

DEPARTMENT OF VETERANS AFFAIRS EMPLOYMENT
DISCRIMINATION RESOLUTION AND ADJUDICATION ACT

OCTOBER 2, 1997.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. STUMP, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 1703]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1703) to amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Veterans Affairs Employment Discrimination Resolution and Adjudication Act".

SEC. 2. EQUAL EMPLOYMENT RESPONSIBILITIES IN THE DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—(1) Chapter 5 of title 38, United States Code, is amended by inserting at the end of subchapter I the following new section:

“§ 516. Equal employment responsibilities

“(a) The Secretary shall provide that the employment discrimination complaint resolution system within the Department be established and administered so as to encourage timely and fair resolution of concerns and complaints. The Secretary shall take steps to ensure that the system is administered in an objective, fair, and effective manner and in a manner that is perceived by employees and other interested parties as being objective, fair, and effective.

“(b) The Secretary shall provide—

“(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary for complaint resolution management; and

“(2) that employees performing employment discrimination complaint resolution functions at a facility of the Department shall not be subject to the authority, direction, and control of the Director of the facility with respect to those functions.

“(c) The Secretary shall ensure that all employees of the Department receive adequate education and training for the purposes of this section and section 319 of this title.

“(d) The Secretary shall impose appropriate disciplinary measures, as authorized by law, in the case of employees of the Department who engage in unlawful employment discrimination, including retaliation against an employee asserting rights under an equal employment opportunity law.

“(e) The number of employees of the Department whose duties include equal employment opportunity counseling functions as well as other, unrelated functions may not exceed 40 full-time equivalent employees. Any such employee may be assigned equal employment opportunity counseling functions only at Department facilities in remote geographic locations (as determined by the Secretary). The Secretary may waive the limitation in the preceding sentence in specific cases.

“(f) The provisions of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 515 the following new item:

“516. Equal employment responsibilities.”.

(b) **REPORTS ON IMPLEMENTATION.**—The Secretary of Veterans Affairs shall submit to Congress reports on the implementation and operation of the equal employment opportunity system within the Department of Veterans Affairs. The first such report shall be submitted not later than April 1, 1998, and subsequent reports shall be submitted not later than January 1, 1999, and January 1, 2000. Each such report shall set forth the actions taken by the Secretary to implement section 516 of title 38, United States Code, as added by subsection (a), and other actions taken by the Secretary in relation to the equal employment opportunity system within the Department of Veterans Affairs.

SEC. 3. DISCRIMINATION COMPLAINT ADJUDICATION AUTHORITY IN THE DEPARTMENT OF VETERANS AFFAIRS.

(a) **IN GENERAL.**—(1) Chapter 3 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 319. Office of Employment Discrimination Complaint Adjudication

“(a)(1) There is in the Department an Office of Employment Discrimination Complaint Adjudication. There is at the head of the Office a Director.

“(2) The Director shall be a career appointee in the Senior Executive Service.

“(3) The Director reports directly to the Secretary or the Deputy Secretary concerning matters within the responsibility of the Office.

“(b)(1) The Director is responsible for making the final agency decision within the Department on the merits of any employment discrimination complaint filed by an employee, or an applicant for employment, with the Department. The Director shall make such decisions in an impartial and objective manner.

“(2) No person may make any ex parte communication to the Director or to any employee of the Office with respect to a matter on which the Director has responsibility for making a final agency decision.

“(c) Whenever the Director has reason to believe that there has been retaliation against an employee by reason of the employee asserting rights under an equal employment opportunity law, the Director shall report the suspected retaliatory action directly to the Secretary or Deputy Secretary, who shall take appropriate action thereon.

“(d)(1) The Office shall employ a sufficient number of attorneys and other personnel as are necessary to carry out the functions of the Office. Attorneys shall be compensated at a level commensurate with attorneys employed by the Office of General Counsel.

“(2) The Secretary shall ensure that the Director is furnished sufficient resources in addition to personnel under paragraph (1) to enable the Director to carry out the functions of the Office in a timely manner.

“(3) The Secretary shall ensure that any performance appraisal of the Director of the Office of Employment Discrimination Complaint Adjudication or of any employee of the Office does not take into consideration the record of the Director or employee in deciding cases for or against the Department.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“319. Office of Employment Discrimination Complaint Adjudication.”.

(b) **REPORTS ON IMPLEMENTATION.**—The Director of the Office of Employment Discrimination Complaint Adjudication of the Department of Veterans Affairs (established by section 319 of title 38, United States Code, as added by subsection (a)) shall submit to the Secretary and to Congress reports on the implementation and the operation of that office. The first such report shall be submitted not later than April 1, 1998, and subsequent reports shall be submitted not later than January 1, 1999, and January 1, 2000.

SEC. 4. EFFECTIVE DATE.

Sections 516 and 319 of title 38, United States Code, as added by sections 2 and 3 of this Act, shall take effect 90 days after the date of the enactment of this Act.

SEC. 5. INDEPENDENT PANEL TO REVIEW EQUAL EMPLOYMENT OPPORTUNITY AND SEXUAL HARASSMENT PROCEDURES WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.

(a) **ESTABLISHMENT.**—There is hereby established a panel to review the equal employment opportunity and sexual harassment practices and procedures within the Department of Veterans Affairs and to make recommendations on improvements to those practices and procedures.

(b) **PANEL FUNCTIONS RELATING TO EQUAL EMPLOYMENT OPPORTUNITY AND SEXUAL HARASSMENT.**—The panel shall assess the culture of the Department of Veterans Affairs in relationship to the issues of equal employment opportunity and sexual harassment, determine the effect of that culture on the operation of the Department overall, and provide recommendations as necessary to change that culture. As part of the review, the panel shall do the following:

(1) Determine whether laws relating to equal employment opportunity and sexual harassment, as those laws apply to the Department of Veterans Affairs, and regulations and policy directives of the Department relating to equal employment opportunity and sexual harassment have been consistently and fairly applied throughout the Department and make recommendations to correct any disparities.

(2) Review practices of the Department of Veterans Affairs, relevant studies, and private sector training and reporting concepts as those practices, studies, and concepts pertain to equal employment opportunity, sexual misconduct, and sexual harassment policies and enforcement.

(3) Provide an independent assessment of the Report on the Equal Employment Opportunity Complaint Process Review Task Force of the Department.

(c) **COMPOSITION.**—(1) The panel shall be composed of six members, appointed as follows:

(A) Three members shall be appointed jointly by the chairman and ranking minority party member of the Committee on Veterans' Affairs of the House of Representatives.

(B) Three members shall be appointed jointly by the chairman and ranking minority party member of the Committee on Veterans' Affairs of the Senate.

(2) The members of the panel shall choose one of the members to chair the panel.

(d) **QUALIFICATIONS.**—Members of the panel shall be appointed from among private United States citizens with knowledge and expertise in one or more of the following:

(1) Extensive prior military experience, particularly in the area of personnel policy management.

(2) Extensive experience with equal employment opportunity complaint procedures, either within Federal or State government or in the private sector.

(3) Extensive knowledge of the Department of Veterans Affairs, and particularly knowledge of personnel practices within the Department.

(e) **REPORTS.**—(1) Not later than six months after the members of the panel are appointed, the panel shall submit an interim report on its findings and conclusions to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2) Not later than one year after establishment of the panel, the panel shall submit a final report to the Committees on Veterans' Affairs of the Senate and House

of Representatives. The final report shall include an assessment of the equal employment opportunity system and the culture within the Department of Veterans Affairs, with particular emphasis on sexual harassment. The panel shall include in the report recommendations to improve the culture within the Department.

(f) PAY AND EXPENSES OF MEMBERS.—(1) Each member of the panel shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the panel.

(2) The members of the panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the panel.

(g) ADMINISTRATIVE SUPPORT.—The Chairman may hire such staff as necessary to accomplish the duties outlined under this title.

(h) FUNDING.—The Secretary of Veterans Affairs shall, upon the request of the panel, make available to the panel such amounts as the panel may require, not to exceed \$400,000, to carry out its duties under this title.

(i) TERMINATION OF PANEL.—The panel shall terminate 60 days after the date on which it submits its final report under subsection (e)(2).

Amend the title so as to read:

A bill to amend title 38, United States Code, to provide for improvements in the system of the Department of Veterans Affairs for resolution and adjudication of complaints of employment discrimination.

INTRODUCTION

On May 22, 1997, the Honorable Terry Everett was joined by the Honorable Lane Evans, the Honorable Bob Stump, Chairman of the Committee on Veterans' Affairs, the Honorable James Clyburn, the Honorable Mike Bilirakis, and the Honorable Stephen Buyer, in the introduction of H.R. 1703 to amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

The full Committee met on September 30, 1997 and ordered H.R. 1703, as amended, reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 1703, as amended, would:

1. Require the Secretary of Veterans Affairs to establish a new Department of Veterans Affairs (VA) employment discrimination complaint resolution system whose employees are supervised by and report to an Assistant Secretary or Deputy Assistant Secretary for complaint resolution management.
2. Establish a VA Office of Employment Discrimination Complaint Adjudication headed by a Director who would report directly to the Secretary or Deputy Secretary.
3. Establish an independent commission to assess the culture of VA in relationship toward sexual harassment and other unlawful employment discrimination.

BACKGROUND AND DISCUSSION

In 1992, the Veterans' Affairs Oversight and Investigations Subcommittee conducted an oversight hearing on egregious cases of sexual harassment at the Atlanta Veterans Affairs Medical Center

(VAMC) and elsewhere in VA. The following year, VA implemented a “zero tolerance” policy against sexual harassment and promised to improve its equal employment opportunity (EEO) system. During the 105th Congress, the Committee revisited the problem of sexual harassment at VA facilities. The Subcommittee on Oversight and Investigations convened two hearings on sexual harassment and other unlawful employment discrimination. The first hearing on April 17, 1997, focused on events which occurred at the Fayetteville, North Carolina, VAMC from 1995 to 1997. Five current and former medical center employees testified. In addition to their sworn testimony that the medical center director, who has subsequently retired, sexually harassed and abused them and other subordinate employees, the Committee reviewed findings of the VA Office of Inspector General (VA OIG). In the three cases it investigated, the VA OIG found that the director of the medical center engaged in sexual harassment in one case and was abusive in the other two cases. At the second hearing on July 17, 1997, the Subcommittee received the results of a Department-wide survey on sexual harassment and follow-up testimony on the situation at the Fayetteville VAMC, as well as testimony on VA’s opposition to H.R. 1703 as originally introduced.

The Subcommittee has concluded that a culture of tolerance of sexual harassment and abusive behavior exists at certain VA facilities, and that the policy of “zero tolerance” of sexual harassment is insufficient to address these problems. Consequently, the Committee believes it 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, and that final agency decisions on the merits of a complaint should be made by a quasi-independent entity, the Office of Employment Discrimination Complaint Adjudication (OEDCA). The OEDCA would be headed by a Director who would report directly to the Secretary of Veterans Affairs or the Deputy Secretary. In addition, the Secretary should provide a work place free of harassment and discrimination by ensuring that employees and managers alike receive the education and training necessary for proper behavior in the workplace. The Secretary should be held responsible for ensuring that employees and managers are accountable for their conduct and behavior.

EQUAL EMPLOYMENT RESPONSIBILITIES IN THE DEPARTMENT OF
VETERANS AFFAIRS

H.R. 1703, as amended, would direct the Secretary to establish a new employment discrimination complaint resolution structure within VA, including a new Office of Resolution Management (ORM). The ORM would be expected to achieve a timely, high qual-

ity EEO complaint system built on fairness, integrity and trust. The timely processing of employee complaints is of critical concern to the Committee. The Committee fully expects that the professional staff of the ORM will administer the EEO system so as to encourage timely and fair resolution of concerns and complaints. If significant improvements are not made in this area, the Committee stands ready to consider the imposition of tighter time limitations at each step of the EEO process. The Committee anticipates the establishment of customer service standards to focus on quality of employee assistance, respect for privacy, and the responsive and timely processing of employee complaints of discrimination. Additionally, the ORM should commence its operation and planning activities in full compliance with the Government Performance and Results Act.

While the Secretary would be responsible for the structural components of the ORM, the Committee anticipates that daily operation of the ORM would be the responsibility of a Deputy Assistant Secretary for Resolution Management reporting to the Assistant Secretary for Human Resources and Administration. The ORM would be supported by district managers, field offices, full time EEO counselors and investigators, and a limited number of collateral duty counselors. Collateral duty EEO employees are VA employees who perform EEO functions, such as serving as counselors and investigators, in addition to their primary responsibilities at VA facilities. Such employees currently manage the majority of EEO claims at local facilities, with the facility director as the EEO officer supervising those employees. In order to reduce the influence of facility management over the EEO process at local facilities and achieve greater professionalism among VA personnel assigned to EEO complaints, the bill would limit the number of collateral duty EEO employees to 40 full time employee equivalent positions. Currently, there are 1,077 such employees within VA. In practical terms, retaining some collateral duty EEO employees would allow more geographically remote facilities to function in an efficient manner. In another essential step to remove facility management from the EEO process, medical center, regional office, and other facility directors would no longer perform the duties of EEO officer for the facility. However, clear responsibility and accountability for implementation of the Department's EEO policies and standards would remain with the facility directors and management.

Currently, facility directors are the EEO officers at their facilities, and therefore have a substantial amount of control and influence over the EEO system. The Committee believes that removing the facility director from such duties would address the concern among VA employees that an employee who files an EEO complaint is, in effect, making a claim against the facility director. Some VA employees who have been discriminated against believe that it would be futile to file an EEO claim because the facility director would oppose the claim as reflecting poorly on management. Consequently, too many VA employees fear that if they file an EEO claim, not only is it unlikely to be resolved in their favor, but they might be punished by the facility management via transfer, demotion or other forms of retaliation.

H.R. 1703, as amended, would also eliminate a clear conflict of interest in the instances where an EEO claim is filed against a facility director. In the situation at the Fayetteville VA Medical Center, the complaints of sexual harassment and other unlawful employment discrimination were in fact against the facility director, who was also the EEO officer. As a result, the complainants were required to pursue EEO claims with collateral duty EEO employees who also worked for the facility director. The bill would eliminate the situation where a subordinate employee is charged with investigating and assisting in the filing of formal complaints against a facility manager or supervisor.

The Office of Resolution Management (ORM) would be responsible for the development and implementation of alternative dispute resolution programs at the facility level, and guidance of aggrieved employees to an EEO program coordinator who could recommend a series of informal resolution strategies. The ORM would be expected to advise employees that mediation or other forms of alternative dispute resolution may be made available to employees as a means to more quickly resolve discrimination complaints. In addition, the ORM would be authorized to make certain final agency decisions on procedural issues, including "acceptability determinations" based on timeliness, failure to state a claim, mootness, and other reasons specified in the regulations of the Equal Employment Opportunity Commission (EEOC). See 29 C.F.R. 1614.107. Final agency procedural decisions of the ORM would only be made by a senior EEO specialist or field office manager. Timely complaint processing is of critical importance to the Committee. The Committee anticipates that allowing final agency decisions on procedural issues to be made by the ORM would significantly reduce complaint processing time within VA. If it does not, the Committee will revisit this authority.

The bill would require the Secretary of Veterans Affairs to submit reports to Congress on the implementation and operation of the equal employment opportunity system within VA. The Committee would expect to receive specific statistical data on complaints received by the OEDCA. Such data should reflect the number of complaints received in each region and the total number of complaints, and should provide complete information on the types and dispositions of cases, including those settled. Reports would also provide an accounting of all collateral duty EEO employees. The Committee also expects to receive information on the transfer of authority to write final agency decisions on procedural issues from the Office of General Counsel (OGC) to the ORM. The Secretary would be required to submit the first report on April 1, 1998, and additional reports on January 1, 1999, and January 1, 2000.

DISCRIMINATION COMPLAINT ADJUDICATION AUTHORITY IN THE
DEPARTMENT OF VETERANS AFFAIRS

The second component of the reorganization of VA's EEO system would result in a transfer of final agency decision authority on substantive issues from the OGC to a newly established Office of Employment Discrimination Complaint Adjudication (OEDCA). The OEDCA, located in VA Central Office, would be a quasi-independ-

ent complaint adjudication unit, the head of which would report directly to the Secretary or Deputy Secretary.

H.R. 1703, as amended, would establish a Director as the head of the OEDCA. It would also require that the OEDCA be staffed with an adequate number of attorneys and support personnel, and that it operate as a quasi-independent unit under the administrative supervision of the Secretary or Deputy Secretary. The OEDCA is expected to enjoy a level of independence comparable to that of administrative law judges employed by other federal agencies. The bill specifies that the Director of the OEDCA be a career appointee at the SES level, assisted by an Associate Director at an appropriate grade. The Committee expects that both the Director and Associate Director would be attorneys with significant experience in EEO law. The Committee anticipates that some, but not all, EEO attorneys in OGC's Professional Staff Group IV may be reassigned to the OEDCA. The OGC would retain some attorneys to meet its remaining EEO responsibilities in advising and representing management. The Director would be authorized to hire additional attorneys and support personnel as are needed to issue substantive decisions in a timely manner. The OEDCA would also be responsible for creating an efficient and effective complaint tracking system.

The operating independence of the OEDCA would be its most important feature. Under the current structure, if a VA employee does not informally resolve his or her complaint at the local level, then the claim is adjudicated on the merits by the OGC. If the employee files an appeal of the decision to the EEOC or the Merit Systems Protection Board (MSPB), then the same OGC attorneys who made the earlier final agency decision may participate in VA's defense of that decision on appeal at the EEOC or MSPB. Consequently, the OGC is the adjudicator of substantive issues at one level, and the advocate for the Department on the same issues at another level. H.R. 1703, as amended, would remove final agency decision-making responsibility from OGC. With OEDCA as the final agency decision maker on the merits of discrimination complaints, OGC would continue to provide legal representation to VA at EEOC and MSPB hearings, and assistance to U.S. Attorneys in federal court litigation.

The final agency decision-making process in the OEDCA would consist of staff attorneys writing proposed decisions which, if approved, would be signed by the Director, or the Associate Director in the Director's absence. Only the Director and Associate Director would have actual decision-making authority. The OEDCA decisions would not be subject to further review by anyone within VA, including the Secretary or Deputy Secretary. The Director and Associate Director would not be required to justify or defend their decisions within the Department in any case. In addition, H.R. 1703, as amended, would not permit any ex parte communications by or to any employee of the OEDCA with respect to a matter on which the Director has responsibility for making a final agency decision. However, OEDCA staff attorneys would be able to initiate contact with appropriate elements within VA solely for the purposes of obtaining documents missing from a complaint file, obtaining bio-

graphical information, and other similar procedural reasons unrelated to the merits of the complaint.

As discussed above, the Subcommittee on Oversight and Investigations believes that some VA employees fear that they would be retaliated against if they filed a complaint of unlawful employment discrimination. The bill requires the Director or any other employee of the OEDCA who receives credible evidence of international discrimination or retaliation to report such evidence to the Secretary and recommend appropriate disciplinary measures to be imposed. For example, the Director could recommend a stay of adverse personnel actions where credible evidence of retaliation or discrimination has been received. In addition, should any employee of the OEDCA receive evidence of other unlawful conduct arising from an investigation of a discrimination complaint, then such evidence should be transmitted to the Department of Justice. The bill would also prohibit annual performance appraisals of the Director or any other employee of the OEDCA based in any way on whether claims were granted or denied. Finally, the bill would require the Director of the OEDCA to submit reports to the Secretary and to Congress on the implementation and operation of the OEDCA.

INDEPENDENT PANEL TO REVIEW EQUAL EMPLOYMENT OPPORTUNITY
AND SEXUAL HARASSMENT PROCEDURES WITHIN THE DEPARTMENT
OF VETERANS AFFAIRS

The bill would create an independent panel to assess the culture of tolerance toward sexual harassment and other unlawful employment discrimination at VA. In order to assess the “culture”, the Committee envisions that the panel would examine the attitudes and perceptions of VA employees, as well as practices within VA pertaining to the EEO system. The panel would be required to examine laws, regulations, and policies relating to sexual harassment and equal employment opportunity in VA, and determine if they have been consistently and fairly applied throughout VA. After such examination, the panel would be required to recommend methods to correct any disparities it found. The panel would also be required to provide an independent review of the VA’s internal Report of the Equal Employment Opportunity Complaint Process Review Task Force.

Finally, the panel would be required to submit to Congress an interim report on the panel’s findings and conclusions six months after the members of the panel are appointed, and a final report one year after the establishment of the panel. The panel would be composed of six members—three appointed jointly by the chairman and ranking member of the House Committee on Veterans’ Affairs, and three appointed jointly by the chairman and ranking member of the Senate Committee on Veterans’ Affairs.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the title of this Act is the “Department of Veterans Affairs Employment Discrimination Resolution and Adjudication Act.”

Section 2(a) would amend chapter 5 of title 38, United States Code, by adding a new section 516, “Equal employment responsibil-

ities.” Section 2(a) would establish in VA Central Office a new Office of Resolution Management to carry out equal employment responsibilities of the Department.

Section 2(b) would require the Secretary of Veterans Affairs to report to Congress on the implementation and operation of the equal employment opportunity system under section 516 of title 38, United States Code. The reports would be due on April 1, 1998, January 1, 1999, and January 1, 2000.

Section 3(a) would amend chapter 3 of title 38, United States Code, by adding a new section 319, “Office of Employment Discrimination Complaint Adjudication.” Section 3(a) would establish in VA Central Office, a new Office of Employment Discrimination Complaint Adjudication to issue final agency decisions on the merits of claims of unlawful employment discrimination.

Section 3(b) would require the Director of the Office of Employment Discrimination Complaint Adjudication to report to Congress and the Secretary of Veterans Affairs on the implementation and operation of the Office of Employment Discrimination Complaint Adjudication. The reports would be due on April 1, 1998, January 1, 1999, and January 1, 2000.

Section 4 would establish an independent panel to assess the culture of VA in relationship to issues of sexual harassment and other unlawful employment discrimination, determine the effect of that culture on VA’s operation overall and provide recommendations as necessary.

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1997.

Hon. BOB STUMP,
*Chairman, Committee on Veterans’ Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1703, the Department of Veterans Affairs Employment Discrimination Resolution and Adjudication Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Valerie Barton, who can be reached at 226-2840.

Sincerely,

JUNE E. O’NEILL,
Director

Enclosure

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

**H.R. 1703—Department of Veterans Affairs Employment
Discrimination Resolution and Adjudication Act**

*As ordered reported by the House Committee on Veterans' Affairs on
September 30, 1997*

H.R. 1703 would restructure authority and responsibility for overseeing equal employment opportunities within the Department of Veterans Affairs (VA). CBO estimates that the costs of implementing this legislation would have an insignificant budgetary impact. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of State, local, or tribal governments. Because it would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 1703 would create the Office of Employment Discrimination Complaint Adjudication within VA to adjudicate complaints by employees of VA of employment discrimination. The bill would also reallocate responsibilities within VA so that more employees would have duties related only to matters of employment discrimination, and it would require that such employees be outside of the control of the director of the facility where they work. In addition, the bill would establish a panel to provide an independent assessment of the agency's practices and procedures in relation to equal employment opportunity and sexual harassment and to make recommendations for their improvement. The bill would authorize the appropriation of \$400,000 for the costs of the panel.

VA is currently revising its system for processing and adjudicating claims of employment discrimination, and CBO expects that many changes required by the bill would probably occur under current law. Other changes in procedures would not add significant costs.

The CBO staff contact for this estimate is Valerie Barton, who can be reached at 226-2840. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

APPLICABILITY TO LEGISLATIVE BRANCH

The reported bill would not be applicable to the legislative branch under the Congressional Accountability Act, Public Law 104-1, because it would apply only to employees and facilities of the Department of Veterans Affairs.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a federal mandate under the Unfunded Mandates Reform Act, Public Law 104-4.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the U.S. Constitution, the reported bill would be authorized by Congress' power to "provide for the common Defence and general Welfare of the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

Sec.
301. Department.
* * * * *
319. *Office of Employment Discrimination Complaint Adjudication.*
* * * * *

§319. *Office of Employment Discrimination Complaint Adjudication*

(a)(1) *There is in the Department an Office of Employment Discrimination Complaint Adjudication. There is at the head of the Office a Director.*

(2) *The Director shall be a career appointee in the Senior Executive Service.*

(3) *The Director reports directly to the Secretary or the Deputy Secretary concerning matters within the responsibility of the Office.*

(b)(1) *The Director is responsible for making the final agency decision within the Department on the merits of any employment discrimination complaint filed by an employee, or an applicant for employment, with the Department. The Director shall make such decisions in an impartial and objective manner.*

(2) *No person may make any ex parte communication to the Director or to any employee of the Office with respect to a matter on which the Director has responsibility for making a final agency decision.*

(c) *Whenever the Director has reason to believe that there has been retaliation against an employee by reason of the employee asserting rights under an equal employment opportunity law, the Director shall report the suspected retaliatory action directly to the Secretary or Deputy Secretary, who shall take appropriate action thereon.*

(d)(1) *The Office shall employ a sufficient number of attorneys and other personnel as are necessary to carry out the functions of*

the Office. Attorneys shall be compensated at a level commensurate with attorneys employed by the Office of General Counsel.

(2) The Secretary shall ensure that the Director is furnished sufficient resources in addition to personnel under paragraph (1) to enable the Director to carry out the functions of the Office in a timely manner.

(3) The Secretary shall ensure that any performance appraisal of the Director of the Office of Employment Discrimination Complaint Adjudication or of any employee of the Office does not take into consideration the record of the Director or employee in deciding cases for or against the Department.

CHAPTER 5—AUTHORITY AND DUTIES OF THE SECRETARY

SUBCHAPTER I—GENERAL AUTHORITIES

Sec.							
501.	Rules and regulations.	*	*	*	*	*	*
516.	<i>Equal employment responsibilities.</i>	*	*	*	*	*	*

SUBCHAPTER I—GENERAL AUTHORITIES

* * * * *

§ 516. *Equal employment responsibilities*

(a) The Secretary shall provide that the employment discrimination complaint resolution system within the Department be established and administered so as to encourage timely and fair resolution of concerns and complaints. The Secretary shall take steps to ensure that the system is administered in an objective, fair, and effective manner and in a manner that is perceived by employees and other interested parties as being objective, fair, and effective.

(b) The Secretary shall provide—

(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary for complaint resolution management; and

(2) that employees performing employment discrimination complaint resolution functions at a facility of the Department shall not be subject to the authority, direction, and control of the Director of the facility with respect to those functions.

(c) The Secretary shall ensure that all employees of the Department receive adequate education and training for the purposes of this section and section 319 of this title.

(d) The Secretary shall impose appropriate disciplinary measures, as authorized by law, in the case of employees of the Department who engage in unlawful employment discrimination, including retaliation against an employee asserting rights under an equal employment opportunity law.

(e) The number of employees of the Department whose duties include equal employment opportunity counseling functions as well as

other, unrelated functions may not exceed 40 full-time equivalent employees. Any such employee may be assigned equal employment opportunity counseling functions only at Department facilities in remote geographic locations (as determined by the Secretary). The Secretary may waive the limitation in the preceding sentence in specific cases.

(f) The provisions of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission.

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