TO ALL EMPLOYEES

SUBJECT: The Secretary’s Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Protection Policy Statement

The Department of Veterans Affairs (VA) is strongly and unequivocally committed to equal employment opportunity, diversity and inclusion, and the protection of employee rights in the workplace. As the Acting Secretary of VA, it is my privilege to express my unwavering commitment to the rights and protections enshrined in the Civil Rights Act of 1964, the Notification and Federal Employee Antidiscrimination and Retaliation Act, the Whistleblower Protection Act and all Federal laws that protect our employees.

As we face challenges in our work environment, it is more important than ever that each of us recommit ourselves to these principles and redoubles our efforts to cultivate a safe, fair, and inclusive culture at VA. Our collective ability to deliver the best services and care to our Nation’s Veterans is inextricably linked to sustaining an organizational culture that protects and empowers the voices of all employees and leverages the diverse talent of all of our human resources. This includes creating a climate that embraces constructive dissent, welcomes critical feedback, and ensures compliance with legal requirements.

An essential component to this is the clear demonstration of VA’s Core Values: Integrity, Commitment, Advocacy, Respect, and Excellence. These enduring values create the foundation for an environment that fosters diversity and inclusion. We must be vigilant in ensuring that our words and behaviors congruently promote a culture that facilitates employee engagement and hears all voices.

Executives, managers, and supervisors bear a special responsibility for enforcing the policies summarized below and promoting the imperatives of equity, diversity, and inclusion in the workplace. It is my expectation that supervisors share this Policy Statement with their workforce to ensure full understanding of its content. Thank you for your dedication to Veterans and our mission to serve them.

Sloan D. Gibson
Acting Secretary

Attachment
VA is committed to ensuring EEO, promoting workforce diversity, workplace inclusion, and constructively resolving conflict to maintain a high-performing organization in service to our Nation's Veterans. We will vigorously enforce all applicable Federal EEO laws, executive orders, and management directives to ensure equal opportunity in the workplace for all VA employees. This document summarizes VA's EEO, diversity and inclusion, and No FEAR-related workplace policies.

EEO and Prohibited Discrimination

VA does not tolerate discrimination, including workplace harassment, based on race, color, religion, national origin, sex (including gender identity, transgender status, sexual orientation, and pregnancy), age, disability, genetic information, marital/parental status, political affiliation, or retaliation for opposing discriminatory practices or participating in the discrimination-complaint process. This applies to all terms and conditions of employment, including recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits, and separation.

VA's Office of Resolution Management (ORM) is responsible for administering an impartial and effective complaints management process to receive, investigate, and resolve, if possible, complaints of employment discrimination at the earliest possible stage. Employees may report allegations of discrimination to ORM at (888) 737-3361. The regulations governing the Federal EEO complaint process are found in 29 CFR Part 1614.

Employees seeking redress under this process must contact an EEO counselor in person, by phone, or in writing within 45 calendar days of the date of the alleged discrimination. Employees may also report allegations to their immediate local facility EEO program manager or a management official in their chain of command, or they may raise discrimination issues through the Negotiated or Administrative Grievance Process or the Merit Systems Protection Board (MSPB) as appropriate. While an allegation of discrimination may be raised through these additional avenues, this action does not constitute initiation of an EEO complaint with an EEO counselor through the Federal sector EEO complaint process, and it does not extend the 45 calendar-day time limit to initiate an EEO complaint with ORM.

Complaints of discrimination filed on the basis of marital status or political affiliation may be investigated as prohibited personnel practices and are under the jurisdiction of the MSPB or the Office of Special Counsel (OSC). Complaints filed on the basis of parental status may be processed through VA's internal complaints process. Employees seeking to file complaints based on sexual orientation may
have multiple avenues to consider. If an employee believes that he or she has been discriminated against based on sexual orientation, he or she should contact an ORM EEO counselor for more information.

**Conflict Management and Alternative Dispute Resolution**

Workplace conflict is often the result of miscommunication and creative tension in the organization. If properly managed, it can yield positive improvements to business processes and the organizational climate. It is important we maintain an organizational culture in VA that does not suppress creative conflict or suppress constructive debate and dissent. To maintain a respectful, productive, and effective work environment, it is VA's policy to address and resolve workplace disputes and EEO complaints at the earliest possible stage. VA offers Alternative Dispute Resolution (ADR) services such as mediation, facilitation, and conflict management coaching to assist parties in constructively resolving disputes. ADR involves a neutral third party working with the employee, supervisor, or group to engage in constructive communication, identify issues and concerns, and develop collaborative solutions. Employees and supervisors are encouraged to consult their ADR program manager or VA’s Workplace ADR program for guidance and assistance in resolving workplace disputes of any kind.

**Prohibited Personnel Practices**

The Civil Service Reform Act of 1978, as amended, protects Federal Government applicants and employees from "Prohibited Personnel Practices" including discrimination, coercion, intimidation, preferential treatment, and other prohibited practices in violation of merit systems principles. Under the law, OSC will investigate and take action to correct prohibited conduct. Injured persons may bring actions before the MSPB, if OSC declines to act. Individuals interested in more information should visit: http://osc.gov/PPP.htm.

**Reasonable Accommodations**

VA is committed to the employment and retention of individuals with disabilities. To that end, VA will vigorously enforce Sections 501, 504, 505, and 508 of the Rehabilitation Act of 1973 as amended, which mirror the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendments Act of 2008. This includes maintaining accessibility of electronic and information technology to individuals with disabilities. All Federal employees and members of the public with disabilities must have access to and use of information and data, comparable to that of employees and members of the general public without disabilities, unless an undue burden would be imposed on the agency.

An important component in hiring and retaining individuals with disabilities is the provision of reasonable accommodations to employees and applicants on the basis of disability in accordance with law. For individuals with disabilities, a reasonable
accommodation is any change in the work environment or in the manner work is accomplished that enables them to perform the essential functions of their jobs and enjoy equal benefits and privileges of employment. Individuals who believe they need such accommodation should request accommodation from immediate supervisors. The procedures for requesting and processing requests for reasonable accommodation are contained in VA Handbook 5975.1. VA has also established a centralized reasonable accommodations fund to support requests for accommodation that may not be otherwise funded. Individuals interested in more information should contact the Office of Diversity and Inclusion.

In accordance with Title VII of the Civil Rights Act of 1964, VA also provides religious accommodations to employees unless doing so imposes an undue hardship on the organization. Accommodations may include adjustments to work schedules to accommodate religious observances, allowances regarding religious attire, allowances to be excused from compulsory activities that conflict with the employees sincerely held religious beliefs or practices, and other modifications. Individuals who believe they need a religious accommodation should request the accommodation from their immediate supervisors. Religious expression and exercise are permitted in the VA workplace provided that such expression does not suggest government endorsement or preference for one faith over another, interfere with efficient working of government VA operations, or intrude upon the legitimate rights of other employees.

**Workplace Harassment**

Workplace harassment is a form of unlawful employment discrimination, and will not be tolerated. Workplace harassment is defined as any unwelcome, hostile, or offensive conduct taken on the bases listed above, which interferes with an individual’s performance or creates an intimidating, hostile, or offensive work environment. Harassment by or against VA employees, applicants, contract employees, clients, customers, and anyone doing business with VA is prohibited. Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

Sexual harassment is a form of workplace harassment that is prohibited and will not be tolerated in VA. Analogous to other forms of workplace harassment, it involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of one’s employment; (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (3) such conduct interferes with an individual’s performance or creates an intimidating, hostile, or offensive work environment.
Unlawful harassment extends to harassing comments posted on social media, such as Internet sites. It is the duty of an employer to protect its employees from unlawful harassment, if there is a nexus with the workplace. This duty is unaffected by the location where harassment occurs, on or off the worksite, including in cyberspace. The duty remains the same—supervisors must intervene and take prompt and effective corrective action to end the harassment.

Supervisors and employees bear responsibility in maintaining a work environment free from discrimination and harassment. Employees must not engage in harassing conduct, and all employees should immediately report such conduct to their supervisor, another management official, collective bargaining unit, Employee Relations (ER), Labor Relations (LR) Specialists, or ORM, as appropriate. If an employee brings an issue of harassment to a supervisor’s attention, the supervisor must promptly investigate the matter and take appropriate and effective corrective action. Allegations of discrimination and harassment will be taken seriously and appropriate corrective action—up to and including termination—will be taken, if allegations are substantiated. Supervisors are strongly encouraged to seek guidance from their local EEO manager, ORM, ER and LR staff, or the Office of General Counsel when addressing issues of discrimination or harassment.

Workplace Violence and Bullying

Workplace violence, the threat of violence, and/or bullying of workers are strictly prohibited. This type of prohibited behavior can occur at or outside the workplace and can range from threats and verbal abuse to physical assaults. “Bullying” conduct constitutes fighting, threats, and intention to inflict harm, or abusive, offensive, unprofessional, intimidating, slanderous, malicious, derogatory, or otherwise inappropriate or unacceptable language intended to degrade or humiliate a particular person or group of people. Bullying and workplace violence are violations of VA’s policy and will not be tolerated. Any employee who is subject to bullying behavior or potential workplace violence should immediately report the matter to his or her supervisor or another appropriate official.

VA’s Office of Occupational Safety and Health under the Office of Administration is responsible for providing oversight of VA’s Occupational Safety and Health and Workers’ Compensation programs in support of VA’s Designated Agency Safety and Health Official. Violence in the workplace is an occupational safety hazard citable under Department of Labor’s Occupational Safety and Health Administration standards and under VA Directive 7700. Under Secretaries, Assistant Secretaries, and other Key Officials are required to implement a violence prevention program.

Language Usage

VA recognizes and respects the right of employees who speak languages other than English in the workplace, outside of the performance of their work duties.
Employees may speak another language when the conversation is not related to the performance of their duties; for example, when they are in the break room or making a personal telephone call. Circumstances in which an English-only rule may be justified include: communications with customers or coworkers who only speak English; emergencies or other situations in which workers must speak a common language to promote safety; cooperative work assignments in which the English-only rule is needed to promote efficiency. Even if there is a need for an English-only rule, Supervisors may not take disciplinary action against employees for violating the rule unless VA notified workers about the rule and the consequences of violating it.

The Equal Employment Opportunity Commission has stated that rules requiring employees to speak only English in the workplace violate the law unless they are reasonably necessary to the operation of the business. A rule requiring employees to speak only English in the workplace at all times, including breaks and lunch time, should be limited to the circumstances in which it is needed for the employer to operate safely or efficiently.

No FEAR Act/Whistleblower Protection

It is imperative that all VA employees, supervisors, and officials understand the protections afforded by The Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) and the Whistleblower Protection Act. The No FEAR Act protects Federal employees from unlawful discrimination and reprisal for participation in protected EEO and whistleblowing activity. The Whistleblower Protection Act prohibits retaliation against public employees or applicants for employment for reporting a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and special danger to public health or safety. Retaliation against individuals for whistleblowing, opposing discrimination, or participating in the discrimination-complaint process is unlawful and will not be tolerated. This includes complainants, witnesses, and others who provide information concerning such claims.

The Whistleblower Protection Enhancement Act of 2012 amended the law regarding whistleblowers' rights by: (1) making a whistleblower's oral disclosures legally sufficient; no longer must a disclosure be in writing; (2) making disclosures that fall within the whistleblower's job duties an eligible basis of a whistleblower claim; (3) strengthening anti-retaliation restrictions; (4) allowing damages that could be obtained by a whistleblower to include consequential damages such as emotional distress; and (5) establishing a 2-year trial period for these provisions. Avenues of redress available to address claims of reprisal for whistleblowing include local Congressional representatives, the MSPB, and the OSC. VA will not tolerate violations of the spirit or letter of these Federal statutes.

Every VA employee is responsible for safeguarding the privacy of Veterans and other individuals served by VA and for complying with laws that protect patient health information and other sensitive personal information. Be advised that a whistleblower
disclosure of information is protected only if the release is specifically permitted by all applicable confidentiality provisions. Wrongful disclosure of sensitive personal information, such as medical or personnel records, may be subject to civil and criminal penalties as well as disciplinary or other adverse action.

Uniformed Services Employment and Reemployment Rights Act of 1994

An employee has the right to be reemployed in his or her civilian job, if he or she leaves a civilian job to perform service in the Armed Forces, Reserves, National Guard, or other "uniformed services" as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. §§ 4301 – 4335). USERRA ensures that persons who serve or have served in the uniformed services: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. Individuals interested in more information should visit: http://www.osc.gov/outreach.htm.

EEO, Diversity, and Conflict Management Training

VA is committed to educating its workforce on its EEO-related policies and protections on a regular basis to maintain a discrimination-free workplace. To that end, VA requires that all employees take mandatory Workplace Harassment Awareness/No FEAR Act training in the Talent Management System (TMS Item No. 8872) within 90 days of their initial hire and every 2 years thereafter. This training is available to all employees through VA's TMS. Managers and supervisors are also required to take mandatory EEO, Diversity, and Conflict Management Training (TMS Item No. 1328672) every 2 years. This training is mandatory for all senior executives, managers, and supervisors. Both courses are available online at the following link: https://www.tms.va.gov/learning/user/deeplink_redirect.jsp.

Diversity and Inclusion

VA must cultivate an inclusive work culture and create an environment that reflects the diversity of our increasingly global community. We must leverage the diversity of our workforce and empower all of our employees to contribute to VA’s noble mission. Inclusion is the means by which we drive employee engagement and empower all of our human resources by enabling their full participation in the mission and protecting their voices. Diversity and inclusion are the cornerstones of a high performing organization. They are more than legal or social imperatives in this millennium; they are business imperatives essential to providing the best public service. We all share the responsibility to ensure we embed the complementary principles of
equity, diversity and inclusion throughout VA. I encourage all VA employees to actively embrace these principles in all that we do to deliver the best care and services to America's Veterans.

Acting Secretary of Veterans Affairs

Date 6/11/2014
REFERENCES

FEDERAL EEO LAWS


Age Discrimination in Employment Act of 1975, as amended: Prohibited discrimination on the basis of age in programs or activities receiving Federal financial assistance http://www.dol.gov/oasam/regs/statutes/age_act.htm


Genetic Information Nondiscrimination Act: http://www.eeoc.gov/laws/statutes/gina.cfm


Title VII of the Civil Rights Act of 1964: http://www.eeoc.gov/laws/statutes/titlevii.cfm


EXECUTIVE ORDERS

Executive Order 13583, Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce

Executive Order 11478, as amended by Executive Order 13152: Extending protection based on parental status

Executive Order 11478, as amended by Executive Order 13087: Adding protection based on sexual orientation
http://www.eeoc.gov/laws/executiveorders/13087.cfm

Executive Order 13548, Increasing Federal Employment of Individuals With Disabilities

DIRECTIVES

http://www.va.gov/vapubs/search_action.cfm?dType=1

Diversity and Inclusion, Management Directive VA Directive 5975, March 29, 2013:
http://www.va.gov/vapubs/search_action.cfm?dType=1

VA Handbook 5975.1, Processing Requests for Reasonable Accommodation by Employees and Applicants with Disabilities:
http://www.va.gov/vapubs/search_action.cfm?dType=1

GUIDANCE

Guidelines on Religious Exercise and Religious Expression in the Federal Workplace:

Office of Special Counsel Whistleblower Disclosures:
http://www.osc.gov/wbdisc.htm

Filing Whistleblower Disclosures: http://www.va.gov/oig/hotline/default.asp

VA Whistleblower Protection Ombudsman Program:

OSC Pamphlet (Whistleblower Rights and Protections):
http://www.osc.gov/outreach.htm
OSC Prohibited Personnel Practices, USERRA and the Hatch Act:  
http://www.osc.gov/outreach.htm

Secretary's EEO, Diversity, and No FEAR Policy Statement:  

VA Workplace Alternative Dispute Resolution:  
http://www1.va.gov/adr/workplaceADR.asp

VA Policy on Employee and Management Relations, Directive 5021:  
http://www.va.gov/vapubs/search_action.cfm?dType=1

Violence in the Workplace:  
http://www.va.gov/VASAFETY/DashoLetters/AllVAEmployeesAndVolunteersLett.pdf

CONTACTS

EEOC:  http://www.eeoc.gov/

EEOC:  http://www.eeoc.gov/eeoc/publications

MSPB:  http://www.mspb.gov/

VA's Office of Occupational Safety and Health:  
http://www.va.gov/vasafety

VA's Office of Diversity and Inclusion:  www.diversity.va.gov

VA's Office of Resolution Management:  www.va.gov/orm

VA's Employee Relations:  www.va.gov/ohrm

VA's Office of Labor-Management Relations:  http://www1.va.gov/lmr

VA's Section 508 Office:  http://www.section508.va.gov/index.asp

U.S. Office of Special Counsel:  
http://www.osc.gov