that individual’s name or personal identifier (such as Social Security or C-file number). The Privacy Act prohibits disclosure of any records about an individual, which are retrieved by that individual’s name or personal identifier, without that individual’s written consent, unless disclosure is specifically authorized by the Act.
6. All records, from which information is retrieved by the name or personal identifier of an individual, must be maintained in what is called “a Privacy Act system of records,” published in the Federal Register. ORM maintains one system of records entitled EEOC/GOVT-1. (Hereinafter referred to as the EEOC system of records.) When an employee or applicant contacts an EEO counselor, or files a complaint, any resulting information or documents are placed in this system of records, which belongs to the Equal Employment Opportunity Commission (EEOC), but which is located at the agency where the complaint was filed. According to the system of records notice, these files contain information or documents compiled during the precomplaint counseling and the investigation of complaints. In VA, such files are generally maintained at the ORM field office where the complaint was filed, by the name of the complainant. ORM employees of the filed office which

has custody of the records determine whether to release these complaint records in accordance with any instruction from the EEOC and consistent with the Privacy Act.

7. As indicated, the Privacy Act prohibits disclosure of records from the EEOC system of records (or disclosure of information from these records) without the complainant's prior written consent, unless an exception applies. Under the "need to know" exception [subsection (b) (1) of the Privacy Act], records may be disclosed to another VA employee without prior written consent if the employee has a need for that record (or information from a record) in performing his or her official duties. Subsection (b) (1) of the Privacy Act provides that such records must be disclosed "to those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties."
8. This opinion identifies the nature of a VA employee's need for records at certain stages of an EEO proceeding. Before releasing records, ORM employees are required to make judgments concerning whether VA employees need the records for official duties. The VA employee may need an entire file, or simply some information from the file to satisfy the official purpose at hand. Disclosures should be commensurate with the need to know and be limited to only that amount of information necessary to assist an employee in the performance of the duties requiring disclosure.

A. THE PRECOMPLAINT COUNSELING STAGE

9. The precomplaint counseling stage includes all counseling efforts up to, but not including, the filing of a complaint and preparation of the written Counselor's report. The relevant documents at this stage are the Counselor's notes, and documents gathered by the Counselor or provided by the complainant. The persons likely to request these materials are the complainant (or representative), RMO's, and facility management.
10. Disclosure to the Complainant. As discussed in paragraph 25, the complainant has no Access right to the records under the Privacy Act, and therefore cannot compel the agency to release copies of records from the file at this stage of the proceeding. There is not regulatory entitlement to these documents at this stage either.

Under EEOC's regulatory scheme, in the final interview, the counselor orally explains what information was obtained in the precomplaint counseling, so the complainant can decide whether to go forward with a formal complaint. In exempting the EEOC system of records under subsection (k)¹, the EEOC has decided that complainants do not require copies of the documents gathered or the Counselor's notes in order to make that decision. They should have received sufficient oral information in the final interview. Thus, the only disclosure required is that oral information communicated by the counselor in the final interview.²

11. Disclosure to the RMO. The purpose of the complaint process is first to evaluate the validity of an employment discrimination allegation, and, where valid, provide relief at the

most informal level possible. At the counseling stage, the RMP simply needs notice of, and

opportunity to respond to, the allegations raised by the complainant. The RMO is merely a

witness who has no independent “need to know” what is contained in the subject documents.

Under the “need to know” exception, the counselor is authorized to disclose a limited amount of information from the file to the RMO to gain information about what happened,

or to hear the RMO’s side of the events at issue. However, this exception is not generally

broad enough to include a wholesale disclosure of notes and documents.

Furthermore, if

ORM counselors determine that it is necessary to disclose some additional information to an

RMO in order to informally resolve the case, they may do so. Any request from an RMO

(without the complainant’s prior written consent) before an investigation has begun should

be denied as barred by the Privacy Act.

12. Disclosure to Management. Disclosure should be guided by the reason the information is sought, balanced against the constraints identified above, i.e., the need to maintain the perception and reality of a complaint resolution system which is fair and independent of management. The needs often asserted by management are, first, to consider settlement of issues raised; second, to know what has transpired at the facility; and third, to conduct any necessary disciplinary action. As to the first need, both the EEOC and VA have strong policies in favor of resolving these cases at the earliest possible stage. In order to do so, management clearly must understand the issues and what has transpired, in order to evaluate whether settlement is appropriate. ORM employees could disclose the issues and bases raised by the complainant during the informal counseling. If management seeks

¹ See discussion in paragraph 25.

² Even though neither the Privacy Act nor EEOC regulations require disclosure

at this point of the proceedings, ORM employees could still make a discretionary disclosure. However, members of my staff conferred with ORM officials who have confirmed that they intend to follow the arrangement instituted by the EEOC which does not contemplate disclosure of the file to the complainant until the investigation has been completed.

disclosure of any other information in the file, the need to know would have to be compelling before disclosure would be authorized. As to the general need to be informed

about what is going on at a facility, ordinarily only general information, sufficient for management to undertake their own detailed inquiry, would seem to be authorized. With regard for management's need for the file purposes of discipline, it would almost always be premature to disclose information or documents from the file at this point in the complaint process for that purpose. It should be noted that if a manager making the request is also the RMO, the request should be denied. Such a request should be made from management at a level above that of the RMO.

B. AFTER A FORMAL COMPLAINT IS FILED

1. Request is Made Before Completion of The Investigation

13. Disclosure to the Complainant. As discussed in more detail in paragraph 24 – 27, the Complainant does not have a right under the Privacy Act to the counseling stage records. However, EEOC regulations (29 C.F.R. Part 1614) provide that once a formal complaint is filed, the Counselor must draft a report and submit it to the applicable ORM field office and the aggrieved person. See 29 C.F.R. § 1614.105 ©. Further, the EEOC Management Directive, EEO MD-110 (October 22, 1992), pp. 2-24, paragraph VII.A, provides that the Counselor must submit the report to the complainant within 15 days after notification by the EEO Officer or other appropriate officials that a formal complaint has been filed.³
14. Disclosure to the RMO. From the formal complaint filing until the EEO investigator contacts the RMO as a witness, RMOs do not generally have a need to know which would justify any disclosures. The counselor has presumably made the RMO aware of the allegations during the counseling period. The investigator may disclose information from the file to the RMO in order to uncover more facts, but there is a need that would justify a broad release of all the documents in the file by the investigator, or pursuant to the request of the RMO.
15. In this regard, see EEOC Management Directive, EEO MD-110 (October 22, 1992), pp. 5-12 to 5-13. The Directive states in pertinent part:

The responsible management official should have access to case materials to the extent needed to respond to allegations and give evidence. The agency has the burden of determining what case material may be released in accordance with the Privacy Act.

³ Although it is not entirely clear that the EEOC regulation and directive would overcome the statutory preclusion to access by the Privacy Act, we will defer to the EEOC in this matter since it is that agency's system of records.

Thus, investigators must decide on a case-by-case basis what material may be released in

order to give RMOs notice and an opportunity to fully respond to all of the allegations in the EEO complaint and to matters raised by other witnesses during the investigation.

16. Disclosure to Facility Management. With regard to facility management, again, as in Paragraph 12, the ORM employee must assess the reason offered by the official. For example, if the request demonstrates a need to know for purposes of assessing settlement potential, release is authorized to the extent it is consistent with that purpose. ORM employees would accordingly be authorized to disclose the content of the relevant portions of the Counselor's Report to management pursuant to the "need to know" exemption. If the request is premised on the more general interest in what is happening within the organization, the disclosure may be more limited, or possibly, denied. As at the precomplaint counseling stage, almost all requests for information for disciplinary purposes would be premature, and thus could not be honored at that time, under the Privacy Act.

2. Request is Made After Completion Of the Investigation

17. Disclosure to the Complainant. A complete copy of the file is provided pursuant to EEOC Regulations. See 29 C.F.R. § 1614.108 (f), which provides in pertinent part: "Within 180 days from filing of the complaint, . . . the agency shall notify the complainant that the investigation has been completed, *shall provide the complainant with a copy of the investigative file.*" [Italics supplied.] This includes the precomplaint documents, the formal complaint, the acceptability determination, the appointment of the investigator, sworn statements, and any other documentary evidence compiled.
18. Disclosure to the RMO. The RMO may obtain a copy of his or her own affidavit. With respect to the entire complaint file, the following rules apply:
 - (a) When the Complainant Does Not Request a Hearing. If the complainant Does not request a hearing, the RMOP does not need to know any more Information, since the RMO has no role in the only remaining element Of the process, i.e., the Department's decision on the matter. Any request from an RMO at this stage will be denied as barred by the Privacy Act.
 - (b) When the Complainant Requests a Hearing. If the complainant asks for a hearing, the RMO must appear as a witness. The agency representative represents VA and the RMO (if the VA interests are consistent with the RMO's interests). Representatives are usually Regional Counsel or General Counsel employees, or Human Resources employees. The agency representative must have a copy of the entire file. Since the agency representative will make available relevant portions of the complaint file to the RMO during preparation for the hearing, the RMO has no independent "need to know" for the file. Thus, if an RMO asks ORM employees for copies of documents, ORM would deny the request under the Privacy Act, advising that the RMO must contact the agency representative for any appropriate disclosures. Where the interest of VA and the RMO are inconsistent, there can be a need to know to disclose information from the complaint file to the RMO to permit full preparation for a hearing. In such cases ORM employees should contact the Office of General or Regional Counsel for guidance regarding such disclosures.
19. Disclosures to Management. As in the case of the RMO, management's "need to know" will vary depending on whether a hearing has been requested.

- (a) When the Complainant Does Not Request a Hearing. Management requests for a copy of the investigator's report should be granted at this stage, since it contains a summary of the evidence. It will satisfy the need for information by management to determine appropriateness of settlement. Management requests for additional portions of (or the entire) complaint file, should be determined by their relevance to the settlement purpose, assuming that is the purpose of the request. As to the "general interest" in occurrences at the facility, and for the disciplinary purposes, need to know might be established, at least to the point of limited disclosures suitable for providing guidance for further inquiry by the facility.
- (b) When the Complainant Requests a Hearing. Management has a clear need to know the contents of the entire file in order to consider settlement and to prepare for the hearing. Thus, a copy should be provided. This may often be accomplished by disclosure to the agency representative.

3. Request is Made After a Final Agency Decision is Issued

20. Disclosure to the Complainant. The complainant should have already received a complete copy of the file pursuant to 29 C.F.R. § 1614.108 (f), after the investigation had been completed. The Administrative Judge makes the hearing transcript available, and the Office of Employment Discrimination Complaint Adjudication sends a copy of the decision to the complainant.
21. Disclosure to RMO. If an RMO request is made after an OEDCA decision, the request may be denied unless discipline has been proposed. If discipline is being considered, the RMO should have all pertinent information in order to ensure that all points of view are properly considered by the Department regarding any disciplinary action. All portions of the file which reasonably relate to the disciplinary charges should be disclosed pursuant to the need-to-know exception.

22. Disclosures to Management.

- (a) Finding of Discrimination. If discrimination has been found, management must consider whether discipline should be taken against the RMO, and, whether other preventative measures need to be undertaken. That portion of the file needed for disciplinary purposes, including transcripts, hearing exhibits, and a copy of the investigation (if it has not already been provided), should be made available. In order to inform management about what is going on in the facility, a copy of the decision alone would ordinarily suffice. If preventative measures are indicated, more information may be disclosed under the need to know exception. Further, management may review those portions of the file necessary to settle other issues such as compensatory damages and attorneys fees.
- (b) No Finding of Discrimination. When there is no finding of discrimination, the decision alone would ordinarily be sufficient to meet management needs.

**II. RELEASING RECORDS TO THE OFFICE OF
GENERAL COUNSEL AND REGIONAL COUNSELS**

23. We now turn to the issue of what information can be released to Regional Councils and the

Office of General Counsel. As in the foregoing discussion of releasing information to RMO's and management, the "need to know" of Regional and General Counsel employees must be assessed according to what official duties are being performed. To the extent Regional or General Counsel attorneys represent management, their "need to know" is equivalent to that of management. Under such circumstances (e.g., litigation, giving legal advice, responding to Congressional oversight requests) their need to know would be commensurate with the nature of the official duties at hand.

III. RELEASE OF RECORDS AFTER SETTLEMENT

24. We now turn to the second question, which arose when a complainant requested a copy of

the investigative file after signing a settlement agreement. ORM denied the request. The issue is whether VA must provide an EEO complainant with a copy of documents compiled during an investigation, which was suspended due to a settlement being reached.

25. In most situation, under the Privacy Act, individuals have the right to see VA records when Their names or other identifiers retrieve those records. 5 U.S.C. § 552a (d) (1). For example, if an employee asks for his or her Official Personnel Folder, VA must grant access because it is retrieved by that employee's name. However, a Federal agency can sometimes prevent an individual from gaining access to his or her own file, if the agency promulgates special regulations and publishes notice in the Federal Register, pursuant to an exemption to the Privacy Act contained in subsection (k). The EEOC opted to implement this process, and promulgated regulations to exempt the EEOC/GOVT-1 system of records from the provisions of the Privacy Act which mandate first-party access. Thus, even though a complaint file is retrieved by the name of the complainant, the usual right to access does not apply and the ORM should refuse to grant the complaint access to the file under the Privacy Act.

26. As discussed previously, a complainant has the right to obtain a full copy of the file pursuant

To another legal authority, EEOC Regulation, 29 C.F.R. § 1614.108 (f). Under that provision, any decision to release the contents of the file depends upon where the case is in the EEO process. If a complaint has been filed, and the investigation has been completed, VA must provide a copy of the investigative file to the complainant. However, if the investigation has never been completed, this regulation, on its face, does not apply, and VA is not required to provide a copy under the EEOC regulation either.

IV. MISCELLANEOUS

27. If ORM employees receive a Freedom of Information Act (FOIA), 5 U.S.C. § 552, request for information contained in an EEO file, they should consult their FOIA/Privacy Act officer for advice. FOIA generally requires federal agencies to release records unless they may be withheld under a series of exemptions. The applicability of these exemptions is strictly dependent upon the facts and circumstances of the EEO case, the identity of the requester, the stage of the proceeding, etc. It might be possible for FOIA to compel disclosure of some information of the requester, the stage of the proceeding, etc. It might be possible for FOIA to compel disclosure of some information to a requester under some limited circumstances.
28. We also must respond to a statement contained in the request for this opinion, in which the following statement is made:

Technically, settlement closes the process. Any information obtained by the Investigator is null and void, and should be shredded.

The records gathered in response to an informal or formal EEO complaint are official Federal records, and as such, are governed by the General Records Retention Schedule which provides that they be kept for four years. (See National Archives and Records Administration, General Records Schedule 1 (Civilian Personnel Records), Transmittal No. 7, August 1995, Item No. 25). These records are maintained for one year after resolution of the case and then transferred to the Federal Records Center where they are destroyed after three years. See the EEOC System of Records notice, "Retention and Disposal," Privacy Act Issuance's, 1995 Compilation. Thus, VA may not shred the records; ORM must retain them for one year after the case is resolved, and transfer them to the Federal Records Center for an additional three-year retention period.

29. This opinion must necessarily be general in scope, and is not intended to answer all questions that can conceivably arise concerning the release of records from EEO files. Furthermore, some releases of information under the "need to know" exemption may be affected by administrative policy decisions promulgated by appropriate officials in the Department which have not been considered in this opinion. Subject to legal requirements, officials may promulgate policy rules that can expand or contract the need to know of management, RMOs or other employees. We encourage ORM employees to contact the Office of General Counsel and Regional Counsels as questions arise.

HELD:

- I. Employees of ORM may disclose records within the agency pursuant to an exception to the Privacy Act, 5 U.S.C. § 552a (b) (1), when an employee has a need for the record in order to perform his or her official duties. The attached

chart details the extent ORM counselors are authorized to discuss EEO cases with, and release information to, VA management, responsible management officials, and the complainant on a “need to know” basis.

- II. If an Equal Employment Opportunity Investigation has never been completed due to a Settlement between the complainant and the agency, neither the Privacy Act or EEOC regulations require VA to provide a copy of the contents of the file to the complainant.

/s/
Leigh A. Bradley

<u>Stage of the Proceeding</u>	<u>Disclosure to Complainant</u>	<u>Disclosure to the RMO</u>	<u>Disclosure to Management</u>
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Precomplaint Counseling management	Information from the file which is necessary for making the decision to file a formal complaint (orally conveyed).	Information from the file which is necessary for giving notice of the allegations and an opportunity to respond.	No general disclosure unless a compelling need to know for settlement. However, limited disclosure appraising of the issues raised by the complainant.
Formal Complaint			
Investigation not completed	Complainant is entitled to a copy of EEO counselor's report within 15 days [29 C.F.R. § 1614.105(c)], But no other disclosure should be made until investigation is completed.	No general disclosure is appropriate. Investigator may disclose whatever information is necessary to give the RMO complete notice and full opportunity to respond to all matters raised in the complaint and investigation.	Assess need for settlement and for resolving workplace disputes; disclose according to need.
Investigation completed	Disclosure of complete copy of entire file in accordance with 29 C.F.R. § 1614.108 (f) within 180 days.	No disclosure (if there will not be a hearing). Disclosure through the agency representative (if hearing will be held.)	Disclosure of investigator's report if there is no hearing. Disclosure of entire file if a hearing will be held.)
Final Agency Decision Finding Discrimination	Disclosure of all documents not ready received.	If discipline is proposed, disclose pertinent documents and information.	If considering whether discipline is necessary, disclose file to extent needed for that purpose.

Appendix F

Collateral Counselor

**Department of
Veterans Affairs**

Memorandum

Date: October 15, 1998
From: Deputy Assistant Secretary for Resolution Management (08)
Subj: Collateral Duty EEO Counselors
To: Chief, Network Officer (10N)
Deputy Under Secretary for Operations (201)

1. The purpose of this memorandum is to provide you with an up-date on the status of the Office of Resolution Management's (ORM) plan for use of collateral duty Equal Employment Opportunity (EEO) Counselors.
2. Public Law 105-114 provides for the use of collateral duty EEO Counselors at facilities in remote geographic locations. ORM defines collateral duty as those employees who spend no more than 20% of their time on EEO counseling activities. Since ORM's full-time EEO Counselors are effectively managing the workload; we are not currently using any collateral duty EEO Counselors.
3. Although we are not utilizing collateral duty counselors, we established a target date of March 1999 to revisit this issue. In the interim, we will gather the workload data necessary to determine whether we will need collateral counselors to supplement ORM's full-time EEO Counselor staff. At that time, we will re-evaluate the need for collateral duty counselors.
4. ORM will also explore several alternatives for supporting remote locations. These alternatives include rotating full-time counselors through these sites, outbasing full-time counselors, greater use of telephonic counseling, videoconferencing, and the brokering of cases among ORM field offices.
5. I will keep you informed of future decisions regarding this issue. If you have any questions, please feel free to contact Mr. Robert J. Poindexter, Director, ORM Field Operations, at (202) 691-3440. We would appreciate if you would advise your field facilities, Areas and Networks accordingly.

/s/
Ventris C. Gibson

Appendix G

Complaint of Employment Discrimination (4939)

I. Department of Veterans Affairs	II. Complaint of Employment Discrimination	
<p>1. Name (Please Print) (Last, First, MI)</p>	<p>2. Mailing address</p>	<p>3a. Work Telephone Number ()</p> <p>3b. Home Telephone Number ()</p>
<p>4. Are you:</p> <p>() a VA employee () an applicant for employment () a former VA employee</p>	<p>5a. Job Title, Grade and Series</p> <p>5b. Service/Section/Product Line</p>	<p>6. Name & address of VA facility where discrimination occurred</p>
<p>For each employment related matter that you believe was discriminatory, you must list: bases (list one or more of the following: <u>Race (specify), Color (specify), Religion (specify), Sex (male or female), Sexual Orientation, National Origin (specify), Age (provide date of birth), Disability (specify), and Reprisal for prior EEO activity or having opposed discrimination</u>).</p>		
<p>7. Basis</p>	<p>8. Issue(s): What employment related matter(s) – personnel action(s), incidents(s), or event(s) caused you to file this complaint? Briefly, describe what happened in the space below. Use an additional sheet of paper if necessary.</p>	<p>9. Date(s) of occurrence (include the most recent date)</p>
<p>10. Remedies sought:</p>		
<p>11. Do you have a representative?</p> <p>Yes () No ()</p>	<p>11a. If yes, is he or she an attorney?</p> <p>Yes () No ()</p>	<p>11b. Provide the name, address & telephone number of your representative:</p>
<p>12. Have you contacted an EEO Counselor?</p> <p>Yes () No ()</p>	<p>12a. Name of EEO Counselor</p>	<p>13. Date of Initial Contact with ORM</p>
<p>14. If you contacted an EEO Counselor more than 45 calendar days after the date(s) of occurrence note above, or if this complaint is filed more than 15 calendar days after receipt of a Notice of a Right to File a Discrimination Complaint from an EEO Counselor, you must explain why you were untimely in seeking EEO counseling or in filing your EEO complaint. If applicable, please provide this information by including it on an additional sheet of paper. If more space is needed, please attach an additional page(s) with the information in the same format.</p>		
<p>15. Have you filed a union grievance on any of the issue(s) listed above?</p> <p>Yes () - (If yes, list the issue(s) and date grievance filed)</p> <p>No ()</p>	<p>16. Have you filed an appeal with the Merit System Protection Board (MSPB) on any of the issue(s) listed above?</p> <p>Yes () – (If yes, list the issue(s) and date MSPB appeal filed)</p> <p>No ()</p>	
<p>17. Have you filed this complaint with anyone else? Yes () No ()</p> <p>(If yes, please provide the Name & Address)</p>		
<p>18. Signature of Complainant (Do not print)</p>	<p>19. Date</p>	

INSTRUCTIONS

Please read these instructions carefully. You *can* obtain assistance from your EEO Counselor in filling out this form. Your EEO Counselor can also answer any questions you may have about this form. Each Item is largely self-explanatory. However, in Item 7, you should specify whatever basis(es) of discrimination you are alleging by identifying your race, color, religion, sex, sexual orientation, national origin, age (date of birth), and/or disability, as applicable. Use additional pieces of paper, if necessary. If you *list* "Reprisal," please state the nature of the prior EEO activity in which you engaged. For example, did you file a prior EEO complaint?

It is very important that you are precise as to the dates of all actions or events that you are protesting. In addition, the issues *listed* in item 8 must be limited to issues you discussed with an EEO Counselor that are *like or related to the issues* discussed with a counselor. If any of the issues listed in item 8 were not discussed with an EEO Counselor, see an EEO Counselor IMMEDIATELY. The requirement that you see an EEO Counselor about *every issue* listed in Item 8 will not be waived under any circumstances. Failure to do so may delay the processing of your complaint.

Item 8 asks you to state the issue; that is, the employment related matter that caused you to file this complaint. You must identify the employment-related matter, the personnel action, incident, or event that caused you to file this complaint. At this stage of the complaint process, you are not required to provide a lengthy explanation regarding your claim. Instead, you only need to clearly and briefly state your claim; (you only need to state in a few words what happened, and, in item 9, the date(s) on which it happened.) If you allege more than one issue (more than one personnel action, incident, or event), number each issue in item 8 and, for each issue, state the basis (i.e., the type) of discrimination alleged in item 7, and the date of occurrence in item 9.

If any of the issues *listed* in Item 8 were discussed with an EEO Counselor, but not within 45 calendar days of their occurrence or of their effective date, you must explain why you waited more than 45 calendar days. In addition, you must file this complaint within 15 calendar days of your receipt of the Notice of a Right to File a Complaint Discrimination from your EEO Counselor. If you do not meet this time limit, explain why you waited more than 15 calendar days to file. Time limits may be waived under certain circumstances, but they will NOT be waived and your complaint will NOT be investigated unless you explain the untimeliness. Use a separate piece of paper for this purpose. If you have evidence, which supports your explanation, please attach it to this complaint.

E. NOTICE

It is your responsibility to keep the *Office of Resolution Management (ORM)* informed of your current address. If you move, immediately advise the *ORM Field Office* where you filed this complaint of your new address. In addition, you may receive certified mail in connection with your complaint from time to time. It is your responsibility to claim all certified mail. Failure to notify ORM of a change in address or to claim certified mail may lead to dismissal of your complaint.

A. PRIVACY ACT STATEMENT

Collection of the information on this form is authorized and/or required by the regulations of the U.S. Equal Employment Opportunity Commission (EEOC), at 29 CFR 1614. The information collected will be used by ORM to determine whether your complaint is acceptable for investigation and in connection with any subsequent investigation and processing of your complaint. In the course of any investigation as may occur, this form may be shown to any individual who may be required by regulations, policies or procedures of the EEOC and/or ORM to provide information in connection with this complaint,

including individuals you may have identified as responsible for the acts or events at issue in this complaint.

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NOTICE OF RIGHTS AND RESPONSIBILITIES

1. In connection with the EEO matter, which you brought to my attention, you have certain rights and responsibilities. They are:

a. The right to remain anonymous during EEO Counseling. I will divulge your name to others only if you authorize me to do so. You should know, however, that it might be very difficult to resolve your complaint informally if you **choose** to remain anonymous.

- I want to remain anonymous during counseling.
- I do **NOT** want to remain anonymous during counseling.

b. You have the right to a representative during the EEO complaint process, including at EEO counseling. You may select anyone to represent you, as long as his or her position with VA would not represent a conflict of interest. I cannot be your representative.

- I want a representative. My representative will be:

Name: _____

Address: _____

Phone: (____) _____

- I do **NOT** want a representative at this time. I understand I may select a representative later (or at any stage of the EEO process).

c. If you are in the bargaining unit, you may have the right to file a grievance on this matter, through a **union negotiated grievance procedure that accepts issues of discrimination**. You may not file **both** an EEO complaint and a grievance, however. Whichever you file first, a formal complaint or a step 1 grievance will be considered your election to proceed in that forum.

d. If you are disputing a matter appealable to the Merit System Protection Board (MSPB), you may file an EEO complaint or an MSPB appeal, but not both. Whichever you file first (a formal EEO complaint or an MSPB appeal) will be considered an election to proceed in that forum.

e. You have the right to receive in writing within 30 calendar days of the first counseling contact (unless the time period is extended by your prior written consent) a notice terminating counseling and informing you of the right to file a formal complaint. You also have the right, at the conclusion of counseling, to file a formal complaint within 15 calendar days of receipt of a written "Notice of Right to File Discrimination Complaint" from me.

f. If you allege age discrimination, you have the right to file a lawsuit in Federal District Court, without filing a formal EEO complaint. But you must first notify the Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, D.C., 20507 of your intent to do so, at least 30 calendar days in advance of the filing of your lawsuit. Your lawsuit must be filed within 180 calendar days of the date of the act alleged to be discriminatory.

g. If you are complaining about sex based wage discrimination (this is, being paid less than a person of the opposite sex, even though you are doing equal work), you may file a formal EEO complaint, or a lawsuit in Federal District Court, pursuant to the Equal Pay Act. In addition to other remedies available through the EEO complaint process, liquidated damages are available for willful violation of the Equal Pay Act.

h. If you file a formal EEO complaint and it is accepted, you have the right to **request** a hearing before an administrative judge of the EEOC after 180 days from the date you file your formal complaint or after completion of the investigation, whichever comes first.

i. Except for complaints of age discrimination, you have the right to file a lawsuit in Federal District Court at any time 180 calendar days after filing a formal complaint, **or** up to 90 calendar days after receipt of a final agency decision from VA. You also may appeal a final agency decision to EEOC within 30 calendar days of receipt. If you choose to appeal a final agency decision to EEOC, you have the right to file a lawsuit in Federal District Court at any time **after** 180 calendar days **from the** filing of such an appeal, or up to 90 calendar days after receiving an appellate decision from EEOC.

j. If you believe that other individuals, similarly situated to you, have suffered from the same kind of discrimination, you may have the right to file a class action complaint. A class action complaint must allege that you have been individually harmed by a VA personnel management policy or practice which has similarly harmed numerous other class members. You must also allege that there are questions of fact that are common to and typical of the claims of the class, and that you or your representative will fairly and adequately protect the interest of the class. EEOC also requires that a qualified attorney represent a class agent.

k. You have the responsibility to cooperate with VA during the processing of your complaint. If you file a formal EEO complaint, you must keep VA informed of your current address; you must claim any certified mail sent to you; and you must cooperate with any investigator assigned to your complaint. If you eventually file an appeal with EEOC about your complaint, you must serve copies of your appeal papers on VA.

l. If your complaint involves backpay, you have a duty to mitigate damages, by actively seeking and/or retaining employment. Interim earnings or amounts that could be earned by a complainant with reasonable diligence generally must be deducted from backpay.

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m. Finally, you must limit any formal EEO complaint you may file to those matters you discussed with me, or to like or related matters (that is, matters which are subcomponents of those matters or which are unmistakably derived from those matters). To protect your rights, discuss everything with me before you file a formal EEO complaint.

2. Please note that if a complaint is filed on the basis of sexual orientation, you do not have appeal rights beyond the Department of Veterans Affairs.

3. If you wish to discuss your rights and responsibilities further, please advise.

EEO Counselor

NAME OF THE AGGRIEVED

DATE

VIA: Regular Mail/Return Receipt

Date:

From: _____, EEO Counselor

Subj: Notice of the Right to File a Discrimination Complaint

To:

1. This is notice that on the above date, the final counseling interview was held in connection with the matters you presented to me.
2. If you are not satisfied with the results of the EEO counseling and you believe that you were subjected to discrimination because of your race, color, religion, sex (sexual harassment or sexual orientation), national origin, age, disability, or reprisal for prior EEO activities, you now have the right to file a formal complaint of discrimination. **If you decide to file a formal complaint you must do so WITHIN 15 CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE.** Please note that if a complaint is filed on the basis of sexual orientation, you do not have appeal right beyond the Department of Veterans Affairs.
4. Attached is VA Form 4939, Complaint of Employment Discrimination. If you choose to file a formal complaint at this time, please use this form and carefully read the instructions on the reverse side before completing it. I am available to assist you in filling out this form and to answer any questions you may have about it. If you require assistance, please contact me **immediately**. Please note that the 15-calendar days time frame mentioned above will not be extended due to your desire to seek my assistance in completing the form.
5. Any complaint you choose to file may be filed in person or by mail with the EEO Officer. You may also file it with the Secretary of Veterans Affairs or with the Deputy Assistant Secretary for Office of Resolution Management (DAS/ORM). Their addresses are listed below.

Regional EEO Officer
Office of Resolution Management Field Office
Address of the ORM Field Office

Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

Office of Resolution Management (ORM)
Deputy Assistant Secretary (08)
810 Vermont Avenue, NW
Washington, D.C. 20420

6. If you file a complaint with the Secretary or the DAS/ORM, **you should provide a copy to the ORM Field Office.** Since the Secretary and the DAS/ORM will send your complaint to the ORM Field Office for initial processing, **failure to provide a copy to the ORM Field Office will only delay the processing of your complaint.**

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7. You must identify each event you are protesting and provide the date on which each event occurred. Your complaint must be specific and limited to the events you discussed with me. **Therefore, if there are any events that you have not discussed with me, please do so immediately.** Regulations require that you provide the Department with an opportunity to resolve each event informally at EEO counseling.

8. You are entitled to representation at every stage of the complaint process. You may choose anyone to represent you, unless that person occupies a position within the VA that would create a conflict of interest. If you do select a representative, you must inform the ORM Field Office of your representative's name and business address.

9. If you are a member of the bargaining unit, you may have the right to dispute the events you discussed with me through a negotiated grievance procedure. Regulations provide that you may file a grievance or an EEO complaint about the events in dispute, but not both. Should you file both, whichever you file first (a union grievance or an EEO complaint) will be considered your election to proceed in that forum

10. If you are complaining about a matter appealable to the Merit Systems Protection Board (MSPB), you may file an EEO complaint or an MSPB appeal, but not both. Whichever you file first (a formal EEO complaint or an MSPB appeal) will be considered your election to proceed in that forum. If I can be of further assistance to you, please advise.

Issued by: _____
Counselor/Date

Received by: _____
Name/Date

Date

In Reply Refer To:

ORM/08E
Director (00)
Department of Veterans Affairs Medical Center
(Address)

Subj: Notice of Informal Counseling for (Aggrieved's Name) and Request for Information to Establish Potential Acceptability if a Formal Complaint is Filed

1. An employee within (service/section) or a former employee has contacted the _____ Office of Resolution Management (ORM) for EEO counseling. He/She has waived the right to remain anonymous and has agreed that we may inform you that the following EEO concerns have been brought to our attention.

Responsible Management Official (RMO) or Management Official involved:

Issue	Date Occurred	Basis(es)
1.		
2.		
3.		
4.		

2. Our goal in the counseling stage of the EEO process is to assist the employee and management to reach an informal resolution of the issues. Therefore, if your facility is able to offer an informal settlement or resolution, please inform our office of this offer.

3. If an informal resolution cannot be reached during the counseling period, the employee has a right to file a formal EEO complaint. However, if an employee first files a grievance through a negotiated grievance procedure (and that procedure permits allegations of discrimination to be raised) and then files a complaint of discrimination on the same matter, the complaint must be dismissed. Whichever action the employee files first is considered an election to proceed in that forum.

4. Similarly, if an employee has standing to appeal to the Merit System Protection Board (MSPB) and the underlying issue is one that can be appealed to MSPB, that employee may raise an allegation of discrimination either as a direct appeal to the MSPB or as an EEO complaint but not both. If an employee files an appeal with the MSPB before filing an EEO complaint with the ORM, and if the MSPB assumes jurisdiction over the appeal, ORM must dismiss any complaint on the same matter, whether or not the allegations of discrimination are raised in the appeal to the MSPB.

5. As you can see, it is important for your facility to notify ORM if and when an employee who is in EEO counseling or who has filed a formal EEO complaint elects to appeal an identical matter to MSPB or elects to file a grievance on an identical matter through the negotiated grievance procedure.

6. Please designate a staff member in your Human Resources Management Service to complete the attached document and indicate if the employee named above has raised any issue(s) listed above in a negotiated grievance procedure or if the employee has appealed any issue(s) listed above to the MSPB. The matters must be identical in order to declare that an employee has elected more than one forum.

7. If you indicate that the employee has raised the issue(s) in a negotiated grievance procedure, please enclose a dated copy of the grievance (or other documentation that establishes when the grievance was filed). If you indicate that the employee has filed an appeal with the MSPB on the issue(s), please enclose documentation that establishes the filing date of the MSPB appeal.

8. You will later be notified if the employee named above files a formal EEO complaint. When you receive a letter notifying you of the filing of a formal EEO complaint, please again have your Human Resources Management Service staff member check to see if an MSPB appeal or a grievance has been filed on an identical matter and update the form below to reflect any changes.

9. Your cooperation in providing this information to our office is greatly appreciated.

Intake Specialist

EEO Counselor

Enclosure



Office of Resolution Management

III. (Enter Name of Aggrieved) (Enter Name of Facility)

This employee *has not* filed a negotiated union grievance.

This employee has filed a negotiated union grievance on _____.

A copy is enclosed.

This employee *has not* filed an appeal with the Merit System Protection Board.

This employee has filed an appeal with the Merit System Protection Board on _____.

A copy is enclosed.

Medical Center Director

Date:

****Please fill in and return upon receipt of this notice of EEO counseling and again update when you are notified that the employee has filed a formal EEO complaint.***

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To:

ORM/08E

Complainant's Name

Complainant's Address

Subj: Notice of Receipt of Your Discrimination Complaint – Case No. (case number)

1. This will acknowledge receipt of your discrimination complaint filed on **(filing date)**. This notice will also provide you with written notification of your rights, as well as the time requirements for exercising those rights.
2. If your complaint is accepted, an EEO investigator employed by the Office of Resolution Management (ORM) will investigate it. You will be provided with a copy of the investigative file upon completion and you will be advised, in writing at that time, of your right to request a Final Agency Decision (FAD) from the Office of Employment Discrimination Complaint Adjudication (OEDCA), with or without a hearing by an administrative judge appointed by the Equal Employment Opportunity Commission (EEOC).
3. If your complaint, or any allegation contained therein, is dismissed, you will receive a decision from ORM explaining the reasons for the dismissal, and advising you of your right to appeal that dismissal.
4. If your complaint is accepted, but you do not receive a copy of the investigative file within 180 calendar days of the date you filed your formal complaint of discrimination, you have the right to request EEOC to appoint an administrative judge to conduct a hearing on your complaint without waiting further. You may not, however, request a hearing before the 181st day, unless you receive the investigative file sooner. Any request for hearing that you may file on the 181st day should be addressed to this Office. It shall be immediately transmitted to the District Office of EEOC, along with a copy of your complaint file and our request that EEOC appoint an administrative judge to hear your complaint.
5. You must keep this office advised of any change of address. Failure to do so could lead to dismissal of your complaint. You must also immediately advise this Office, in writing, of the name, address and telephone number of any representative you may designate to represent you in this

matter. If you advise us of representation, copies of all complaint-related correspondence, documents and decisions will be provided to your representative with copies to you, unless you advise us in writing that you are no longer represented by that individual. If your representative is an attorney, present regulations require that all complaint related correspondence, documents and decisions be submitted directly to your attorney, with no copies sent to you.

6. If you have not received a copy of the report of investigation within 180 calendar days of the date you filed your formal complaint and you do not wish to have a hearing conducted by an administrative judge appointed by EEOC, you also have the right to file a civil action in U.S. District Court. If you file a civil action and you do not have an attorney or are unable to obtain the services of an attorney, the court, in its' discretion and upon your request, may appoint an attorney to represent you in this matter. The court may also authorize commencement of the civil action without payment of fees, costs or security. Finally, if you decide to file a civil action you must name the Secretary of Veterans Affairs as the defendant.

7. The goal of the EEO process is to achieve a mutual resolution of complaints of discrimination. Resolution may occur at any stage of the process and you are encouraged to explore mutual resolution to your complaint of discrimination with management officials at the facility responsible for the alleged discrimination. My staff and I are available to assist you with this should you so desire.

8. If you have any questions concerning the processing of your complaint, please contact **(name of the Intake Specialist)** Intake Specialist assigned to review your case, at **(telephone number)**.

Regional EEO Officer

Date

In Reply Refer To: ORM/08E

(Name of Facility Director)
(Name & Address of Facility)

Subj: Notice of Receipt of Complaint – Case Number (case number)

1. This is to inform you that (complaint's name), an employee at your facility in **(name of service, section or department)**, filed a complaint of discrimination on **(date complaint filed)** with the Office of Resolution Management **(ORM)**, **(location of ORM Office)**.
2. The complaint is currently being reviewed for acceptability determination. You will be informed as to whether the complaint is accepted or dismissed by ORM (location).
3. The goal of the EEO process is to achieve resolution at the lowest level possible. Once you have been notified of the issue(s) accepted for investigation, ORM encourages you to explore with the employee mutual resolution of his or her complaint of discrimination. If resolution is achieved, please notify the Intake Specialist named below.
4. If you have any questions, please contact **(Intake Specialist's name and telephone number)**.

Regional EEO Officer

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

Complainant's Name
Complainant's Address

Subj: Notice of Receipt of Your Mixed Case Complaint – Case No. (case number)

1. This will acknowledge receipt of your mixed case complaint filed on **(filing date)**. This notice will also provide you with written notification of your rights, as well as the time requirements for exercising those rights.
2. If your complaint is accepted, an impartial investigator from the Office of Resolution Management (ORM) will investigate it. You will be provided with a copy of the investigative file upon completion and you will be advised, in writing at that time, of your right to request a Final Agency Decision (FAD) from the Office of Employment Discrimination Complaint Adjudication (OEDCA), which will be issued within 45-calender days of your receipt of the investigative file. A copy of the entire complaint file will be transmitted concurrently to OEDCA, which will advise you of its decision. You will also be advised of your right to appeal the FAD, within 30-calender days of your receipt, to the U.S. Merit Systems Protection Board (MSPB).
3. If your complaint, or any allegation contained therein, is dismissed, you will receive a decision from ORM explaining the reasons for the dismissal, and advising you of your right to appeal that dismissal.
4. If you do not receive a copy of the FAD on your complaint within 120-calendar days of the date you filed the formal complaint of discrimination; you have the right to appeal to the MSPB without waiting further. You may not, however, file such an appeal before the 121st day, unless you receive the FAD sooner. Any appeal that you file on the 121st day should be addressed to:

(Name of Regional Director)
Merit Systems Protection Board
Address of the Regional Office

5. You must keep this office advised of any change of address. Failure to do so could lead to dismissal of your complaint. You must also immediately advise this Office, in writing, of the name, address and telephone number of any representative you may designate to represent you in this matter. If you advise us of representation, copies of all complaint-related correspondence, documents and decisions will be provided to your representative with copies to you, unless you advise us in writing that you are no longer represented by that individual. If your representative is

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an attorney, present regulations require that all complaint related correspondence, documents and decisions be submitted directly to your attorney, with no copies sent to you.

6. The goal of the EEO process is to achieve a mutual resolution of complaints of discrimination. Resolution may occur at any stage of the process and you are encouraged to explore mutual resolution to your complaint of discrimination with management officials at the facility responsible for the alleged discrimination. My staff and I are available to assist you with this should you so desire.

7. If you have any questions concerning the processing of your complaint, please contact **(name of the Intake Specialist)**, Intake Specialist assigned to review your case, at **(telephone number)**.

Regional EEO Officer

Date

In Reply Refer To: ORM/08E

(Name of Facility Director)
(Name & Address of Facility)

**Subj: Notice of Receipt of Mixed Case Complaint – (name of complainant)
Case Number (case number)**

1. This is to inform you that **(complaint's name)**, an employee at your facility in **(name of service, section or department)**, filed a mixed complaint of discrimination on **(date complaint filed)** with the Office of Resolution Management (ORM), **(location of ORM Office)**.
2. The complaint is currently being reviewed for acceptability determination. You will be informed as to whether the complaint is accepted or dismissed by ORM (location).
3. The goal of the EEO process is to achieve resolution at the lowest level possible. Once you have been notified of the issue(s) accepted for investigation, ORM encourages you to explore with the employee mutual resolution of his or her complaint of discrimination. If resolution is achieved, please notify the Intake Specialist named below.
4. If you have any questions, please contact **(Intake Specialist's name and telephone number)**.

Regional EEO Officer

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

Name of Representative
Address of Representative

Subj: Notice of Receipt of Mixed Case Complaint-Case No. (case number)

1. This will acknowledge receipt of the mixed case complaint of (complainant's name) and will provide you with written notification of his/her rights, as well as the time requirements for exercising those rights.
2. If his/her complaint or any allegation contained therein, is dismissed, you will receive a decision from the Office of Resolution Management (ORM), explaining the reasons for the dismissal and advising you of his/her right to appeal that dismissal.
3. If the complaint is accepted, an impartial investigator from the office of ORM will investigate it. You will be provided with a copy of the investigative file upon completion and you will be advised, in writing of his/her right to a Final Agency Decision (FAD) from the Office of Employment Discrimination Complaint Adjudication (OEDCA), which will be issued within 45-calendar days of your receipt of the investigative report. A copy of the entire complaint file will be transmitted concurrently to OEDCA, which will advise you of its decision. You will be advised of your client's right to appeal the FAD, within 30-calendar days of your receipt, to the U.S. Merit Systems Protection Board (MSPB).
4. If you do not receive a copy of the FAD on your client's complaint within 120-calendar days of the date he/she filed their formal complaint of discrimination; he/she has the right to appeal to the MSPB without waiting further. He/she may not, however, file such an appeal before the 121st day, unless he/she receives the FAD sooner. Any appeal that your client files on the 121st should be addressed to:

(Name of Regional Director)
Regional Director
Merit Systems Protection Board
(Address of the Regional Office)

1. If you have not received a copy of the investigative file within 120-calendar days of the date the formal complaint was filed and your client does not wish to appeal to the MSPB, he/she also has the right to file a civil action in U.S. District Court. If your client files a civil action, the Secretary of Veterans Affairs must be named as the defendant.

The goal of the EEO Process is to achieve a mutual resolution of complaints of discrimination. Your client is encouraged to explore with the appropriate management officials, mutual resolution to his/her complaint of discrimination.

If you have any questions concerning the processing of this complaint, please contact (name and telephone of ORM Intake Specialist).

Regional EEO Officer

Date

In Reply Refer To: ORM/08E

Director (00)

(Name and Address of facility)

Subj: Discrimination Complaint of (Name of Complaint) Case No. (Case number)

1. This is to inform you that we have received a formal complaint of discrimination from (name of complainant), (an employee) (an applicant for employment) at your facility, filed on (date of complaint). The issue(s), basis(es), and date(s) of the occurrences are as follows:

- a.
- b.
- c.

2. Please provide this office with copies of any documents that might affect the acceptance of this complaint, such as an identical EEO complaint, an MSPB appeal, or a negotiated union grievance. Include verification of training on the EEO Complaints Process and or posting of the EEO process if procedurally the issues above appear to be untimely.

3. All documents and records, including the Official Personnel Folder related to this complaint, should be maintained at the facility and made available throughout the EEO process. The Office of Resolution Management is currently experiencing some delays in the assignment of EEO Investigators, but as always, we will try to process the complaint within prescribed time frames, in accordance with 29 CFR, Section 1614.

4. The goal of the EEO process is to attempt resolution of all disputes at the lowest level. We encourage all parties involved to explore other avenues of resolution, such as Alternate Dispute Resolution (ADR), mediation, and other avenues available to you. If resolution efforts are initiated through the ADR process, or result in a settlement agreement, please submit written notification to our office as soon as possible. Please notify our office if a settlement or resolution is obtained, or if the parties enter into the ADR process, via letter as soon as possible.

5. If you have any other concerns or questions, please feel free to contact (name and telephone number of Intake Specialist).

Regional EEO Officer

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

(Name of Complainant)

(Address of Complainant)

Subj: Request for Additional information

1. This is in reference to your complaint of discrimination, which you filed on (Date complaint was filed.) An initial review of your complaint is being made in order to determine whether it is acceptable for investigation. In order for us to make that determination, it is necessary for you to provide additional information concerning your complaint.

(Select and tailor the following paragraphs, which pertain to the information, needed.)

- ◆ (Your complaint fails to allege discrimination because of race, color, religion, sex, sexual orientation, national origin, age (40+), physical or mental disability, or retaliation for having opposed such discrimination. You must select one or more of these bases, if appropriate. If none of these bases apply, please so state and otherwise describe what you believe motivated management to discriminate against you.)

- ◆ (Your complaint alleges discrimination due to reprisal, but you failed to describe the nature of the prior EEO activity in which you engaged. Please provide us with this information.)

- ◆ (EEO regulations require that a complainant discuss all matters believed to be discriminatory with an EEO Counselor. You failed to provide the name of the EEO Counselor with whom you discussed your complaint. Please provide us with this information.)

- ◆ (EEO regulations require that a complainant discuss all matters believed to be discriminatory with an EEO Counselor within 45-calendar days of the date of the allegedly discriminatory event or, if a personnel action, within 45-calendar days of its effective date. Your initial contact with an EEO Counselor was on ***(date of initial contact.)*** This was more than 45-calendar days after the event(s) alleged to be discriminatory. Time limits may be waived if you were not advised and were otherwise not aware of them, or if you were prevented from timely contacting an EEO Counselor due to circumstances beyond your control, or for such other reasons as VA may consider sufficient. Time limits cannot be waived, however, without an explanation of your untimeliness. Please explain why you waited more than 45-calendar days to discuss these matters with an EEO Counselor.)

- ◆ (EEO regulations require that you file your formal complaint of discrimination with the Department of Veterans Affairs and within 15-calendar days of receipt of a Notice of Right to File Discrimination Complaint. Your complaint was filed more than 15-calendar days after you received that Notice. Please explain why you waited more than 15-calendar days to file your complaint.)

(EEO regulations require that a complaint be set forth with specificity and detail, in order to allow VA Office of Resolution Management (ORM) to determine whether the complaint is acceptable for investigation, in whole or in part, and to thereafter make it possible for ORM to conduct a full and complete investigation. Your complaint lacks the required specificity and detail. (Explain in detail why it does not contain the required specificity and specifically state what information is needed and for what purpose).

2. Consequently, you must provide the following information:

- a. State the specific personnel actions or events and which you believe to be discriminatory.
- b. State the exact date on which each event or personnel action occurred. If not known, please state the exact date on which you first learned of the personnel action or event and describe the circumstances surrounding your having obtained that knowledge.
- c. State the Responsible Management Official(s) (RMO) who you believe is responsible for this action.

2. Please be as specific as possible in your response to the above inquiries. The information you provide in response to this request will be used to determine whether your complaint is acceptable for investigation. You must provide this information within 15-calendar days of your receipt of this letter. Failure to provide the exact information requested, or failure to respond at all within that time limit may cause VA ORM dismiss your complaint. Please address your response to **(Intake Specialist name and address.)**

Regional EEO Officer

cc: Facility Director

NOTE TO INTAKE SPECIALISTS

When additional information is needed, we must establish that the request is both reasonable and necessary and that the agency cannot reasonably proceed with further complaint processing without it. We must clearly explain to the complainant why the requested information is necessary and for what purpose it will be used. If the request is for information the agency already possesses, or information that can reasonably be found by comparing the complaint with the counselor's report, the request is unnecessary. There is no obligation on the complainant to respond. Under these circumstances, the agency cannot dismiss the complaint for failure to respond.

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

(Name of Complainant)
(Address of Complainant)

Subj: Notice of Acceptance of Your EEO Complaint – Case No. (*case number & date filed*)

1. The purpose of this letter is to advise you of the acceptance of your complaint of discrimination. The precise issue(s) accepted for investigation is (are) as follows:

(Specify each issue accepted, by describing each event and the dates related to each event. Also describe each accepted basis; for example, “Your non-selection for the position of Human Resources Management Officer on March 5, 1998, and your performance evaluation dated April 2, 1998, discriminated against you because of your Race (Black) and in reprisal for prior complaint activity”).

2. An EEO Investigator will be assigned to investigate your complaint, and he or she will contact you directly in order to obtain your affidavit and any other information or evidence which you may wish to offer.

3. The scope of the investigation will be limited to the issues accepted above, and the EEO Investigator is **not** authorized to inquire into any other matters. If you have other matters you wish to complain about, you must contact an EEO Counselor immediately.

4. An investigation of the above-accepted matters does not constitute an express or implied waiver by the Department of Veterans Affairs of any time limits prescribed by EEO regulations for the filing of this complaint.

5. You must keep this Office advised of **any** change of address. Failure to do so could lead to dismissal of your complaint. You must also immediately advise this Office, in writing, of the name, address, and telephone number of your designated representative. If you advise us of representation, copies of all complaint-related correspondence, documents and decisions will be provided to your representative with copies to you, unless you advise us in writing that you are no longer represented by that individual. If your representative is an attorney, present regulations require that all complaint related correspondence, documents and decisions be submitted directly to your attorney, with no copies sent to you.

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If you do not receive a copy of the investigative file of your complaint within 180 calendar days of the date you filed your formal complaint of discrimination, you have the right to request EEOC to appoint an administrative judge to conduct a hearing on your complaint without waiting further. You may not, however, request a hearing before the 181st day, unless you receive the investigative file sooner. Any request for hearing that you may file on the 181st day should be addressed to Office of Resolution Management **(Address)**. Your request for a hearing shall be immediately transmitted to the District Office of EEOC, along with a copy of your complaint file and our request that EEOC appoint an administrative judge to hear your complaint.

If you have any questions concerning the processing of your complaint, please contact **(Name and telephone of Intake Specialist.)**

Regional EEO Officer

Date

In Reply Refer To: ORM/08E

(Name of Facility Director)
(Address of Facility)
(City, State Zip Code of Facility)

**Subj: Notice of Acceptance of EEO Complaint for (name of complainant)
Case No. (case number & date filed)**

1. This is to inform you that **(name of complainant)** of **(service, section, department etc.)** has filed a complaint of discrimination.
2. Enclosed is a copy of the acceptance letter that was sent to the complainant.
(Note: Attached copy of acceptance letter).
3. All documents and records, including the Official Personnel Folder related to this complaint, must be maintained at the facility and made available at the time of the investigation.
4. We encourage the parties involved to explore resolution or to utilize the Alternative Dispute Resolution (ADR) process, if available at your facility. If a mutual resolution is achieved, or if the parties enter into the ADR process, please contact **(name and telephone of Intake Specialist)**.

Regional EEO Officer

Enclosure

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

(Name of Complainant)
(Address of Complainant)

**Subj: Notice of Acceptance of Your Mixed Case Complaint
Case No. (case number & date filed)**

1. The purpose of this letter is to advise you of the acceptance of your “mixed case” complaint of discrimination. The precise issues accepted for investigation are as follows:

(Specify each issue accepted, by describing each event and the dates related to each event. Also describe each accepted basis; for example:)

(“Your removal from the position of Human Resources Management Officer on January 5, 1998 discriminated against you because of your race (Black) and in reprisal for your prior complaint activity.”)

2. An EEO Investigator will be assigned to investigate your complaint and he or she will contact you directly in order to obtain your affidavit and any other information or evidence which you may wish to offer. The scope of the investigation will be limited to the issues accepted above, and the EEO Investigator is **not** authorized to inquire into any other matters. If you have other matters you wish to complain about, you must contact an EEO Counselor **immediately**. An investigation of the above-accepted matters does not constitute an express or implied waiver by VA of any time limits prescribed by EEO regulations for the filing of this complaint.

3. You will be provided with a copy of the investigative file upon completion. You will be advised in writing of your right to a Final Agency Decision (FAD) from the Office of Employment Discrimination Complaint Adjudication (OEDCA). The final agency decision will be issued within 45-calendar days of your receipt of the investigative file. A copy of your entire complaint file will be transmitted concurrently to OEDCA. You also will be advised of your right to appeal the FAD, within 30-calendar days of your receipt, to the U. S. Merit Systems Protection Board (MSPB).

4. If you do not receive a copy of the report of investigation or a FAD on your complaint within 120-calendar days of the date you filed your formal complaint of discrimination, you have the right to file an appeal with the U. S. Merit Systems Protection Board (MSPB) without waiting further. You may not, however, file an appeal before the 121st day, unless you receive a FAD on your complaint sooner. Any appeal that you may file on the 121st day should be addressed to Regional Director, Merit Systems Protection Board (**Name and address of MSPB’s Regional Office**).

Page 2.

5. You must keep this Office advised of any change of address. Failure to do so could lead to dismissal of your complaint. You must also immediately advise this office, in writing, of the name, address, and telephone number of any representative or attorney you may designate to represent you in this matter. If you advise us of representation, copies of all complaint-related correspondence, documents and decisions will be provided to your representative with copies to you, unless you advise us in writing that you are no longer represented by that individual. If your representative is an attorney, present regulations require that all complaint related correspondence, documents and decisions are submitted directly to your attorney, with no copies sent to you.

6. If you have any questions concerning the processing of your complaint, please contact **(Name and telephone number of Intake Specialist.)**

Regional EEO Officer

Date

(Name of Facility Director)
(Address of Facility)
(City, State Zip Code of Facility)

Subj: Notice of Acceptance of Mixed Case Complaint
Case No. (case number & date filed)

1. This is to inform you that **(name of complainant)** of **(service, section, department etc.)** has filed a mixed complaint of discrimination.
2. Enclosed is a copy of the acceptance letter that was sent to the complainant. *(Note: Attached copy of acceptance letter).*
3. All documents and records, including the Official Personnel Folder related to this complaint, must be maintained at the facility and made available at the time of the investigation.
4. We encourage the parties involved to explore resolution or to utilize the Alternative Dispute Resolution (ADR) process, if available at your facility. If a mutual resolution is achieved, or if the parties enter into the ADR process, please contact **(name and telephone of Intake Specialist)**.

Regional EEO Officer

Enclosure

**Department of Veterans Affairs
Office of Resolution Management
Washington, DC 20420**

NOTICE TO COMPLAINANTS

Your EEO complaint of discrimination has been assigned to an investigator for processing. In connection with the investigation, which will soon commence, you have certain rights, responsibilities and opportunities. We hope that by communicating them to you now you will better understand what you must do in connection with the investigation of your EEO complaint.

You have the right to give a sworn statement to the investigator. You also have the right to have a representative of your choice at all meetings with the investigator, within certain limits. First, your representative may not occupy a position with VA, such that his or her role as your advocate would present a conflict of interest. Generally, this precludes EEO program officials, employees of Human Resources Management Service (HRMS) and VA managers and supervisors from being your representative. Second, VA is not required to provide premium pay or travel expenses to facilitate your choice of a representative. Thus, if your representative works at a VA facility other than the one where your complaint arose, he or she will not be paid travel expenses in order to be present at meetings between you and the investigator.

You also have the right to request a copy of the sworn affidavit that you provide to the investigator, shortly after you sign it, as well as the right to a complete copy of the investigative file, shortly after it is finished.

It is your responsibility to cooperate with the investigator assigned to your complaint. You are required to give testimony, which will either be transcribed by a court reporter or tape-recorded by the investigator and then transcribed. It will be returned to you for review, correction and signature prior to insertion in the investigative file. Finally, you are also required to assist the investigator in scheduling his or her on-site interview with you without unnecessary delay. Postponements may be granted by the Investigator, but only for good cause, such as death in the family, military leave, or other emergencies beyond your control. The investigator may not grant postponements of more than 14 calendar days, however, without the approval of this Office.

There are also several legal burdens imposed upon you that you must meet in order to prevail in your complaint. The Investigator has been trained to look for evidence that satisfies those burdens, but you will be called upon to assist him or her in this effort.

If your complaint alleges that you have been treated differently because of your race, color, religion, sex, national origin, age or disabling condition, your initial burden is to allege such facts, which, if true, would raise an inference, that discrimination had occurred. To do this, you must be able to identify at least one individual who is not of the same race, color, religion, sex, national origin, age or not disabled as yourself who was treated differently (better) than you, in circumstances similar to those in dispute of your claim. Should you allege reprisal for prior EEO activity, you must demonstrate you have engaged in protected EEO activity, you must demonstrate that the manager(s) responsible for the events in dispute knew of your prior EEO activity, you were subjected to unfavorable treatment and that it is logical to infer a cause and effect relationship between your prior EEO activity and the subsequent actions.

Should you meet this burden, management may be required to give a detailed explanation for its actions. Thereafter, the investigator will attempt to discover whether there is any evidence that management's explanations are unworthy of belief. If there is, you will prevail, if the evidence establishes that discrimination was the reason for the dissimilar unfavorable treatment.

If your complaint alleges that management failed to accommodate your religious beliefs, your initial burden is to demonstrate that you had a religious belief or practice, which required some adjustment in your duties or your schedule at work. If your complaint alleges that management failed to accommodate a known disabling condition, your initial burden is to demonstrate that you have a substantial limitation to a major life activity (as opposed to a temporary illness or injury), but, with reasonable accommodation, you can still perform the essential duties of your position without endangering yourself or others.

If you meet the initial burden, management will be called upon to demonstrate that granting whatever accommodation you requested would impose an undue hardship on VA. In religion complaints, undue hardship is anything that would impose more than a de-minimus cost on the service or department in which you work. In disability cases, an undue hardship means an action requiring significant difficulty or expense when considering, among other things, the accommodation cost, financial resources of the facility, and the impact of the accommodation upon the operation of the facility. If management demonstrates that your requested accommodation would impose undue hardship, the investigator will attempt to obtain evidence to the contrary.

The above explanations are provided so that you will know what you will be called upon to do, and that you will be better able to assess the desirability of informally resolving your complaint prior to the completion of the investigation. A similar advisement is being provided to management, for the same reasons. The investigator is available to assist you and management in resolving your complaint. If you are interested in obtaining this kind of assistance, please contact the investigator.

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

(Name of Complainant)
(Address of Complainant)

**Subj: Assignment of EEO Investigator to Investigate Your Complaint of
Discrimination**
Case Number (case number & date filed)

1. This is to inform you that (name of Investigator) of the Office of Resolution Management (ORM) (**or contract investigator**) is assigned to investigate your complaint of discrimination, (**case number**). This letter serves to authorize the Investigator to (a) investigate the accepted issues of this complaint; (b) require all employees of the agency to cooperate with the investigation; and (c) require employees having any knowledge of the matter accepted for investigation to furnish testimony without a pledge of confidence. Pursuant to 29 CFR 1614, the Investigator's authority to administer the oath is automatic during the course of this investigation.

2. The Investigator will contact you in the near future to inform you of when the investigation will commence. Should you have any questions, please **contact (Intake Specialist Name and telephone number)**.

Regional EEO Officer

cc: Facility Director

Date

In Reply Refer To: ORM/08E

(Name of Facility Director)

(Address of Facility)

(City, State Zip code)

**Subj: Notice of Assignment of an EEO Investigator for (name of complainant)
Case No. (case number & date filed)**

1. This is to inform you that **(investigator's name)** of the Office of Resolution Management (ORM) **(or a contract investigator)** will be conducting the EEO Investigation concerning the discrimination complaint of **(complainant's name and case number.)**

2. This investigator is authorized to: (a) investigate all accepted issues of this complaint; (b) require all employees of the Department of Veterans Affairs to cooperate with the investigation; and (c) require employees of the agency having any knowledge of the matter accepted for investigation to furnish testimony without a pledge of confidence.

3. Pursuant to 29 CFR 1614, the Investigator's authority to administer the oath is automatic during the course of this investigation.

4. Advance preparation for the investigation will begin immediately. The Investigator will be contacting your EEO liaison to arrange for logistical support and assistance. You will be provided a copy of the investigative report. If there is an agency finding of discrimination you will be provided a complete copy of the entire investigative file.

5. If you have any questions please contact **(name and telephone of the Intake Specialist)**.

Regional EEO Officer

Date

In Reply Refer To: ORM/08E

(Name of Facility Director)

(Name & Address of Facility)

**Subj: Notice of Completion of EEO Investigation for (name of complainant)
Case No. (case #)**

1. Enclosed is the Investigative Report concerning the EEO complaint of (**complainant's name**), (**case number**) filed on (**date filed**). The complainant and/or (**representative**) have been forwarded a copy of the investigative file with a letter outlining the complainant's rights for further complaint processing. Your office will be notified of the complainant's election for further processing. We encourage the parties involved to continue to explore possible resolution to the matters in dispute. If you elect to do so, please advise my Office if a settlement is reached. Should you have any question please contact (**name and telephone number of the Intake Specialist**).

We appreciate your cooperation in the processing and exploration of resolution of this complaint.

Regional EEO Officer

Enclosure

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

(Name of Complainant)
(Address of Complainant)

Subj: Notice of Advise ment of Rights in Your EEO Complaint
Case No. (case number & date filed)

1. The purpose of this letter is to provide you (and your representative) with a copy (copies) of the Investigative file of your EEO complaint and to advise you of your further complaint processing rights.

2. At this time, you have the right to request a hearing, to be conducted by an administrative judge appointed by the U. S. Equal Employment Opportunity Commission (EEOC), followed by a Final Agency Decision (FAD) by the VA Office of Employment Discrimination Complaint Adjudication (OEDCA). If you do not want a hearing by EEOC, you also have the right to request an immediate FAD by OEDCA. If you want a hearing, you must request this in writing within **30-calendar days of your receipt of this letter**. If you fail to request a hearing within that timeframe, you may forfeit your right to a hearing, and your complaint will be transmitted to OEDCA for a FAD without a hearing.

3. The 30-calendar day time limit for requesting a hearing is non-discretionary, and we are without authority to extend it, even if you agree to discuss settlement with the facility official. Consequently, if you desire a hearing you must request it before the expiration of the 30-calendar day time limit.

4. If you have any questions about your rights, please contact (name and telephone number of Intake Specialist designated to answer questions), before expiration of the 30-calendar day time limit.

Regional EEO Officer

Enclosure

cc: Facility Director

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

(Name of Complainant)

(Address of Complainant)

Subj: Notice of Advise ment of Rights in Your Mixed Case Complaint

1. The purpose of this letter is to provide you (**and your representative**) with a copy (**copies**) of the Investigative file of your EEO mixed case complaint and to advise you of your further complaint processing rights.
2. Your complaint is being transmitted to the Office of Employment Discrimination Complaint Adjudication (OEDCA), which will issue a Final Agency Decision (FAD), on your complaint within 45-calendar days of the date of this letter. The decision will advise you of your right of appeal to the Merit Systems Protection Board (MSPB), and of your right to request a hearing in connection with your appeal to the MSPB, and of the 30-calendar day time limit within which to file such an appeal.
3. If you do not receive a copy of the FAD within 120-calendar days of the date you filed your formal complaint; you have the right to appeal to the MSPB without waiting further. You may not, however, file an appeal before the 121st day, unless you receive the FAD sooner. Any appeal that you may file should be addressed to:

(Name of Regional Director)

Regional Director

Merit Systems Protection Board (MSPB)

(Address of MSPB Regional Office)

4. If you have not received a copy of the Investigative file within 120-calendar days of the date you filed your formal complaint and you do not wish to appeal to the MSPB, you also have the right to file a civil action in Federal District Court. If you file a civil action and you do not have an attorney or are unable to obtain the services of an attorney, the court, in its' discretion and upon your request, may appoint an attorney to represent you in this matter. The court may also authorize commencement of the civil action without the payment of fees, costs or security. Finally, if you decide to file a civil action, you must name the Secretary of Veterans Affairs as the defendant.

Page 2.

5. If you have any questions concerning the processing of your complaint, please contact (**name and telephone number of Intake Specialist**).

Regional EEO Officer

cc: Facility Director

Date

In Reply Refer To: ORM/08E

(District Director's Name)
District Director
US Equal Employment Opportunity Commission
(EEOC District Office Address)

Subj: Referral of Discrimination Complaint for EEOC Hearing - (complainant's name)

Case No. (case number & date filed)

1. Enclosed is the complete file for the EEO complaint of **(name of complainant), (complaint number)**. The complainant has requested a hearing. Please appoint an administrative judge to conduct the hearing.
2. The contact person in this matter is **(name, address and telephone number of the contact person.)** (He or She) will make all arrangements for the hearing.
3. Upon completion of the hearing, please instruct the administrative judge to send the complete file, including all copies of the hearing transcript and his or her recommended decision, to:

Office of Employment Discrimination
Complaint Adjudication (OEDCA)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

4. We also request that the administrative judge provide us with a copy of the transmittal letter to OEDCA for our records.

Regional EEO Officer

Enclosure

cc: (Name of Complainant)
(Name of Complainant's Representative)
Facility Director

Date

In Reply Refer To: ORM/08E

Facility Director (00)

Department of Veterans Affairs

(Medical Center or Regional Office)

(Address of the Facility)

**Subj: Appointment of an Agency Representative for the EEOC Hearing of
(Name of complainant) – Case Number (case # & date filed)**

1. This letter serves as notification that a complete copy of the investigative file of the EEO complaint of **(complainant's name)**, **(case number)**, along with a copy of **(his/her)** request for a hearing before an EEOC Administrative Judge, has been forwarded to the designated agency representative for your facility. In accordance with 29 CFR 1614 the complainant's request was forwarded to EEOC District Office for assignment.
2. Questions concerning this case may be directed to **(name and telephone of the Intake Specialist.)**

Regional EEO Officer

Enclosure

Date

In Reply Refer To: ORM/08E

Office of Employment of Discrimination
Complaint Adjudication (OEDCA)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

SUBJ: Referral of the Complaint of (Complainant's Name and Case Number) for Final Agency Decision (FAD)

1. Enclosed is a complete copy of the complaint file of (**complainant's name**), filed (**date the complaint was filed**).
2. (**The complainant has requested a FAD**), or (**The complainant has requested a FAD by failure to request a hearing in a timely fashion**), or (**The complainant has failed to respond at all to the Advisement of Rights**). Appropriate documentation to that effect is also enclosed.
3. Please review the EEO complaint file and issue a FAD at your earliest convenience.
4. Should you require additional information, please contact (**Name of the Intake Specialist**) at (**telephone number**). The complainant has been advised of this referral by copy of this letter.

Regional EEO Officer

Enclosure

cc: (**Name of Complainant**)
(**Name of Complainant's Representative**)
Facility Director

Date

In Reply Refer To: ORM/08E

Office of Employment of Discrimination
Complaint Adjudication (OEDCA)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

**Subj: Referral of Final Agency Decision (FAD)– Mixed Case Complaint of
(Complainant’s Name and Case Number)**

1. Enclosed is a complete copy of the “**mixed case**” complaint of (**Complainant’s name**), filed on (**date complaint was filed**.) The complaint has been investigated and a copy has been furnished to the complainant and (**name of complainant’s representative**) (**his or her representative**.)
2. It is our understanding that the complainant has not filed an appeal with the MSPB. Therefore, please review the mixed case complaint file and issue a FAD on this complaint, within the required 45-calendar days.
3. Should you require additional information, please contact (**Intake Specialist Name**) at (**telephone number**). The complainant has been advised of this referral by copy of this letter.

Regional EEO Officer

Enclosure

cc: (Name of Complainant)
(Name of Complainant’s Representative)
Facility Director

Date

In Reply Refer To: ORM/08E

(Name of District Director)

District Director

Equal Employment Opportunity Commission

(EEOC District Office Address)

(City, State, Zip Code)

Subj: Referral of Class Complaint of (name of class agent) for Procedural Review

1. Enclosed is the complete file for the EEO complaint of (**name of class agent**), complaint number (**case number & date filed**). This class complaint is submitted for a determination as to its acceptability. Please appoint an administrative judge to review the complaint.
2. If you need any additional information, please contact (**name, address and telephone number of Field Manager**).
3. Upon completion of his/her review, please instruct the administrative judge to send the complete file, along with his/her recommended decision to this office.

Office of Employment of Discrimination
Complaints Adjudication (OEDCA)
Department of Veterans Affairs
(Insert appropriate Field Office address here)

Regional EEO Officer

Enclosure

cc: (Complainant's Name)
(Complainant's Representative's Name)
Facility Director

APPEAL RIGHTS

This Final Agency Decision may be appealed within **30 calendar days** of receipt of this decision. The appeal should be addressed to: Equal **Employment Opportunity Commission, Office of Federal Operations, P.O. Box 19848, Washington, D.C. 20036**. If you decide to appeal this decision to the Commission ("EEOC"), you should use EEOC Form 573, a copy of which is enclosed.

A copy of your appeal to the EEOC **must** also be sent to the VA Office of General Counsel at the following address: **Department of Veterans Affairs, Office of General Counsel (024), 810 Vermont Avenue, NW, Washington, D.C. 20420**.

Statements or briefs in support of your appeal must be submitted to the EEOC within 30 calendar days of the filing of the appeal. **A copy of any such statement or brief, including any statements made on EEOC's "Appellant Docketing Statement," must also be sent to the VA Office of General Counsel at the above address.** If you have an appeal with the EEOC, your appeal, and any subsequently filed statement or brief, must contain a statement certifying the date and method by which copies of these documents were served on the VA Office of General Counsel.

RIGHT TO FILE A CIVIL ACTION

A civil action may also be filed in an appropriate United States District Court. A civil action may be filed:

Within 90 days of receipt of this final decision **if no appeal to EEOC has been filed**; or,

If an appeal is filed with the EEOC, within 90 days after receipt of EEOC's final decision on your appeal;

After 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the EEOC.

If a civil action is filed, the head of the Department of Veterans Affairs must be named as the defendant. The head of the Department of Veterans Affairs is **Togo D. West, Jr.** The official title is **Secretary of Veterans Affairs**. Failure to provide the name and official title of the head of the Department may result in dismissal of the case.

If a civil action is filed under Title VII (discrimination due to race, color, religion, sex, national origin, or reprisal); or under the Rehabilitation Act of 1973, as amended, (discrimination due to disability), and if a complainant does not have, or cannot afford the services of, an attorney, the

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Court may upon a complainant's request, appoint an attorney to represent the

complainant and permit the filing of the action without payment of fees, costs, or other security. **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend the time in which to file a civil action. Both the request and the civil action **MUST BE FILED WITHIN NINETY (90) CALENDAR DAYS** of the date of receipt of this final agency decision or, if this decision is appealed to the EEOC, within **NINETY (90) CALENDAR DAYS** of the date of receipt of the EEOC's final decision on the appeal.

ACCEPTABLE & DISMISSAL COMBINED

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

Name of Complainant

Address of Complainant

Dear Mr. Doe:

This is in reference to your complaint of discrimination on the basis of Sex (Male), filed on January 29, 1998, against the officials of the Department of Veterans Affairs, Kansas City, Missouri.

Your complaint of discrimination sets forth the following incidents of discrimination.

(SAMPLE: Working Conditions, from October 1, 1993 through February 4, 1994, while employed in the Laundry Section of Environment Management Service.)

(SAMPLE: On October 17, 1997, non-selected for Seamstress position, Vacancy Notice No. 40-97, Laundry Section of Environmental Management Service. Highly qualified and the only male applicant, a lady from another Service was selected for this predominately female occupation.)

Your written response dated March 20, 1998, explaining failure to timely contact an EEO Counselor within the required 45 days of the Working Conditions issue, Item No. 1, has been carefully reviewed. During this time period, you were employed in the Laundry Section, under Mr. G's supervision, and allege unbearable working conditions, which resulted in your requesting to leave the Laundry and return to the Housekeeping Section. Your narrative response revealed that you provided this information regarding Working Conditions only to reflect a past history of your treatment by Mr. G and his laundry staff which being assigned there in 1993 and 1994. In addition, you stated that this material would emphasize the influence Mr. G had on Mr. S during the recent interview for the Seamstress job, and in making the final selection for the vacancy. You further revealed that during the 1993-1994 incidents, supervisors were very vindictive when dealing with problems, you didn't want to make any waves, and your only desire at the time was to be reassigned back to the Housekeeping Section. Therefore, it appears that you would like the Working Conditions incidents to be recognized as background information in your complaint of non-selection for the Seamstress position

Page 2

Accordingly, the issue of Working Conditions for the period of October 1, 1993 through February 4, 1994, is hereby dismissed in accordance with 29 C.F.R. 1614.107(b) for failure to timely contact an EEO Counselor. However, the dismissed allegations may still be used as background, insofar, as they are relevant to the allegations accepted. If you are dissatisfied with this decision, you have the right to appeal the dismissed issue as stated in the enclosed Appeal Rights.

After review, we have concluded that the following allegation listed below has been found acceptable for further processing and investigation.

Whether you were discriminated against on the basis of your Sex (Male), when you were non-selected for the position of Seamstress, announced under Vacancy Notice No. 40-97.

An EEO Investigator will be assigned to investigate your complaint of non-selection, and he or she will contact you directly in order to obtain your affidavit and any other information or evidence which you may wish to offer.

The scope of the investigation will be limited to investigating the accepted issues in your complaint of discrimination, and the EEO Investigator is not authorized to inquire into any other matters. If you have other matters you wish to complain about, you must see an EEO Counselor immediately.

An investigation of the above-accepted matter does not constitute an express or implied waiver by the Department of Veterans Affairs of any time limits prescribed by EEO regulations for the filing of this complaint.

You must keep this office advised of any change in address. Failure to do so could lead to dismissal of your complaint. You must also immediately advise this office, in writing, of the name, address, and telephone number of any representative you may designate to represent you in this matter. If you advise us of representation, copies of all complaint-related correspondence and documents will be provided to your representative, unless you advise us in writing that you are not longer represented by that individual.

If you do not receive a copy of the investigative file of your complaint within 180-calendar days of the date you filed your formal complaint of discrimination, you have the right to request the Equal Employment Opportunity Commission (EEOC) to appoint an administrative judge to conduct a hearing on your complaint without waiting further. You may not, however, request a hearing before the 181st day, unless you receive the investigative file sooner.

Any request for hearing that you may file should be addressed to: Office of Resolution Management (08G), Department of Veterans Affairs, (Insert appropriate ORM Field office address). Your request for a hearing will be immediately transmitted to the District Office of EEOC, along with a copy of your complaint file, along with your request that EEOC appoint an administrative judge to hear your complaint.

If you have questions concerning the processing of your complaint, please contact the EEO Intake Specialist, (Name and Number).

Sincerely yours,

Regional EEO Manager

Enclosure

Settlement Agreement

In exchange for those things set forth below, the undersigned parties to this agreement resolve to settle the complaint(s) of (name of complainant), identified by complaint number(s) filed on (date filed).

1. The complainant agrees to withdraw the above-identified complaint(s) in (its/their) entirety, in exchange for the promises set forth in paragraph 2 below. By doing so, the complainant waives all right to further administrative processing and all rights to file a civil action in connection with the above-identified complaint(s).
2. The Department of Veterans Affairs agrees to:
 - a. (Specify, in detail, whatever terms have been agreed upon)
 - b.
 - c.
 - d.
3. Both parties also stipulate and agree that:
 - a. This agreement has been entered into freely by both parties;
 - b. This agreement does not constitute an admission of guilt, fault, or wrongdoing by either party
 - c. This agreement shall not serve as a precedent for resolving any other complaints, which have been or may be filed by the complainant or any other person; and
 - d. This agreement constitutes the entire agreement and there are no other terms to this agreement except those specified herein.
 - e. This agreement shall be kept confidential and the terms therein shall not be disclosed by either party, except to authorized EEO and VA officials responsible for implementing the agreement; **(NOTE: DO NOT USE IN AN OFFER OF FULL RELIEF SETTLEMENT AGREEMENT)**

Additionally, the Department of Veterans Affairs agrees that, should it fail to comply with any of the terms set forth herein for any reason not attributable to the acts or conduct of the complainant, it will reopen the complaint for further processing at the point in the process where processing ceased as a result of this agreement, provided that the complainant brings any allegations of breach of this Settlement Agreement to the attention of the Deputy Assistant Secretary for the Office of Resolution Management (ORM), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, and within 30-calendar days of discovery of the breach.

In the event the agency has not decided the issue of breach within 35 days of the submission to the Deputy Assistant Secretary, you have the right to appeal to the Equal Employment Opportunity Commission Office of Federal Operations, P.O. Box 19848, Washington, D.C. 20036. Authority 29: 29 C.F.R., 1614.402(a).

In witness whereof, the parties to this agreement have affixed their signatures this _____ day of _____, 19____.

(Complainant)

(Complainant's Representative)

(Director)

(Witness-optional)

VIA: Regular Mail/Return Receipt

Date

In Reply Refer To: ORM/08E

COMPLAINANT
ADDRESS

Dear _____,

This is in reference to your complaint of discrimination on the bases of _____, filed against officials of the _____, on _____.

You allege the processing of your EEO complaint, filed on _____, was improper. You indicate on _____, you received a copy of the EEO Counselor's report and noted that the EEO Counselor had not interviewed all of the witnesses you requested he interview. You indicate this served to cause harm against you because it hindered the acceptability of the complaint.

As you know, EEO regulations require a complainant be "aggrieved" and provide for the dismissal of complaints that fail to state a claim. 29 C.F.R. § 1614.103, 1614.106, 1614.107 (a). A complainant who fails to allege harm to a term, condition, or privilege of employment by the matter complained of has failed to state a claim. Although the Commission's regulations do not define the term "aggrieved", the Commission and the courts have held that an aggrieved employee is one who has suffered a personal loss or harm with respect to a term, condition or privilege of employment resulting from the action being challenged. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); *Gatpandan v. Department of the Navy*, EEOC Docket No. 05900087 (1990).

Allegations involving the alleged improper processing of an EEO complaint would previously have been treated as a spin-off complaint and the agency would have been required to process the matter if timely raised. However, under the new guidance to treating allegations of this nature, EEO Management Directive (MD) 110 requires only that the agency refer the complainant to the agency official responsible for the quality of complaint processing and that individual must earnestly attempt to resolve dissatisfaction with the complaints process as early as possible. (EEO MD 110 (4-8)) EEO MD 110 provides that the agency must process only those complaints in which the individual alleges he was treated differently or being adversely affected by a policy or practice having a discriminatory effect on the processing of his complaint. The EEOC has determined that spin off complaints, which simply express dissatisfaction with the processing of the complaint, fail to state a claim within the meaning and intent of the regulations.

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In this case, you have failed to identify a policy or practice having a discriminatory effect on the processing of your complaint, nor have you alleged your treatment was different from those afforded others.

We note you have also stated you are seeking compensatory damages. However, the Commission held that when an allegation fails to show that a complainant is aggrieved for purposes of Title VII and EEO regulations, it will not be converted into an actionable claim merely because the complainant has requested a specific relief. *Girard v. Dept. of Treasury*, Docket No. 05940379 (Sept. 1994).

Accordingly, it is my decision to DISMISS your complaint for failure to state a claim. Authority: 29 C.F.R. § 1614.107 (a).

In accordance with EEO MD 110, we are also hereby referring your allegations to the Deputy Assistant Secretary for the Office of Resolution Management, who has responsibility over the complaint process, for review and any appropriate action.

If you are dissatisfied with this Final Agency Decision on your discrimination complaint, you may appeal in accordance with the following statement of your appeal rights.

[Appeal Rights Here]

Regional EEO Officer

Enclosure

Cc and separate memo to: ORM (08)

Appendix I

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