

**EQUAL EMPLOYMENT OPPORTUNITY
DISCRIMINATION COMPLAINTS PROCESS**

1. **REASON FOR ISSUE:** To revise the Department of Veterans Affairs (VA) Equal Employment Opportunity (EEO) Discrimination Complaints policy.
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** 38 United States Code 516, as enacted in Title I, Public Law 105-114, 105th Congress, November 21, 1997, directs the Secretary to provide that the employment discrimination complaint resolution system be established and administered in a fair, objective manner that encourages timely and fair resolution. As a result in 1997 the Office of Resolution Management (ORM) was established. Since its establishment ORM's mission has expanded to a more proactive role in prevention and early resolution of workplace disputes. In 2007 the Secretary transferred management and oversight of the Department's Workplace Alternative Dispute Resolution program to ORM. In addition, ORM augmented its senior management structure and realigned its field operations to improve its organizational performance. Additionally, while Federal law and Equal Employment Opportunity Commission regulations do not cover sexual orientation as a protected basis, the VA has established new procedures for processing complaints of discrimination based on sexual orientation. This directive sets forth revised policies and responsibilities for the processing of EEO discrimination complaints.
3. **RESPONSIBLE OFFICE:** The Office of the Deputy Assistant Secretary for Resolution Management (08) is responsible for this Directive.
4. **RELATED HANDBOOKS:** VA Handbook 5977, EEO Discrimination Complaint Procedures.
5. **RESCISSIONS:** VA Directive 5977, EEO Discrimination Complaints Process, February 7, 2007.

CERTIFIED BY:

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

/s/

/s/

Roger W. Baker
Assistant Secretary for
Information and Technology

John U. Sepúlveda
Assistant Secretary for
Human Resources and Administration

Distribution: Electronic

DISCRIMINATION COMPLAINTS

1. PURPOSE. This directive revises Department of Veterans Affairs (VA) policy for processing Equal Employment Opportunity (EEO) complaints of discrimination. It implements Federal law and regulations of the Equal Employment Opportunity Commission (EEOC) at part 1614, title 29, Code of Federal Regulations (C.F.R.), which prohibits discrimination based on race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, and/or reprisal for filing a complaint of discrimination, participating in the EEO process or having opposed prohibited discrimination. Executive Order 13087 prohibits discrimination based upon sexual orientation in the competitive service of the civilian workforce. While Federal law and EEOC regulations do not cover sexual orientation as a protected basis, the VA has established new procedures for processing complaints of discrimination based on sexual orientation. In addition, on November 9, 2010, EEOC promulgated regulation 29 C.F.R. §1635, which implements Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). Title II of GINA prohibits the use of genetic information in making decisions related to any terms, conditions, or privileges of employment (e.g., hiring, firing, and opportunities for advancement); restricts employers and other entities from requesting, requiring, or purchasing genetic information, with limited exceptions; generally requires employers to keep any genetic information they have about applicants or employees confidential; and prohibits retaliation. Genetic information is a covered basis under the jurisdiction of EEOC. This policy applies to all VA employees, applicants for employment, and former employees.

2. POLICY

a. VA employees, applicants for employment, and former employees shall not be discriminated against based on race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, sexual orientation, genetic information, and/or reprisal for filing a complaint of discrimination, participating in the EEO process, or having opposed prohibited discrimination. Harassment based on the above categories is also prohibited.

b. VA employees, applicants for employment, and former employees will be afforded the right to file a complaint of discrimination under the provisions set out in 29 C.F.R. §1614 and §1615 as it relates to GINA.

c. VA employees, applicants for employment, and former employees will be afforded the right to file a complaint of discrimination based upon sexual orientation as set forth in the Secretary's Policy Statement dated May 13, 2010.

d. The Office of Resolution Management (ORM) will provide timely and quality EEO complaint processing services to all complainants. Complaints will be processed promptly with integrity, trust and impartiality throughout the counseling, investigation, and resolution of EEO complaints.

e. Complainants, their representatives, witnesses, and other participants in the EEO process shall be free from restraint, interference, coercion, discrimination, and reprisal at all stages in

the presentation and processing of a discrimination complaint, including the pre-complaint counseling stage. Allegations of reprisal in discrimination complaints, like EEO complaints themselves, should be brought to the attention of a VA ORM EEO counselor. Retaliation for whistleblowing may be reported to the United States Office of Special Counsel (OSC). Refer to VA Handbook 5977, Discrimination Complaints for information regarding other grievance and administrative processes.

f. Complaints will be resolved at the earliest possible stage. Early resolution of complaints is encouraged to achieve better employee relations, cut administrative costs, and it avoids prolonged litigation. ORM will actively seek to assist in resolving EEO disputes at the lowest level possible by explaining and offering alternative dispute resolution (ADR). If the parties agree to ADR, they will be referred to the ADR coordinator.

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

- (1) A discrimination complaint under this directive.
 - (2) A grievance under a negotiated procedure.
 - (3) An appeal under the appellate provisions of the Merit Systems Protection Board (MSPB) regulations.
 - (4) A complaint with the OSC.
 - (5) A complaint with the OIG.
 - (6) An action under any other administrative procedure.
- h. Sufficient resources in personnel and funds should be made available to ensure the success of VA's EEO Discrimination Complaint Program.

3. RESPONSIBILITIES

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

b. **Office of Resolution Management (ORM).** The complaint resolution process is administered through the Veterans Affairs Central Office (VACO), Deputy Assistant Secretary for Resolution Management (DAS/RM), Associate Deputy Assistant Secretary for Resolution Management (ADAS/RM), District Directors (DD), Executive Operations Director and field offices throughout the country. Each field office has the following positions: Regional EEO Officer/Field Manager, administrative officer, case managers, team leaders, EEO investigators, EEO counselors, investigator/case managers (C2), and program assistants. This group of

subject-matter-experts provides seamless and comprehensive EEO complaint processing services.

(1) **Mission.** The ORM's mission is to promote a discrimination-free work environment focused on serving veterans by preventing, resolving, and processing workplace disputes in a timely and effective manner.

(2) **Functional Independence.** Pursuant to 38 U.S.C. §§512 and 516 the DAS/RM has authority to implement and manage the EEOC regulatory requirements and procedures in this Directive and related Handbook 5977.

(3) **Functions.** ORM manages the informal and formal EEO complaint process. All functions performed by ORM are guided by EEOC regulatory requirements with the exception of sexual orientation complaints. Sexual orientation complaints are processed in accordance with the Secretary's Policy Statement dated May 13, 2010. These discrimination complaint processing services include:

(a) Conducting informal counseling during the informal complaint process to try and resolve allegations of discrimination.

(b) Acknowledging receipt of formal complaints of discrimination.

(c) Issuing procedural determinations concerning discrimination complaints.

(d) Managing the EEO investigation process including compensatory damages investigations.

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

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

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

(h) Issuing decisions on claims of dissatisfaction with the processing of an individual's EEO complaint.

(i) Promoting early resolution through the ADR Program.

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

(k) Providing Congress with mandated quarterly and annual reports on discrimination complaints filed against senior VA managers. This report is required by 38 U.S.C. §516, which codifies Title I of Public Law 105-114, Veterans' Benefits Act of 1997, dated November 21, 1997.

(l) Posting quarterly statistical data as required by Title III, Section 202 of Public Law 107-174, Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002, dated May 15, 2002 (the NO FEAR Act of 2002), codified at 5 U.S.C. §2301 note.

(m) Providing Congress a mandated Annual No Fear Act Report as required by Title II, Section 203 of the NO FEAR Act of 2002.

(4) **Commitment.** ORM will encourage employees, supervisors, and union officials to use ADR to help resolve workplace disputes as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. ORM employees will explain the ADR process. If the parties agree to ADR, they will be referred to an ADR coordinator. ORM supports VA's goal of creating and maintaining a high-performing workforce.

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

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

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

(c) If a conflict of interest is discovered after the issuance of a counselor's report, report of investigation, or procedural determination, the Regional EEO Officer/Field Manager will investigate the matter, and take appropriate action, which may include rescission of the report or determination. When appropriate, disciplinary action will be taken.

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

(e) If an ORM employee initiates a complaint of discrimination, OEDCA will assume responsibility for the complaint. Counseling and investigation will be conducted by a contractor.

(6) Customer Service/Due Professional Care Standards. ORM is committed to providing quality customer service. ORM employees will have a thorough knowledge of the applicable laws, regulations, directives, and handbooks related to the processing of EEO complaints. ORM employees will conduct themselves in a highly professional manner at all times and will avoid the appearance of compromising the integrity of the EEO complaint process. Employees shall avoid personal involvement with aggrieved persons, complainants, responsible management officials, witnesses, representatives, or any other participant in the EEO complaint process. Any conduct of an ORM employee that is believed to be inappropriate should be reported, in writing, to the ORM Regional EEO Officer/Field Manager or supervisor. They will investigate the matter and take corrective and/or disciplinary action where appropriate. ORM employees will provide the best possible service to VA and its employees. ORM employees will comply with all applicable Ethics in Government regulations and ensure that their conduct is consistent with ORM's Due Professional Care Standards. This requires high standards of honesty, objectivity, diligence, and loyalty. ORM employees will apply competent skills, exercise sound judgment and exhibit professional demeanor in performing their duties. The exercise of due professional care requires independence, professional proficiency, planning, and quality outcome. ORM's Customer Service/Professionalism Standards require that ORM staff will:

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

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

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

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

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

(f) Provide procedural determinations of all EEO complaints in accordance with 29 C.F.R. §1614.

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

(h) Treat all customers with dignity.

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

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

(k) Maintain confidentiality of information in accordance with applicable privacy and security laws, regulations, directives, and handbooks.

(7) ORM Principal Roles.

(a) **Deputy Assistant Secretary for Resolution Management (DAS/RM).** The DAS/RM serves as the principal advisor to the Assistant Secretary for Human Resources and Administration (AS/HRA) regarding the EEO complaint process in the VA. The DAS/RM has been delegated authority to supervise and control the operation of the administrative EEO discrimination complaint processing system within the VA. Pursuant to 38 U.S.C. §516, 38 U.S.C. §512, and 38 C.F.R. Parts 2 and 15, the DAS/RM exercises exclusive authority to establish and modify discrimination complaint processing procedures. The DAS/RM's responsibilities are:

1. Administering the VA's discrimination complaint process in a manner that ensures prompt, equitable, and efficient processing of discrimination complaints.
2. Formulating and implementing department-wide policies and procedures to ensure the integrity, effectiveness, and impartiality of the complaint system.
3. Ensuring sufficient resources are allocated to achieve ORM's objectives.
4. Working closely with VA officials in resolving EEO complaint issues and raising awareness of management responsibility in this area.
5. Providing technical assistance and guidance to management and employees on all aspects of EEO complaint processing and recommending solutions to matters giving rise to discrimination complaints.
6. Utilizing departmental data to conduct special studies, research, and analysis to enhance the EEO complaint program.
7. Administering VA's Alternative Dispute Resolution program.
8. Formulating and implementing organizational wide ADR policies and procedures.
9. Providing executive leadership over ORM, its offices, and employees.

(b) **Associate Deputy Assistant Secretary for Resolution Management (ADAS/RM).** The ADAS/RM serves as the principal advisor to DAS/RM in formulating and implementing department-wide policies and procedures to ensure the integrity, effectiveness, and impartiality of the complaint processing system and the ADR program. Other responsibilities are:

1. Developing VA's resolution management's programs initiatives in accordance with EEOC regulations and maintaining the control of administrative EEO discrimination complaint processing within the VA.

2. Providing direct oversight over the senior management team which is comprised of the Executive Operations Director, ADR Director, Eastern Operations Director and Western Operations Director.

3. Supervising the effectiveness of the complaint processing system, providing technical guidance and program management advice to the agency and to ORM management.

4. Overseeing the development and implementation of procedures, standards, and guidelines related to complaint processing.

5. Assuming all duties and authorities of the DAS in an acting capacity when necessary.

(c) **District Directors (DDs).** ORM has offices in various locations throughout the United States responsible for a full range of EEO services for the VA. To effectively manage field operations, two regions (east and west) are managed by the DDs. The Eastern DD provides leadership and technical guidance to the counselor, investigator and case manager national team leaders (NTL). The Western DD provides leadership and oversight to the Centralized Investigations Division (CID). Other responsibilities are:

1. Serving as the principal advisors to DAS/RM and ADAS/RM in formulating and implementing department-wide policies and procedures to ensure the integrity, effectiveness, and impartiality of EEO complaint processing.

2. Managing ORM's field operations and providing leadership, oversight and direction to ORM's Regional EEO Officers/Field Managers. The two regions have three field offices each and a host of satellite offices.

3. Determining ORM field operations program goals and objectives including identification of field program requirements and monitoring of accomplishments.

4. Monitoring the workload of field operations and advising the DAS and ADAS on staffing needs to assure the effectiveness of the complaint processing system.

5. Providing technical guidance and program management advice to the administrations and ORM management.

6. Assisting in the development and implementation of procedures, standards, and guidelines related to complaint processing and the development of training for EEO counselors, EEO investigators, and EEO case managers.

7. Providing direction based on ORM's mission and strategic plan.

(d) **Regional EEO Officer/Field Manager.** The Regional EEO Officer/Field Manager is responsible for the full scope of EEO complaint processing and operations within the assigned geographical area and reports directly to the respective DD. The Regional EEO Officer/Field Manager is responsible for:

1. Formulating and directing organizational operations and serving as the principal ORM spokesperson in his/her service area.
2. Working closely with VA field facility management officials in raising awareness of their responsibilities and facilitating achievement of the objectives of the discrimination complaint program.
3. Ensuring sufficient resources are allocated to achieve ORM's objectives within his/her jurisdiction and supervising ORM personnel assigned to their geographical area.
4. Ensuring that all EEO complaints are processed in accordance with applicable laws, regulations, directives, and handbooks.
5. Reviewing and signing procedural determinations regarding the acceptability of EEO complaints for further processing.
6. Ensuring that all employees receive the appropriate level of training required by EEOC regulations.
7. Briefing employees on OPC's Annual and Semi-Annual Spin-Off Reports.
8. Taking prompt and appropriate corrective action to address any program or individual deficiencies that impact the processing of EEO complaints.
9. Creating and maintaining an effective work environment that supports teamwork, is free of discrimination, and promotes diversity.
10. Assigning EEO investigations to individual investigators after receiving notification of assignments from the CID.
11. Ensuring timely compliance with all EEOC and OEDCA remands.

(e) **Administrative Officer (AO).** AO serves as a non-supervisory assistant to the Regional EEO Officer/Field Manager with the exception that they supervise the duties and responsibilities of the Program Assistants. The AOs are responsible for:

1. Serving as a technical office advisor and quality control officer for complaint processing.
2. Providing daily oversight and direction to ensure the smooth processing and quality assurance of the field office operations.

3. Assigning and reviewing work products, and providing technical assistance to field office staff.

4. Reviewing and evaluating procedural decisions and forwarding them to the Regional EEO Officer/Field Manager.

5. Serving as Acting Field Manager in the absence of the Regional EEO Officer/Field Manager.

6. Performing the duties of a case manager.

(f) **National Team Leaders (NTL).** The NTL for counselors, investigators, and case managers are key elements in ensuring standardization of the EEO complaint process. The NTLs are responsible for:

1. Maintaining consistent application of procedures.

2. Conducting regular meetings with their respective discipline team leads or designated representatives to discuss any procedural or policy changes that have or will take effect, any issues and/or areas of concern related to specific processes, and other items related to the effective and efficient processing of EEO complaints.

3. Interacting with the DDs, CID, Regional EEO Officers/Field Managers, AOs, team leaders and case managers, to ensure standardization of EEO complaint processing procedures.

4. Coordinating with the OPC Chief, Quality Assurance (QA) Manager, Learning Resources Chief, their respective DDs, and other key officials to develop policies, procedures, or guidelines for processing EEO complaints.

5. Ensuring a seamless transition of complaint processing responsibilities between each discipline.

6. Consulting with EEOC, OEDCA, and the VA Office of General Counsel (OGC) to ensure the VA is in compliance with established case law and regulations.

7. Serving on task forces and committees impacting the complaint process.

(a) **Counselor National Team Leader (NTL).** The Counselor NTL serves as the technical expert for EEO counseling and is responsible for the oversight of the quality and timeliness of the informal counseling process. Other responsibilities are:

(b) **Case Manager National Team Leader (NTL).** The Case Manager NTL serves as the technical expert and advisor for formal complaint processing and is responsible for oversight of the technical aspects of case manager activities.

(c) **Investigator National Team Leader (NTL).** The Investigator NTL serves as the technical expert for EEO investigations and is responsible for oversight of the technical aspects of the investigative process.

(g) **Counselor Team Leader (TL).** The Counselor TL assigns work, provides technical assistance and guidance to the counselors under their jurisdiction. The Counselor TL is responsible for mentoring, coaching, facilitating, consensus-building and providing technical support to counselors. The Counselor TL is also responsible for reviewing each counseling report to insure it is prepared in accordance with standards and regulatory requirements.

(h) **EEO Counselor.** The EEO Counselor is responsible for providing counseling services. These services are:

1. Providing information to the complainant.
2. Collecting sufficient information to frame the claim(s) and basis(es).
3. Gathering information and affording both the aggrieved person and VA an opportunity to achieve an informal and mutually acceptable resolution of the complaint.
4. Conducting a limited inquiry for the purpose of jurisdictional questions.
5. Seeking resolution of disputes at the lowest possible level.
6. Educating and explaining the benefits of the ADR process.
7. Advising aggrieved individuals of other forums where they can pursue their concerns, i.e., OSC, the negotiated grievance process, MSPB, etc.
8. Preparing administrative files and counselor reports for every complaint counseled.

(i) **Case Manager.** The Case Manager has major oversight responsibilities for the processing of formal complaints of discrimination in a specified geographical location. The case manager is responsible for:

1. Acknowledging receipt of formal complaints, preparing procedural decisions, releasing investigation files, issuing the advisement of rights letter to complainants, and responding to correspondence and EEOC hearing requests.
2. Reviewing, researching, analyzing, and preparing complex, and technically sound procedural determinations, final agency decisions regarding the dismissal of EEO complaints.
3. Ensuring that procedural requirements are met and supported with relevant case law and precedents.
4. Serving as the principal point of contact for an assigned geographical area.

5. Serving as back-up and handling overflow assignments from the counselor and investigator team leaders.

6. Providing technical assistance and mentoring to counselors, investigators, and other staff, in the absence of team leaders.

7. Ensuring the completeness and accuracy of all data entered into the Complaints Automated Tracking System (CATS).

8. Communicating regularly with management officials, EEO Managers and employees.

9. Resolving issues relating to processing complaints of discrimination.

(j) **Investigator Team Leader (TL).** The Investigator TL is responsible for providing support and guidance to the investigators under their jurisdiction. The Investigator TL is responsible for mentoring new investigators. The Investigator TL is responsible for reviewing each investigation prior to its release to insure the investigation has been completed according to standards and regulatory requirements.

(k) **EEO Investigator.** The EEO Investigator is responsible for investigating accepted claims of prohibited employment discrimination including:

1. Taking statements from witnesses under oath.

2. Gathering pertinent documents and records, and conducting whatever inquiry is necessary.

3. Collecting various data and information sources to obtain, analyze, and present facts.

4. Resolving discrepancies by conducting additional fact-finding, additional witness testimony, and reviewing additional documents.

5. Compiling an investigative file and preparing an investigative report, summarizing all relevant facts so a decision-maker can determine the relative likelihood that unlawful discrimination did or did not occur as alleged.

(l) **Investigator-Case Manager (C-2).** The Investigator-Case Manager (C-2) performs a combination of case manager and investigator duties as identified in paragraph (7)(i) and (7)(k) above. This position is designed to seamlessly adapt to workload fluctuations.

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

distributing and monitoring correspondence to ensure appropriate distribution and timely action.

(n) **Centralized Investigations Division Manager (CID).** The CID manager facilitates timely assignment and completion of investigations. They work with ORM Regional EEO Officers/Field Managers in assigning cases pending investigation in ORM's national inventory to ORM investigators. The CID manager also reviews and approves contract investigations for release. The CID provides oversight to the Defense Logistics Agency, Document Services who reproduces, digitizes and distributes investigative files.

(o) **Document Management Specialists (DMS).** The DMS provides assistance to the CID Manager in the triaging and assigning of cases to investigators. The DMS monitors and tracks responses to initial document requests made by ORM case managers.

(p) **Alternative Dispute Resolution (ADR) Director.** The ADR Director advises the DAS/RM, the Deputy Dispute Resolution Specialist (DRS) for Workplace ADR, on VA's nation-wide Workplace ADR program. The ADR Director is responsible for:

1. Developing VA-wide policy and overseeing VA organizations' policy and efforts to manage conflict and resolve workplace disputes.
2. Collaborating with and advising VA organizations and stakeholders, such as Human Resources, OGC, and VA employee national and local labor unions, in designing, developing, and implementing ADR programs department-wide.
3. Representing VA on interagency work groups and committees.
4. Coordinating department-wide training on conflict management and ADR.
5. Tracking, monitoring, and reporting the quantity and quality of VA's Workplace ADR activities.
6. Identifying key issues affecting the use of ADR, assessing participation in ADR, cost savings, timeliness, satisfaction, and providing regular reports to the DAS/RM and appropriate VA officials on key ADR metrics.

(q) **Executive Operations (EO) Director.** The EO Director is responsible for oversight of five programs that provide support to ORM field offices to improve the organizational performance of ORM. The support programs include OPC, QA, External Affairs, Organizational Climate Assessment Program and Customer Service. The EO Director is responsible for:

1. Formulating and implementing organizational wide policies and procedures related to complaint processing.

2. Issuing department-wide policies and procedures to ensure the integrity, effectiveness, and impartiality of the complaint processing system.
3. Overseeing of customer service satisfaction surveys.
4. Developing policy and procedural guidance related to the Privacy Act and the Freedom of Information Act.
5. Maintaining of the discrimination complaints tracking system.
6. Providing oversight of organizational climate assessment program activities which measures employee satisfaction in the workplace.

(r) **Organizational Climate Assessment Program (OCAP) Manager.** The OCAP Manager is responsible for ORM's Organizational Climate Assessment Program and assists the VA in early resolution and complaint prevention. The OCAP Manager measures employee satisfaction in the workplace by conducting surveys, focus groups, interviews, review of complaints, grievances, human resource and EEO data. The OCAP Manager identifies significant systemic patterns, trends and problems in the work environment and provides the DAS/RM an Assessment Report, which is distributed and used by appropriate VA officials to improve VA's work environment.

(s) **Office of Policy and Compliance (OPC) Chief.** The OPC Chief has responsibility for developing policies and procedures for processing complaints of discrimination. Other responsibilities are:

1. Issuing VA and ORM Directives, Handbooks, and Bulletins to ensure that policies and procedures for processing EEO complaints meet the requirements of the law and regulations. All policies, procedures, or guidelines for processing EEO complaints are coordinated with QA, Learning Resources Chief, the DDs, NTLs, and other key officials.
2. Providing technical guidance ORM-wide to preserve the integrity of the EEO complaint processing system.
3. Preparing mandated quarterly and annual Senior Manager Reports and the Annual No Fear Act Report.
4. Monitoring agency compliance with OEDCA, EEOC decisions and EEO settlement agreements.
5. Evaluating OEDCA and EEOC remand decisions to discern patterns or trends and providing guidance to ORM Field Offices.
6. Rendering decisions on breach of settlement agreement claims and claims of dissatisfaction with the processing of EEO complaints.

7. Supervising compensatory damage investigations.

8. Conducting preliminary inquiries into age discrimination claims when a notice of intent to sue has been served on the agency.

9. Responding to all Congressional inquiries, Secretary inquiries and controlled correspondences related to EEO matters.

(t) **Directive Management Officer (DMO).** The DMO develops, controls, reviews, publishes, distributes and maintains ORM directives, handbooks and policies with oversight by the OPC Chief. The DMO provides advice and assistance to ORM personnel on developing, coordinating, reviewing, approving, and maintaining a Document Management System (DMS).

(u) **Internal Complaints EEO Manager.** The Internal Complaints EEO Manager serves as principal advisor to the ADAS/RM on all ORM EEO related matters. This includes managing the processing of complaints filed by ORM employees. Other responsibilities are:

1. Coordinating with the OEDCA Point of Contact to ensure that all ORM internal complaints are processed in accordance with EEOC regulations, the ORM Internal Complaints SOP, and the Memorandum of Understanding between ORM and OEDCA.

2. Receiving initial contact information from ORM employees, former employees and applicants for employment.

3. Forwarding initial contact information to the OEDCA POC for assignment to a contractor.

4. Entering internal complaint data into the applicable data fields and screens and scanning all relevant complaint documents into CATS.

5. Providing the ADAS/RM and DDs with a monthly status report of all ORM internal complaints.

6. Coordinating with the ADR Director, complainants, management officials, and other necessary parties to facilitate ADR participation.

7. Monitoring compliance with ORM settlement agreements and orders from OEDCA and the EEOC Office of Federal Operations.

(v) **Quality Assurance (QA) Manager.** The QA Manager is responsible for ORM's Quality Assurance Program, Data Management, and CATS. The QA Manager is responsible for:

1. Establishing assessment guidelines for reviewing and documenting compliance with applicable laws and regulations regarding the processing of EEO complaints.

2. Evaluating each field office to ensure complaints are processed in accordance with EEOC and ORM guidelines.

3. Developing and reporting on key reporting mechanisms to the DAS/RM, ADAS, key management officials in ORM, internal VA customers, and EEOC.

4. Providing the EO Director with necessary reports, evaluations, and/or trend data regarding ORM compliance with applicable laws and regulations governing the processing of EEO complaints.

5. Overseeing CATS and its daily operation of the system which includes making modifications for improvement and maintaining quality control over operation of the system.

(w) **Customer Service Manager.** The Customer Service Manager is responsible for tracking, reviewing, analyzing, and monitoring internal and external customer satisfaction throughout ORM. The data collection process includes quantitative and qualitative data gathering processes and is utilized to gather information from VA employees that participate in the EEO complaints process, EEO Managers, VA Senior Managers, OEDCA, OGC (to include the Office of Regional Counsel), EEOC and other management officials who may provide responses during the EEO complaint process. Other responsibilities are:

1. Evaluating workload statistics, customer service surveys and focus group's outcomes to define ORM's internal and external customer service goals and performance standards. This evaluation may be targeted towards a specific region, field facility or situation.

2. Developing detailed plans, goals, and objectives for short and long-range implementation and administration of a complete, comprehensive, and consistent internal and external Customer Service Program.

3. Providing the DAS/RM a customer service assessment report, which is distributed to appropriate VA officials.

4. Providing EEO policy guidance, advisory assistance, and support to VA managers in the development of strategic planning for applying customer service principles to core business areas.

5. Ensuring reliability, creditability, and validity that improves job satisfaction for all ORM employees and improves customer satisfaction levels for all ORM stakeholders.

(x) **External Affairs Officer.** The External Affairs Officer serves as the agency liaison to the Department of Justice for external complaints filed with the agency under Title VI of the Civil Rights Act of 1964 and other similar statutes, such as Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and various Presidential Executive Orders. The External Affairs Officer is responsible for:

1. Serving as ORM's Freedom of Information Act and Privacy Act Officer.

2. Advising the DAS and ADAS on public affairs issues relating to the media and special interest group contacts.

3. Providing guidance to ORM employees regarding The Freedom of Information Act under 5 U.S.C. §552, as amended by Public Law Number 104-231,110 Statute 3048.

4. Assisting the DAS and ADAS/RM with presentation and development of speeches.

5. Coordinating the publication and dissemination of ORM's annual report and newsletter.

(y) **ORM Ombudsman.** Under charter by the DAS/RM, ORM's Ombudsman is responsible for:

1. Providing confidential advice and assistance to ORM managers and staff concerning workplace issues affecting employee productivity, job satisfaction or related processes or policies.

2. Formulating recommendations to ORM officials concerning workplace processes and policies affecting employee satisfaction and morale.

3. Providing, and collaborating with the ADR Director to provide, ADR services to VA organizations or employees requesting assistance with workplace issues and making recommendations on resolving such issues.

4. Providing, with the consent of the DAS/RM; ombudsman services under memorandum of understanding to VA organizations requesting such services.

5. Serving as a member of the ADR Council.

6. Performing other collateral duties in ORM not inconsistent with the Ombudsman's duties as requested.

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

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

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

(cc) **Learning Resources Chief.** Learning Resources Chief serves as VA's and ORM's key official for all national EEO training programs that focus on the EEO complaint resolution process. The Learning Resources Chief responsibilities are:

1. Administrating EEO training programs.
2. Developing project plans.
3. Analyzing learning needs of EEO professionals.
4. Designing course curriculum.
5. Developing training content and product marketing plans.
6. Implementing training initiatives to include, mandatory EEOC training.
7. Evaluating EEO training initiatives and programs.

c. Office of Employment Discrimination Complaints Adjudication (OEDCA)

(1) Issues FADs for individual, class action, and sexual orientation complaints, that do not go to EEOC for hearing.

(2) Issues FADs on compensatory damages and attorney fees, in consultation with OGC concerning the reasonableness of an attorney's hourly rate for the geographic location involved.

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

(4) Issues final agency actions, within forty (40) calendar days of receipt of an EEOC hearing decision.

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

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

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

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

e. **Office of Inspector General (OIG).** As specified in the Memorandum of Understanding dated August 22, 2006, with OGC, OIG may serve as the VA representative where an EEO complaint has been filed by an applicant for employment and current and former OIG employees. These responsibilities are:

(1) Assisting the Secretary and the AS/HRA in conducting reviews of cases where there has been a finding of discrimination.

(2) Representing the VA at EEOC hearings, administrative appeals of final agency decisions or final actions, and requests for reconsideration of EEOC decisions.

(3) Assisting the United States Attorney in defending lawsuits filed against the VA.

(4) Advising VA officials on EEO related matters.

(5) Consulting with OEDCA regarding award of attorney's fees.

f. **Under Secretaries, Assistant Secretaries, and Other Key Officials.** Under Secretaries, Assistant Secretaries, and Other Key Officials are responsible for eliminating discriminatory policies and practices, and maintaining a discrimination-free workplace. They are responsible for:

(1) Taking an active role to resolve EEO complaints and workplace disputes.

(2) Publicizing and permanently posting on official bulletin boards, the name, telephone number, and location of the regional ORM Field Office and the time limits for contacting an EEO counselor, Union, and MSPB with allegations of prohibited discrimination.

(3) Ensuring compliance with orders issued by the OEDCA, EEOC, and EEO related cases from the MSPB, Labor Arbitrators, and the Federal Labor Relations Authority (FLRA).

(4) Appointing an EEO manager should be consistent with the needs and availability of resources. This could be on a full-time, part-time or collateral duty basis, as appropriate.

(5) Implementing an ADR program in accordance with VA Directive 5978, Alternative Dispute Resolution.

(6) Establishing policies that facilitate the appropriate use of ADR, especially mediation, to help resolve EEO complaints and workplace disputes and designate an ADR coordinator to manage the ADR program.

g. **EEO Manager.** The role of the EEO manager is vital in support of ORM's mission. It is important for a person to be designated to serve in this capacity. In any case where an EEO Manager believes that he/she has, or may have, a conflict of interest with, 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 their supervisor. The EEO Manager is responsible for:

(1) Providing assistance in efforts to resolve claims during the informal stage, and after the filing of formal complaints of discrimination.

(2) Obtaining facility assistance to ORM during EEO complaint processing.

(3) Coordinate EEOC hearing activities with Regional Counsel.

(4) Monitoring compliance with all settlement agreements and orders issued by the OEDCA, EEOC, and EEO related cases from the MSPB, Labor Arbitrators, and the FLRA.

(5) Notifying management if compliance falters.

(6) Coordinating with ORM's OPC Chief and appropriate management officials to bring compliance actions to closure.

h. **Alternative Dispute Resolution (ADR) Coordinator.** ADR coordinators are located throughout the VA and are responsible for the daily operation of ADR programs under their jurisdiction and collaborating with affected offices in providing effective ADR services and processes.

i. **Dispute Resolution Specialist (DRS).** The AS/HRA is the DRS for VA. The DRS is appointed pursuant to the Administrative Dispute Resolution Act (ADRA), the VA DRS is the senior official within the VA responsible for the development and implementation of the VA's ADR program.

j. **Management Officials and Supervisors.** Managers and supervisors will provide equal opportunity to all employees within their operations by promoting an environment free of discrimination. They will not reprimand, coerce, restrain or interfere with an employee's

rights to use the EEO complaint process; and will cooperate with EEO officials and administrative judges by providing, upon request, information in connection with the processing of an administrative complaint.

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

4. REFERENCES

- a. Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§621-634.
- b. The Administrative Dispute Resolution Act of 1996, (ADRA), 5 U.S.C. §§571-584.
- c. Americans with Disabilities Act of 1990, 42 U.S.C §12101 et seq.
- d. Architectural Barriers Act of 1968, as amended 42 U.S.C. §§ 4151 et seq.
- e. The Civil Rights Act of 1964, as amended, 42 U.S.C §2000e et seq.
- f. The Genetic Information Nondiscrimination Act of 2008, (GINA), 42 U.S.C. § 2000ff-1(b).
- g. Department of Justice (DOJ), The Freedom of Information Act 5 U.S.C. §552 , as amended by Public Law No. 104-231, 110 Stat. 3048.
- h. EEOC Regulation 29 C.F.R. §1614.
- i. EEOC Management Directive 110 (MD 110), November 9, 1999.
- j. EEOC Management Bulletin 100-1 (MB 100-1), October 24, 2003.
- k. EEOC Management Directive 715, October 1, 2003.
- l. EEOC Instructions to Federal Agencies for Equal Employment Opportunity Management Directive 715 (EEO-MD-715), March 31, 2004.
- m. EEOC, Equal Pay and Compensation Discrimination, September 20, 2001.
- n. EEOC Facts about Compensation Discrimination, May 11, 2000.
- o. Equal Pay Act of 1963, 29 U.S.C. §206(d).

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

q. Executive Order 12106, Transfer of Certain EEO Enforcement Functions, amends Executive Order 11478 to include in its coverage non-discrimination based on age and disability. The Order also transferred Federal equal employment opportunity enforcement authority to the EEOC and made the EEOC responsible for directing and furthering the implementation of equal employment opportunity policy.

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

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

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

u. Merit Systems Protection Board (MSPB), Questions and Answers about Appeals.

v. Notification and Federal Employee Antidiscrimination and Retaliation (No Fear) Act of 2002.

w. Office of Personnel Management, Position Classification Appeals, June 1998.

x. Office of Special Counsel (OSC), Your Rights as a Federal Employee.

y. Office of Special Counsel (OSC), How to File a Complaint Alleging a Violation of the Hatch Act.

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

aa. Rehabilitation Act of 1973, as amended, 29 U.S.C. §791, §793, §794(a).

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

cc. VA Authority and Duties of the Secretary, Equal Employment Responsibilities, 38 U.S.C §516.

dd. VA, Delegations of Authority, EEO Responsibilities, 38 C.F.R, §2 and §15.

ee. VA Directive 5975, Diversity Management and Equal Employment Opportunity.

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

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

hh. VA Directive 5978, Alternative Dispute Resolution.

ii. VA OEDCA, A Guide to Investigating Employment Discrimination Complaints, August 1999.

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

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

ll. VA Office of Resolution Management, Due Professionals Care Standards, 2002.

mm. VA Office of Resolution Management, Realignment Process, December 5, 2008.

nn. VA Office of Resolution Management, Standard Operating Procedures.

oo. VA 's Secretary's Delegations of Authority to Certain Officials, 38 U.S.C. §512.

pp. VA's Secretary's Policy Statement regarding processing EEO complaints based upon sexual orientation, May 13, 2010.