



DIRECTOR'S MEMORANDUM NO. 05-09

DEC 03 2008

TO: ALL VETS STAFF

FROM: RUTH M. SAMARDICK 
Director of Compliance and Investigations

SUBJECT: Implementation of USERRA Case Investigation and Referral Deadlines Imposed by Public Law 110-389 for Open USERRA Claims and Pending Referral Requests Received **Before** October 10, 2008

I. Purpose:

To establish procedures to implement statutory deadlines on open USERRA investigations of complaints received **prior** to October 10, 2008; and on USERRA referral requests received **prior** to October 10, 2008 that are still pending at the Department of Labor (DOL). (Director's Memorandum No. 04-09 established similar procedures and deadlines for complaints and referrals received on or after that date.)

II. Background:

On October 10, 2008, the President signed into law Public Law 110-389, the "Veterans' Benefits Improvement Act of 2008," which included a number of changes to the manner in which VETS administers its USERRA program. This DM is one of a series implementing changes required by the new law.

The statute requires that all efforts by VETS to investigate and attempt to resolve a USERRA complaint must be concluded within 90 days of receipt of the complaint, unless the claimant grants an extension. It also requires that referrals from DOL to DOJ or OSC (including all VETS and SOL time spent on the referral) must be made within 60 days of DOL's receipt of the referral request, unless the claimant grants an extension. DM 04-09 provided procedures that implemented these time limits on USERRA complaints and referral requests received on or after October 10, 2008.

In addition to the post-October 10, 2008, complaints and referral requests discussed in DM 04-09, the Department will adhere to a policy of applying the deadlines imposed by PL 110-389 to open USERRA cases for complaints received **before** October 10, 2008, and also to those referral requests received **before** that date that are still awaiting DOL action. This policy might

require obtaining consent from a claimant to continue working on his or her investigation or referral.

III. Action:

VETS' USERRA staff must keep in mind that QUALITY, not just timely, investigations and referrals, are our top priority for all complaints and referrals. The timeline procedures as outlined in DM 04-09 for the processing of post-October 10, 2008 complaints and referral requests will also be followed step-by-step for cases and referral requests opened and made prior to that date, but for the following additional guidance:

A. For all open USERRA cases received prior to October 10, 2008, the appropriate steps defined in DM 04-09 and/or below must be completed no later than December 31, 2008:

1. Cases where 90 days have not passed: determine if an extension will be needed to complete the investigation. If the supervisor, SI and Investigator agree that an extension will be needed, Investigator shall contact claimant to seek consent to continue until an agreed-upon date.
2. Cases over 90 days: determine whether completion is expected by 12/31/2008. If the Investigator and Supervisor anticipate the need for an extension beyond 12/31/2008, Investigator shall contact claimant to seek consent to continue until an agreed-upon date.
3. Investigators shall make every effort to contact the claimant to obtain consent for an extension, and document such efforts in the case file.
4. Claimant cannot be located: If claimant cannot be reached within a reasonable amount of time to discuss the need for an extension, and case remains open, Investigator shall 'Administratively' close the case due to claimant's failure to respond to VETS. Such closure would be for "lack of interest" and Investigator will send the claimant the standard closing letter for such an Administrative closure.
5. Claimant refuses to consent to extension: If claimant refuses to consent to an extension and the case remains open, case shall be Closed as "Merit Undetermined" or "Merit, Not Resolved", as appropriate, and claimant shall be sent the appropriate closing letter.

B. For all USERRA Referral Requests Received Prior to October 10, 2008, that are still awaiting action by DOL, all relevant

steps among the following list must be completed or initiated as soon as possible, but no later than December 31, 2008:

1. A complete copy of the case file and a copy of the referral request must be sent to the appropriate VETS RO and RSOL. The RO shall verify that the referral date in the UIMS "Refer a Case" function is the same as the date stamp on the referral request.
2. Investigators and Regional personnel that have a referral request received prior to October 10, 2008 that is still being prepared for referral (MOR) shall determine the amount of time necessary to complete all DOL referral actions, to be calculated as follows. (NOTE: These procedures differ from those of DM 04-09, which apply to referral requests received on or after October 10, 2008):

- Up to a maximum of 3 weeks for VETS to complete the MOR and send it to RSOL (RAVETS will determine how this additional VETS time will be allocated between the Investigator and the Region);

plus

- An additional 6 weeks for RSOL to complete its referral actions after receiving the MOR from VETS.

After adding up the total projected DOL referral processing time in this manner (VETS' additional MOR time plus 6 weeks for RSOL), the Investigator shall contact the claimant to seek consent for an extension of DOL's referral deadline, to be expressed as a date certain for completion of all DOL referral actions. If claimant consents verbally to this additional time, the Investigator will send claimant a written confirmation. If the claimant does not consent, the SI shall consult with RSOL to determine how to proceed.

3. Immediately upon completion of the MOR, the official case file, including MOR and all attachments, shall be sent from the RO to the RSOL.
4. Investigators and the RO shall remain available to work closely with the RSOL, as necessary, in order to expedite referrals to DOJ or OSC.
5. If RSOL requests additional investigation after receiving the MOR, such becomes a top priority. SI shall work with the RSOL and the Investigator to agree on the time necessary to complete the additional investigative steps. If this investigative time plus subsequent RSOL processing time will require an extension beyond the date established

in step 2 above, RSOL will be responsible for obtaining the claimant's consent for this additional extension.

C. After December 31, 2008, the following rules will apply to all USERRA cases and USERRA referral requests:

1. Every USERRA case that remains open in VETS for more than 90 days (including days for any related reopening(s) of that case) must contain documentation showing the claimant has consented to a future date as a deadline for completion of the investigation.
2. Any unresolved USERRA case that reaches either the 90th day or the day of a previously established extension deadline, but lacks the claimant's consent to a further extension, must be closed in accordance with the procedures described in DM 04-09.
3. Every USERRA referral case that awaits DOL action beyond 60 days after the referral request was received must have received claimant's consent to a future referral completion date.

IV. Effective Date: Immediately

V. Inquiries: Direct questions on this Memorandum to Rob Wilson (202) 693-4719 or Ruth Samardick (202) 693-4706

VI. Expiration Date: Until rescinded