

January 26, 2001

DIRECTOR'S MEMORANDUM NO. 14-01

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DIRECTORS FOR
VETERANS' EMPLOYMENT AND TRAINING

FROM: RONALD G. BACHMAN
Acting Director, Operations and Programs **[Signed]**

SUBJECT: Memorandum of Understanding (MOU) Between the Veterans'
Employment and Training Service (VETS) and the U.S. Office of
Special Counsel (OSC)

References: Uniformed Services Employment and Reemployment Rights Act
of 1994 (USERRA, 38 U.S.C. §§ 4301-4333); Veterans
Employment Opportunities Act of 1998 (VEOA, Pub. L. 105-339)

I. Purpose: To advise VETS staff about subject MOU. To provide guidance on procedures to be followed by VETS and OSC in the handling of veterans' preference (VP) complaints filed under section 3 or section 6 of the VEOA. To provide guidance concerning USERRA referrals including new procedures to be followed in cases where OSC has reached a preliminary determination that is not in agreement with VETS' recommendation. A copy of the MOU is provided as an attachment to this DM.

II. Background: VETS and OSC have interrelated enforcement responsibilities under both USERRA and VEOA. Section 4324(a) of USERRA provides that VETS will, upon request of the claimant, refer unresolved complaints involving Federal executive branch employers to OSC for consideration of representation before the Merit Systems Protection Board. Section 3 of the VEOA spells out VETS' responsibilities in the enforcement of laws and regulations relating to VP. Section 6 of the VEOA provides that failure to comply with VP requirements may be treated as a prohibited personnel practice (PPP) for the purpose of disciplinary action, but not corrective action (reinstatement, back wages, etc.). OSC is the agency responsible for enforcement of PPPs.

The MOU describes the roles and responsibilities of VETS and OSC in carrying out their obligations under the two laws. It provides guidance on referral of cases from one agency to the other. Finally, the MOU establishes guidelines for cooperative efforts between the two agencies in the handling of USERRA and VEOA complaints.

III. Guidance: The MOU contains specific guidance on case handling. Section II refers to VEOA/VP complaints and section III refers to USERRA complaints. Guidance concerning key provisions of the MOU follows. However, VETS staff must review the entire MOU for details.

A. VEOA/VP

1. Regional offices will now refer all VP cases determined to be meritorious to OSC, whether or not the claimant requests such referral. OSC will review each case and make a determination as to whether it will proceed with PPP enforcement action. The referral will be made by the Regional Administrator (RA). The RA will provide OSC a copy of the case file and a letter containing a brief analysis of the case. The analysis, prepared in consultation with the RSOL, will summarize the merits of the claim under veterans' preference. Referrals should be made within 30 days of case closing. If OSC desires further information concerning a referred VP case, it will request such information from the RA. After making a decision as to whether disciplinary action will be taken, OSC will notify the RA.
2. If OSC receives an allegation of a violation of the veterans' preference PPP created by section 6 of the VEOA, OSC will advise the complainant that it does not have the authority to seek corrective action (redress) and refer the person to VETS to seek redress under section 3 of the VEOA. OSC will refer the person to a VETS office in the State in which the employer or potential employer is located. OSC will also notify the VETS Chief of Compliance of each such referral. The Chief of Compliance will notify the RA involved. In light of the timeliness standards for filing complaints with VETS under section 3 of the VEOA, OSC will refer cases to VETS as expeditiously as possible. Further, VETS and OSC have agreed that, to the extent permitted by law, they will treat a complaint to OSC of a PPP as having been received by VETS on the same date in establishing whether the complaint under section 3 of the VEOA is filed timely with VETS.
3. VETS will inform OSC whenever a person who has filed a preference claim informs VETS that he or she intends to file an appeal of the alleged violation with the Merit Systems Protection Board. This notification will be made through the RA in whose region the case was handled whether or not the case has been determined by VETS to be meritorious. RAs will notify the Chief of Compliance via e-mail of any referrals of this type.

B. USERRA

1. Procedures for referral of USERRA cases from VETS to OSC remain essentially unchanged in the MOU. Following receipt of the referral, OSC may request clarification or further VETS investigative efforts. Any such request by OSC will be made through the RSOL. The RSOL will facilitate communication between

OSC, the RA and the case investigator, when warranted. OSC may also seek information and assistance from the VETS Chief of Compliance or the national staff of the Office of the Solicitor, Labor-Management Laws division.

2. Under the MOU, if OSC disagrees with the recommendation provided by VETS in a USERRA referral (i.e., representation recommended or not recommended), VETS will be given an additional opportunity to present its position before OSC makes a final decision and informs the claimant. In these situations, OSC will notify the RSOL involved of its proposed determination. The RSOL will advise the RA that VETS is being afforded another opportunity to present its position on the case. Following consultation with the VETS Chief of Compliance, the RA will advise the RSOL if the agency wants to appeal OSC's preliminary determination. In cases where VETS decides to appeal OSC's position, the appeal will be made by the RSOL in consultation with the RA.

- C. OSC Address – All correspondence to OSC described in the Memorandum should be sent to the following address:

U.S. Office of Special Counsel
Attn: Mr. Ronald K. Jaicks
1730 M Street, N.W., Suite 201
Washington, DC 20036-4505

IV. Action: RAs ensure that assigned investigative staff are aware of and comply with the guidance in this memorandum and in the MOU.

V. Effective Date: This memorandum is effective immediately

VI. Inquiries: Direct inquiries to Nick Dawson at (202) 693-4711

VII. Expiration Date: None

Attachment: Memorandum of Understanding

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