



**NATIONAL VETERANS
AFFAIRS COUNCIL**
American Federation of Government Employees
AFFILIATED WITH THE AFL-CIO

ALMA L. LEE
President

June 27, 2024

The Honorable Secretary Denis McDonough
810 Vermont Ave NW
Washington, DC 20420

Dear Secretary McDonough,

I am writing to you to request a written explanation behind the basis of your decision making in the area of harassment prevention program and equal employment opportunity (EEO) policies and procedures of the VA. Last week, unions, including AFGE, received a copy of VA's proposed rulemaking for VA 203VA08 prior to its publication. Although AFGE submitted a public comment, vigorously disagreeing with the Agency in the federal register¹ personnel and policy makers within the Office of Resolution Management, Diversity and Inclusion (ORMDI), continues with a ludicrous position of secrecy regarding the VA harassment prevention policy and its associated records.

It seems rather than advocating for transparency of disclosing these records, other than to VA managers themselves, VA is attempting to isolate itself to avoid potential EEO liability. This will and does create the exact opposite effect of the required transparency needed for a harassment prevention program to be successful. This will not secure the employees' trust in alleviating harassment and reprisal activities within the Agency. Very simply, the Agency's new rule proposes to exempt itself from disclosing investigatory records, as well as investigatory techniques, to all parties involved, including alleged, alleged harasser, witnesses, representatives, union officials and other individuals. Notably, management officials would have full access to these records.

It is obvious the Agency's only aim is to continue with this vein of non-transparency and conflicts of interests, to maneuver, manipulate, or obscure information or data to its advantage, rather than protect the integrity of its investigative protocols. This ill-advised change ignores recent news reports concerning sexual harassment issues within the Agency's EEO office itself, two (2) Government Accountability Office (GAO) reports, and Congressional hearings that suggested VA must improve both its processes and organizational structure, follow the law, and improve employees' trust in reporting, avoid perceptions of conflicts of interest associated with "No FEAR" requirements.

As far back as 2020, the EEOC notified VA² that due to a conflict of interest concerning the location of

ORMDI within Human Resources and Administration/ Operations, Security, and Preparedness (HRA/OSP), that VA has a critical deficiency.

VA has also failed to comply with the Elijah Cumming Act's legal requirements, found in Section 401-403, which passed in 2020. Instead, VA has alleged a confusion of VA functions under 38 USC 516⁴ and other nonsensical excuses.

The law requires the EEO Department head to report to you directly. Moreover, Section 401, of the Act prohibits the EEO program from being "under the control, either structurally or practically, of the Agency's capital office of human Capital or office of General Counsel." Despite this being brought up on 3 separate occasions, via priority action, under a GAO report, via a congressional letter of Congressional leader by Rep Nick Pappas, and legal requirement of the law itself.^{1,2,3,4} For whatever reason, despite the recent drama the Agency is still resistant to comply.

Additionally, Part G of the MD-715 plan requires the Agency to create procedures to address harassment allegations that are separate from the EEO complaint process. Yet, the alleged in practicality cannot easily distinguish the different programs (EEO and HPP) as they report to personnel utilizing the same office space as EEO, report utilizing the same phone number as EEO, and the notice of communication to the complainant distinguishing the different programs, EEO versus HPP, is not listed, in VA policy 5979, Or in VHA Directive 5019.02.

Therefore, I do not support the Harassment Prevention Program in VA in its current format. Until you do more face-to-face training involving employees, union and management, as well as separate the functions of ORMDI completely from HR and General Counsel, I fear we are going to have continued real problems. The process should be streamlined under the Office of Resolution management, with the exception of the law enforcement function. I think you need to stop, and re-think the EEO organizational reporting structure, who is allowed to have what information, and understand why transparent, fair, objective and impartial investigations is a good practice. Most important, Mr. Secretary, you need, and we all need, to live the gospel you are so-called preaching, regarding "No FEAR" requirements.

Thank you, I hope you heed my advice.

Sincerely,



Alma L. Lee
President
National Veterans Affairs Council, #53
American Federation of Government Employees, AFL-CIO

References:

- ¹ See letter to Honorable Pappas, Chris. “in response to your July 20, 2022 letter to the Chair of the U.S. Equal Employment Opportunity Commission (EEOC or Commission) concerning the House Committee on Veterans Affairs’ Subcommittee on Oversight and Investigations hearing on the efforts to remedy unlawful harassment and discrimination at the Department of Veterans Affairs (VA).” (enclosed)
- ² See US General Accounting Office, GAO-20-654T: Sexual Harassment VA Needs to Better Protect Employees July 22, 2020. Testimony Before the Subcommittee on Oversight and Investigations and the Women Veterans Task Force, Committee on Veterans’ Affairs, House of Representatives (enclosed)
- ³ See US General Accounting Office, GAO-22-106103: Sexual Harassment Opportunities Remain for VA to Improve Program Structure, Policies, and Data Collection July 28, 2022. Testimony Before the Subcommittee on Oversight and Investigations, Committee on Veterans’ Affairs, House of Representatives (enclosed)
- ⁴ See 38 U.S. Code § 516 – Equal Employment Responsibilities policy November 21, 1997 (enclosed)
- ⁵ See 38 U.S. Code § 533 - Anti-Harassment and Anti-Sexual Assault Policy December 6, 2002 (enclosed)