

# Veterans' Employment and Training Service



Investigations Manual:  
USERRA, VEOA, and VP  
(v2024.1)

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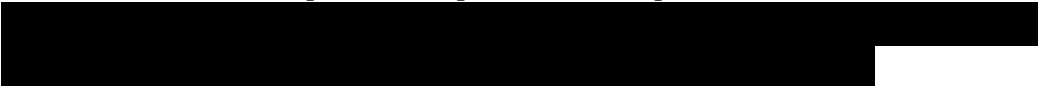
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## Change Summary

1. Change 1, February 2023 (called v2022.01):
  - Section 1: Edited requirements to be plainer language, including defining i.e. and e.g.
  - Section 5.2.3.1.2, 10.8.2.3:
    - Added clarification about the Uniformed Services Employment and Reemployment Rights Act (USERRA) five-year cumulative limit and calculating lost wages.
    - Added resource links to Employer Support of the Guard and Reserve (ESGR) website concerning service exemptions.
  - Sections 8.1.1.1, 8.1.2, 8.1.4, 8.2.1, 8.2.2, 8.2.4, 8.2.4.3, and 8.2.5: Added language to align with authorized carrier service requirements.
  - Section 9.5.1: Clarified the hierarchy for interview modes (i.e., in person, video, and phone).
  - Section 16: Updated Veterans' Employment and Training Service (VETS) Case Management System (VCMS) closing codes and internal references to previous closing codes.
  - Section 17.2.1 Added Fiscal Year (FY) 2023 Agency Management Plan (AMP) concerning USERRA.
  - Section A.2:
    - Added Glossary definition for “authorized carrier,” and added internal links to the term throughout.
    - Added definition for “comparator evidence.” Added internal links to the term throughout.
    - Added “i.e.” and “e.g.” definitions.
    - Clarified “witness” definition and updated any terminology not in alignment with updated definition.
    - Removed “claim withdrawn” definition.
    - Removed “claim granted” and “claim settled” definitions.
    - Added “claim resolved” definition.
  - Section B.1: Edited language to allow quick links tools to present on two pages.
  - Section B.2: Edited language to allow quick links tools to present on a single page.
  - All Sections:
    - Changed specific words to encourage plain language. Examples include:
      - “Telephone” became phone.
      - “Conduct an investigation” became the direct verb, investigate.
      - “Facilitate amicable agreements” became “help the parties cooperatively reach agreement.”
        - Aligned VCMS Agency User Guide 2.0 with the terminology and steps in this Manual.
2. Change 2, September 2023 (called v2022.2)
  - Sections 2, 2.1.1, 2.2, 2.4.1, 2.4.2, 2.4.3, and 2.8: Clarified information about user roles within VCMS.

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- Section 2.6: Clarified VETS employees' relationships to the Employer Support of the Guard and Reserve (ESGR).
- Section 3: Removed redundancies in restating phases of Compliance Assistance (CA).
- Sections 3.2, 3.2.1, 3.2.2.2.2, and 3.2.3: Added information about the role of Compliance Assistance provided to organizations supporting underserved communities.
- Sections 4.2.3 and 8.1: Updated information about edits to Form 1010.
- Section 7.1.3.3: Updated instructions about how to complete the VCMS Form 1063.
- Sections 7.2, 14.1, and 15.1.2.2: Added instructions about VCMS Case Quality Measures tab.
- Sections 8.1.1 and 8.1.2: Added language to align with authorized carrier service requirements.
- Sections 8.1.1.1, 9.4.1.3, 9.4.1.3.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.1.3, 9.5.2.1.1.1, 9.5.2.1.1.2, 9.5.2.1.2, 9.5.2.1.2.1, 9.5.2.1.2.1.1, 9.5.2.1.2.1.2, 9.5.2.1.2.1.3, 9.5.2.1.2.1.4, 9.5.2.1.2.1.5, 9.5.2.1.2.2, 9.5.2.1.2.3, 9.5.2.2.1, 9.5.2.2.1.1, 9.5.2.2.1.2, 9.5.2.2.1.3, 11.1.2.1, and 11.1.2.2: Removed in their entirety and content preserved for use in other materials.
- Sections 8.1.1.2 – 8.1.1.6: Renumbered to account for removal of 8.1.1.1.
- Section 8.2.1: Removed suggested interview questions; content preserved for use in other materials.
- Section 8.2.5: Removed potential responses; content preserved for use in other materials.
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- Section 9.4.1.2: Removed questions; content preserved for use in other materials.
- Section 9.4.4: Removed flow chart; content preserved for use in other materials.
- Section 9.4.4.2: Removed internal routing information; content preserved for use in other materials.
- Section 9.4.4.4: Removed potential responses; content preserved for use in other materials.
- Section 9.5.1.2: Removed content about drawing reasonable inferences, which was preserved for use in other materials.
- Section 9.5.2.1: Removed hyperlinks to sections that no longer exist.
- Section 9.5.2.2: Removed table; content preserved for use in other materials.
- Section 9.5.2.2.2: Removed internal planning steps; content preserved for use in other materials. Collapsed previously numbered 9.5.2.2.2.1 and 9.5.2.2.2.2 into one combined section; updated section named 9.5.2.2.1 "Notetaking During Interviews."
  - Section 9.5.2.2.2.1: Renumbered section 9.5.2.2.1.1. Removed pro tip; content preserved for use in other materials.
  - Section 9.5.2.2.2.2: Renumbered section 9.5.2.2.1.2. Removed tips; content preserved for use in other materials.
- Section 9.5.2.2.3: Renumbered 9.5.2.2.2.
- Section 9.5.2.2.4: Renumbered 9.5.2.2.3.

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- Section 11.1: Removed pro tip that references materials removed; content preserved for use in other materials.
- Section 11.1.3.3: Renumbered 11.1.2.1.
- Section 11.1.2.4: Renumbered 11.1.2.2.
- Section 11.1.2.4.1: Renumbered 11.1.2.2.1.
- Section 11.1.2.4.2: Renumbered 11.1.2.2.2.
- Section 11.1.2.4.3: Renumbered 11.1.2.2.3.
- Section 11.1.3.5: Renumbered 11.1.2.3.
- Section 11.1.3.5.1: Renumbered 11.1.2.3.1.
- Section 11.1.3.5.2: Renumbered 11.1.2.3.2.
- Section 11.1.3.5.3: Renumbered 11.1.2.3.3.
- Section 11.1.2.4.3: Removed internal processing information, which were preserved for use in other materials.
- Section 12.2: Removed internal processing information, which is preserved for use in other materials.
- Section A.1: Added entries for Common Access Card (CAC) and Personal Identity Verification (PIV).
- Section A.2:
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - Updated the definition of Authorized Carrier. Removed pre-subpoena letters from requirement to serve by the primary service method.
  - Updated the definition of “ESGR Ombudsperson.”
  - Removed definitions for two terms no longer referenced in the Manual, “information management system” and “representation declined.”
- Section B.1: Removed references to legacy case management systems.
- Section D:
  - Restructured to include additional information, including an ethics opinion excerpt.
  - Added Section D.1 and relocated previous Section D content here.
  - Added Section D.1 Relevant Ethics Opinion to add an excerpted ethics opinion to conform with other edits concerning ESGR.
- All Sections:
  - Changed specific words to encourage plain language and align with VETS Style Guide v.7. Examples include:



- Converted words to contractions (e.g., “They will” became “They’ll” and “it is” became “it’s”).
  - Removed unnecessary capitalizations.
  - Shortened phrases, for example “general public” became “public” and “in an effort to” became “to.”
  - Aligned VCMS Agency User Guide 2.4 with the terminology and steps in this Manual, as well as updated all references.
  - Aligned National Veterans’ Training Institute (NVTI) 9606 Veterans’ Preference (VP) and Veterans Employment Opportunities Act of 1998 (VEOA) Investigators Participant Guide with the terminology and steps in this Manual, as well as updated all references.
3. Change 3 September 2024 (called v2024.1)
- All Sections:
    - Converted references for business days to calendar days to align with calendar day requirements in the statute, except in instances referring to the business day prior to or following a weekend.
    - Update all references to CA Tool to CAAPP.
    - Update references to the VCMS Agency User Guide to match version 2.6.
    - Updated all hyperlinks.
  - Chapter 1
    - Updated authority and disclaimer language.
  - Section 2.3
    - Include military spouse preference example.
  - Section 2.4.2
    - Update references to MOR.
  - Section 2.4.3
    - Replace Designated QA Reviewer with National QA Reviewer
  - Section 2.12
    - Add First Level Reviewer and Second Level Reviewer functions to Senior Investigator role.
  - Chapter 3
    - Replace all content referring to the CA Microsoft Access Tool with content about the CAAPP.
  - Section 4.3.2
    - Removed change 2, footnote 38, which provided a brief description of case numbers.
    - Created section 4.3.2.1 which describes case numbering in detail.
  - Section 4.4.2
    - Remove reference to LSS team.
  - Section 5.2.1.1.2
    - Add FEMA Reservists to Uniformed Service categories for USERRA coverage.
  - Section 9.4.2

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- Add FEMA Reservist eligibility documents to required case documents.
- Section 9.6
  - Add Investigator Safety provisions.
- Section 12.3
  - Replace all content discussing Protests and Protest Procedures
- Chapter 15
  - Updated all referral content and process descriptions to match VCMS processes.
- Chapter 16
  - Separated USERRA and VEOA/VP closure codes.
  - Updated descriptions of closure codes for clarity in line with the separation of closure codes for USERRA and VEOA/VP.
  - Add description and processes for a new USERRA closure code: Claim Resolved: Resolved prior to Determination.
  - Update Substantiated, Not Resolved to include additional efforts to resolve USERRA cases, including private and State employer cases.
- Chapter 17
  - Update types of USERRA case reviews.
  - Add descriptions, weights, and purpose of CQMs.
  - Consolidate described QA activities by system role rather than job title.
  - Consolidate and update LSS information into a subsection.
- Chapter 18
  - Duplicated content within Investigator Qualifications was consolidated.
  - Investigator Qualifications were updated to allow only “Completed Cases” for on-the-job training requirements.
  - Update periodic USERRA QA reviews.
  - Add details regarding the VETS Investigator Mentorship Program.
- Appendix A:
  - Update Glossary definition of “Authorized Carrier.”
  - Add Glossary definition for “Completed Cases or Completed Investigations.”
  - Add Glossary definition for “Case Quality Measures.”
- Appendix E:
  - Create Appendix E which contains information about the VETS Case Management System (VCMS) and a description of Access Controls.
  - Move Unabridged and Hyperlinked Table of Contents from Appendix E to Appendix F.

## Chapter 1 | Introduction and Purpose

This Manual explains and outlines tasks for staff at the U.S. Department of Labor’s (DOL or the Department) Veterans’ Employment and Training Service (VETS) who might complete investigations under any of three laws:

- Uniformed Services Employment and Reemployment Rights Act (USERRA)<sup>1</sup>
- Veterans Employment Opportunities Act (VEOA)<sup>2</sup> and
- Title 5, United States Code (U.S.C.), provisions relating to Veterans’ Preference (VP).<sup>3</sup>

First, the Manual outlines the investigative requirements under these laws in a role- and task-based format, so the reader will know what tasks to complete for an accurate and well-documented investigation. Second, this Manual provides investigators and reviewers with a desk aid outlining each step required to, or preferred to, take in an investigation. For additional information about the history of the statutes and regulations that cover VETS’ rights and obligations concerning USERRA, VEOA, and VP, please refer to [VETS Scope of Authority](#).

For clarity in reading, when speaking directly to the reader, the Manual uses second person perspective (i.e., you and your). When telling the reader to ask themselves a question, the Manual uses limited first-person perspective (i.e., I). When talking about someone other than the reader, the Manual uses third person perspective (i.e., they and them). When speaking from the perspective of the National Office (NO), the Manual uses the plural first person perspective (i.e., we or our). The Manual provides examples inside of parentheses using “[i.e.](#)” and “[e.g.](#)” which are defined in the [Glossary](#).

When referring to the Secretary of Labor, this Manual will say, “the Secretary.” This Manual covers three laws that often have overlapping tasks to complete an investigation. If a section doesn’t apply to all three laws, the section heading will provide a parenthetical naming the relevant law for that section (e.g., [Analyze Potential Reemployment Violations \(USERRA\)](#)). Acronyms will be spelled out in their first usage. An [Acronym and Abbreviation List](#) and [Glossary](#) are included with this Manual. At publication, there are three versions of the VETS Case Management System (VCMS) User Guide: Agency, Claimant, and DOJ-OSC, respectively. When using “VCMS User Guide,” this Manual refers to the [VCMS Agency User Guide](#). If referring to other guides, this Manual will state the full title (e.g., VCMS Claimant User Guide).

This Manual exists to serve the reader. If at any point in time you have questions about its contents, we encourage you to speak initially with your first-line supervisor. If you both require further clarification, we recommend you progress through your regional office (RO) and the NO

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<sup>1</sup> [38 U.S.C. §§ 4301-4335](#); [20 C.F.R. Part 1002](#); [5 C.F.R. Part 353](#).

<sup>2</sup> [5 U.S.C. §§ 3330a-3330b](#).

<sup>3</sup> [Title 5, U.S.C.](#)

Compliance and Investigations Division (CID) team. This Manual will receive semi-annual updates. We look forward to your feedback on how to improve this Manual.

This Manual is issued by and under the authority of the Assistant Secretary for Veterans' Employment and Training. It formulates and implements procedures for VETS staff and outlines other information relative to the handling of questions and complaints under USERRA, VEOA, and VP for which responsibility was delegated to VETS, and it may be used as a ready reference. Compliance policies and procedures initiated by previously issued memoranda were incorporated into this Manual. This Manual supersedes all prior memoranda relating to compliance policy and procedure.

No duties, rights, or benefits, substantive or procedural, are created or implied by this Manual, which is solely for the benefit of the Government. The contents of this Manual are not enforceable by any person or entity against the Department of Labor or the United States. Statements that reflect current legal precedents don't necessarily indicate agreement with those precedents. Further, the Manual isn't used as a source of interpretative policy for the regulated public. The Federal Register and the Code of Federal Regulations (C.F.R.) remain the official resources for regulatory information published by the DOL.

## Chapter 2 | Relevant Roles

This section covers the major roles involved in filing a complaint and investigating, under USERRA, VEOA, and VP.<sup>4</sup> All terms below are defined, some with additional statutory and regulatory detail, in the [Glossary](#).

### 2.1 Attorneys or Other Counsel

Private and government attorneys may participate in various stages of the work the VETS investigators complete. For clarity, this Manual categorizes their roles based on whether they were hired by a private party (for example, the claimant or employer) or they work for the government enforcing USERRA, VEOA, and VP rights, benefits, and obligations.

#### 2.1.1 *Government Attorneys*

The government attorneys who claimants are most familiar with for USERRA, VEOA, and VP are from the Department of Justice (DOJ) or Office of Special Counsel (OSC), who may agree to represent a claimant in district court or before the Merit Systems Protection Board (MSPB), as appropriate. Other government attorneys may represent an agency employer, much like a private employer might hire counsel.

The Department's Office of the Solicitor (SOL), which VETS employees work with through the regional Solicitor's offices (RSOL) and the National Solicitor's Office (NSOL), provides legal advice about VETS investigations. Regional Solicitors are attorneys who work for SOL locally within the regions. They provide first-line legal advice to Senior Investigators (SI) and regional employees. They consult with NSOL, as necessary. NSOL is the Solicitor's Office located within the Department's headquarters. NSOL oversees legal advice provided to the Department's various agencies and consults with RSOL in providing day-to-day legal advice to ensure consistency and efficiently respond to questions of national policy.

The U.S. Attorney General assigned responsibility for handling USERRA referrals to the Civil Rights Division of DOJ. Within the division, USERRA referrals are assigned to the Employment Litigation Section, which often handles the referrals in cooperation with local U.S. Attorneys' offices.

OSC is an independent federal investigative and prosecutorial agency whose basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and USERRA.<sup>5</sup> OSC's primary mission is to safeguard the merit system by

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<sup>4</sup> This Manual outlines terms used across the Veterans' Employment and Training Service (VETS). For a full list assignable user roles and functions within the VETS Case Management System (VCMS), see [VCMS Agency User Guide](#), Chapter 2.1.3 (p. 11).

<sup>5</sup> [Office of Special Counsel \(OSC\) Homepage, About Us](#).

protecting federal employees and applicants from Prohibited Personnel Practices (PPP), especially reprisal for whistleblowing.

Within VCMS, DOJ and OSC user may be assigned DOJ and OSC accounts, respectively. National SOL users may be assigned SOL and nation read-only accounts. Regional SOL users may be assigned SOL and regional read-only accounts.

### 2.1.2 *Private Attorneys*

A private attorney is one hired by a claimant, employer, or other entities or persons in the case. A claimant has the right to initiate a private legal action in a court of law or with the MSPB, as appropriate.<sup>6</sup> Although DOJ or OSC may agree to represent the claimant in district court or before the MSPB, the claimant is free to file suit through private counsel retained at their own expense at any time. They may hire such counsel at any point in the process. In addition, many employers hire private counsel or in-house counsel to assist them in employment matters.

## 2.2 Chief Senior Investigator (CSI)

The CSI is assigned to the NO and serves as the top investigative position within VETS. The CSI provides guidance, direction, and oversight of the Agency's compliance and investigation programs. They also develop and clarify information on current or proposed policies and programs and provide necessary guidance and assistance to SIs and regional leadership to carry out the Agency's responsibilities. Within VCMS, the CSI may be assigned to CSI, national assigner, national read-only, national FOIA-coordinator, quality reviewer, or mentor roles.

## 2.3 Claimant

The claimant is the person who submits the claim (i.e., a Form 1010 complaint about a suspected violation of USERRA, VEOA, and/or VP). This will most often be a member of or veteran of a uniformed service. However, sometimes it won't. For example, an employer might retaliate against another employee at the company for assisting with a VETS' investigation. That employee has rights to file a USERRA claim. Another example might involve having [preference that comes from the claimant's marital status](#) to a service member or veteran. Following the step-by-step instructions for establishing [eligibility under USERRA, VEOA, and VP](#) will help determine if someone is a claimant. In VCMS, Claimants are assigned to the claimant role.

## 2.4 Designated Reviewer

The designated reviewer is the individual designated by the Regional Administrator for Veterans' Employment and Training (RAVET) to review investigative casework and associated processes and procedural documents. There are three distinct roles a designated reviewer may

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<sup>6</sup> [38 U.S.C. §§ 4323\(a\)\(3\), 4324\(b\); 20 C.F.R. § 1002.303.](#)

fulfill: designated reviewer for the Report of Investigation (ROI), designated reviewer for the Memorandum of Referral (MOR), and designated reviewer for Quality Assurance (QA).

#### *2.4.1 Designated Report of Investigation (ROI) Reviewer*

The designated ROI reviewer is selectable from a drop-down list located at the top of each created ROI. The Investigator will most often select their immediate supervisor or SI as the designated ROI reviewer. However, any person with an ROI reviewer role within their region may be selected as the designated ROI reviewer if their supervisor or SI is not available. The designated reviewer is responsible for validating the information contained in the ROI. Validating means they review every part of the case. This includes examining whether the investigator properly followed VETS' investigative processes: developed and followed through on an appropriate action plan, correctly analyzed and determined potential violations and issues, and chose the correct closing codes. In addition, the designated reviewer reviews the ROI to determine if the investigator has matched each fact within each section of the ROI to the appropriate legal citation and evidentiary source. Designated reviewers will reject any ROI that contains incomplete or inaccurate information. Designated reviewers will accept an ROI once they confirm the investigation is complete, accurate, and on track at that stage of the investigation. For more information on the role of the designated reviewer, refer to Reviewer's Responsibility in Analysis subsections in [Analyze a Potential Violation](#) and [Review the Case](#). In VCMS, the ROI reviewer role can be assigned to Directors for Veterans' Employment and Training (DVET), SIs, Regional Investigators (RI), Deputy Regional Administrators for Veterans' Employment and Training (DRAVET), RAVETs, and national CID staff.

#### *2.4.2 Designated Memorandum of Referral (MOR) Reviewer*

The designated MOR reviewer will most often be a RAVET, DRAVET, or SI. The designated reviewer is responsible for validating the information contained in the MOR. Validating means they review the MOR along with the evidence (presented as exhibits) that confirm the facts and conclusions reached by the investigator. In addition, the MOR reviewer reviews the MOR for any grammatical errors and matches each section of the MOR to the appropriate legal citation and/or evidentiary source. Upon the MOR reviewer's approval, they confirm the MOR is complete, accurate, and on track. They're also responsible for notifying any Second Level Reviewer after them of any priority and timeliness requirements. For more information on the role of the designated MOR reviewer, see [Review and Transfer of a USERRA MOR](#). In VCMS, the first- and second-level MOR reviewer roles can be assigned to DVETs, SIs, DRAVETs, RAVETs, and national CID staff.

#### *2.4.3 National Quality Assurance (QA) Reviewer*

The VETS QA review process allows regular and periodic review and oversight of case activity by appropriate levels of staff and management. Personnel involved in the review process include DVETs, SIs, as well as other regional and NO staff. In VCMS, the QA Reviewer role may be assigned to DVETs, SIs, DRAVETs, RAVETs, and national CID staff.

## 2.5 Employer

An employer, generally, is any person, institution, organization, or other entity who has power over the claimant's employee-related responsibilities. An employment relationship can exist between a claimant and a single person. Employers can be any person, institution, organization, or other entity that has this relationship to the claimant. An employer can also be the successor in interest of that relationship with the claimant. One example of a successor in interest might be a company buying a smaller employer. The purchasing company becomes the employer as the successor in interest to the original smaller employer. The exceptions and criteria for establishing an employment relationship are found in [Identify Employer \(38 U.S.C. § 4304\(4\), 20 C.F.R. § 1002.5\(d\)\)](#). Refer also to the sections concerning [Joint Employers \(and the Status of Pension Plans\)](#).

## 2.6 Employer Support of the Guard and Reserve (ESGR)

ESGR is a U.S. Department of Defense (DOD) program established in 1972 to promote cooperation and understanding between Reserve Component (RC) service members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. An [ESGR ombudsperson \(ombuds\)](#) should not be working with a claimant while VETS investigates. An ombuds might be a volunteer or a federal employee. To avoid conflicts of interest, VETS employees may not volunteer with ESGR in any capacity.<sup>7</sup> Refer to [Relevant Ethics Opinion](#) for additional information. Ombuds are a neutral party designed to talk to employers and employees about how to follow the law and reach amicable resolution. If resolution cannot be reached, that's often when someone files a complaint with VETS. For a complete list of the jointly owned compliance activities between ESGR and VETS, read the section [Provide Technical Assistance to DOD's ESGR](#).

## 2.7 Federal Courts

Federal courts may be involved to determine an appropriate outcome for the case when a claim isn't resolved during the investigation or later through a potential settlement by the parties. If a claimant wishes to take their claim forward, they may sue for enforcement of their rights against a private employer within the U.S. District Court system. Documents from the VETS case file may be admitted into evidence during these proceedings.

## 2.8 Investigator

Investigators are VETS staff who investigate claims and provide Compliance Assistance (CA) under USERRA, VEOA, and VP. Generally, investigators fall within the following VETS titles:

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<sup>7</sup> Federal employees may volunteer with organizations, but they may not volunteer in areas that overlap their duties as federal employees. For example, ESGR activities relate very closely to a VETS employee's official duties and the ESGR mission relates very closely to the VETS mission. These areas of overlap could cause conflicts of interest and make it more difficult for VETS to fulfill its mission.



Assistant Director for Veterans' Employment and Training (ADVET), DVET, RI, SI, or Veterans' Program Specialist. In VCMS, the investigator role may be assigned to any VETS employee who completed the Level 1 Investigator requirements, and is or will be assigned USERRA, VEOA, or VP cases to investigate.

## 2.9 Merit Systems Protection Board (MSPB)

The MSPB is an independent, quasi-judicial agency in the executive branch that serves as the guardian of federal merit systems. The MSPB may be involved to determine an appropriate outcome for the case when a claim isn't resolved during the investigation or later through a potential settlement by the parties. If a claimant wishes to take their claim forward, they appeal to the MSPB for enforcement of their rights against a federal agency employer. Documents from the VETS case file may be admitted into evidence during these proceedings.

## 2.10 National VETS Staff

The National VETS staff, or NO team, defines direction and makes decisions on resource allocation to pursue the Agency's strategy by providing overall guidance and establishing policies and procedures. The team consists of:

- Director of Compliance and Investigations, who manages and monitors the Agency's compliance and investigation programs. They're the first-line supervisor to NO compliance and investigations staff.
- CSI, whose duties are described [in the CSI section above](#).
- Senior Compliance Policy Advisor, who develops, plans, and implements VETS' USERRA, VEOA, and VP compliance and investigation policy, including investigative practices and procedures, training curricula, and quality measures and milestones. They also develop, plan, and implement other VETS compliance-related policy, including CA activities policy.
- Senior Compliance Analyst, who oversees the compliance data and leads actions required to ensure reliable operations; leads production of monthly, quarterly, and annual reports to Agency stakeholders; and produces other ad hoc reports and analyses to support compliance operations.
- Investigative Analyst, who provides oversight, programmatic, and performance analysis and support of VETS' investigative and compliance activities. They also develop and provide technical guidance and assistance for VETS' staff and other appropriate stakeholders to address difficulties encountered in state, regional, and national investigative activity.

### 2.11 RAVET, or Their Designee

The RAVET has overall responsibility for managing and monitoring VETS programs, including USERRA, VEOA, and VP compliance and investigations within their region. Staff assigned to ROs assist RAVETs in fulfilling this responsibility.

### 2.12 Senior Investigator (SI)

The SI performs all regional compliance and investigation program-related functions on behalf of their RAVET, including but not limited to:

1. Provides compliance-related guidance to DVETs, ADVETs, and others within their region.
2. Maintains RO guidance and policy materials for regional and state staff.
3. Monitors the VCMS and other information management systems to assure timely, accurate, and complete claim and investigation processing, in accordance with national and regional directives.
4. May investigate claims and provide technical assistance (TA).
5. Serves as designated reviewer for ROIs and other reviews completed by RIs.
6. Analyzes all referrals within their region and provides approval recommendations to the RAVET.
7. Coordinates efforts with, and requests opinions from, the RSOL.
8. Engages in compliance assistance outreach activities.
9. May serve as an instructor for regional-level training.

In VCMS, SIs may be assigned SI and/or RI, investigator, ROI reviewer, regional assigner, regional read-only, First Level Reviewer, Second Level Reviewer, QA reviewer, mentor, and regional FOIA coordinator roles, as appropriate.

### 2.13 VETS Compliance Data Center (VCDC)

The VCDC oversees the intake of USERRA, VEOA, and VP claims, compliance data systems, and actions required to produce monthly, quarterly, and annual reports to DOL stakeholders, other ad hoc reports, and analyses to support reliable compliance operations nationwide.

## Chapter 3 | Compliance Assistance

The law requires that VETS provide Compliance Assistance (CA).<sup>8</sup> This umbrella term covers both the responsive, or on-request, technical assistance (TA) activities and proactive compliance assistance outreach activities to help employees and employers understand their rights, benefits, and obligations under USERRA, VEOA, and VP. DOL defines a compliance assistance event as “anything included under the following categories: a presentation, seminar, speech, committee meeting, task force meeting, training, town hall, compliance consultation, webinar, and face-to-face consultation. It’s generally pre-scheduled and arranged with the agency.”

When this Manual uses the acronym “CA,” it refers to the umbrella term “Compliance Assistance” that covers both responsive and proactive activities about how to comply with USERRA, VEOA, and VP. “Technical assistance (TA)” covers responsive activities where someone contacted VETS for help with a specific question about how to comply with the law. “Compliance assistance” covers only proactive activities about how to comply with USERRA, VEOA, and VP. When talking about the umbrella activity, we will always refer to it as CA. In this Manual, we refer to those responsive and proactive activities together as CA to match the internal names VETS uses for these activities.

VETS’ USERRA program has three major phases:

- Compliance Assistance-Related Activities
- Investigative Activities, and
- Enforcement Activities.

In phase one, VETS partners with the DOD’s ESGR to perform CA-related activities. VETS also plays a supporting role to ESGR in this phase, as it maintains training relationships with ESGR to provide USERRA assistance. A memorandum of understanding (MOU) governs the [relationship between VETS and ESGR](#).<sup>9</sup>

In phase two, VETS is the sole federal agency responsible for:

- *Determination*: investigating claims to determine appropriate outcomes.
- *Resolution*: resolving substantiated claims to preserve the employee-employer relationship, whenever possible.
- *Referral*: referring USERRA violations to DOJ and OSC, upon the claimant’s request.

Phase three deals with enforcement. During this phase, DOJ and OSC are the lead federal agencies, and VETS supports them in their enforcement efforts and activities. In cases where the claim(s) could be substantiated, VETS also refers VEOA and VP cases to OSC for consideration

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<sup>8</sup> See [38 U.S.C. § 4321](#); [20 C.F.R. § 1002.277](#).

<sup>9</sup> The link location is an internal VETS resource and may not be accessible to staff outside VETS.

of a potential [PPP](#). This Manual outlines activities in these phases based on who the assistance supports and how VETS' assistance supports that person or group.

### 3.1 Log Compliance Assistance Activities

Use the [Compliance Assistance SharePoint Application \(CAAPP\)](#)<sup>10</sup> to document all CA activities and events (both TA and compliance assistance), including non-case-related telephone (phone), mail, and email inquiries; in-person presentations; and briefings. For further explanation, read the sections below (beginning with [CA Activities](#)) on what qualifies as compliance assistance or TA under USERRA, VEOA, and VP. The remainder of this subsection explains how to be prompt, accurate, and sure as you track your CA activities.

#### 3.1.1 *Be Prompt*

Timely entry in the [CAAPP](#) leads to higher quality data tracking for VETS. Record CA activities on the [CAAPP](#) immediately after providing the assistance. At a minimum, all activities completed in that month must be recorded on the [CAAPP](#) before the last day of the calendar month. You can only record your own activities; you can't submit activities on behalf of another employee.

VETS maintains data entered into the [CAAPP](#) in SharePoint To preserve the quality of data entered, users may only edit certain [CAAPP](#) sections: Required Information, Group Event, Resources, Issues and Action, and Comments or Notes. These steps can be found below under [Log CA Activities](#).

#### 3.1.2 *Log CA Activities*

Once logged in to the [CAAPP](#), select "Add CA Activity" on the welcome screen. This opens the New CA Activity Entry Form, which captures your username and location. You need to enter the:

1. Date you provided CA (CA Activity Date field),
2. Requester type from a drop-down menu of options (CA Requester Type field),
3. Requester or point of contact's (POC's) first name (First Name field),
4. Requester or POC's last name (Last Name field), and
5. Outreach or assistance type from a drop-down menu of options based on the method of communication (Outreach Type field).

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<sup>10</sup> Visit the [Compliance SharePoint site](#) to access the [CAAPP](#). On the main page under Compliance Tools, you can find a direct link to the current [CAAPP](#).

There are 10 additional fields that can be filled out but are voluntary. These include:

1. Organization
2. Group Activity?
3. Attendees
4. Location
5. USERRA Issues
6. VP Issues
7. USERRA Referral
8. VP Referral
9. ESGR Referral, and
10. Comments.

The field for Organization, should be used to identify the name of an employer, branch of uniformed service, employer organization, or other entity that the POC for the CA Activity belongs to, applied to, or is employed by.

The fields for Group Activity, Attendees, and Location are specific to activities where multiple attendees receive CA from the provider. The fields for Attendees and Location will only appear in the [CAAPP](#) if an answer of “Yes” is provided for the Group Activity field. It is important to provide the exact or estimated number of attendees at any group events in order for VETS to accurately report the number of persons who were provided CA by the agency in order to justify certain budget requests annually.

The fields for USERRA Issues and VP Issues allow a user to identify if one or multiple issues were discussed. The USERRA Issues drop-down has the following options:

1. Military Obligations Discrimination
2. Initial Hiring Discrimination
3. Health Benefits
4. Pension
5. Seniority
6. Other Non-Seniority Benefits
7. Status
8. Layoff
9. Vacation
10. Reinstatement
11. Promotion
12. Reasonable Accommodations for Disability
13. Pay Rate
14. Special Protected Period Discharge
15. Discrimination as Retaliation
16. Key Employee Designation, and
17. Sovereign Immunity.

The options for VP Issues include options that include:

1. VP: Hiring
2. VEOA: Hiring
3. VP: RIF

The fields for USERRA Referral, VP Referral, and ESGR Referral, have drop-down options for responses of Yes or No. These should be selected if a potential claimant is referred to file a claim.

The Comments field is also available to enter any other information that is relevant to the CA activity. Examples of information that may be entered into this field include contact information for the POC, a special topic or initiative that was discussed (e.g., Military Spouse protections), or information about requested hard copy materials that need to be ordered, shipped, or supplied (e.g., USERRA flipbooks).

### 3.1.3 *Be Accurate and Sure*

Before you submit the CA Activities Form, ask yourself if any of these situations apply.

*Question:* Did I have an in-person USERRA, VEOA, or VP discussion with more than one person?

*Answering Action:* If so, select “Yes” for the Group Activity field, and enter the estimated number of attendees, and location of the event.”

*Question:* Is the requester or point of contact part of a larger organization or entity?

*Answering Action:* If so, put that information under “Requester/Entity/Organization.”

*Questions:* Did my assistance involve a referral to file a USERRA, VEOA, or VP claim? Did my assistance involve a referral to ESGR?

If the answer to any of the above questions is yes, fill in the Issues and Referrals fields. Use the drop-down menu to fill in any applicable fields:

- Potential USERRA violation identified
- Potential VEOA or VP violation identified
- Referred to file a claim alleging a USERRA violation
- Referred to file a claim alleging a VEOA or VP violation
- Referred to ESGR.

If there are multiple potential violations, select the primary one using the drop-down boxes above, but outline the other potential violations or problems under the Comments or Notes section.

*Question:* Do I have any information in my emails, mail, or notes that isn't in the [CAAPP](#)?

*Answering Action:* If so, record this information in the Comments section. This may include outlining any additional potential violations or problems identified, as well as any expenses attributed to non-VETS attendees. Remember to enter problems encountered and best practices into this field.

Once you fill in all the information you have on the CA Activity Form, submit the form using the submit icon (left most icon from the menu at the top right of the page that looks like a paper airplane facing right). Repeat this for each activity you enter. To the best of your ability, do not submit activities within the same minute, of the same hour, of the same day. This may result in loss of a submitted activity or overwrite of the previously submitted activity.

### 3.2 Compliance Assistance (CA) Activities

CA contains both responsive and proactive activities. In the first phase of USERRA administration, VETS partners with DOD's ESGR and the Office of Personnel Management (OPM) to provide CA across the federal, regional, and state and local levels.<sup>11</sup> VETS partners with the DOD's ESGR and OPM. VETS and ESGR are the leading federal agencies responsible for proactively talking to employees and employers about the rights, benefits, and obligations under USERRA. VETS and OPM are the leading federal agencies responsible for proactively talking to employees and employers about the rights, benefits, and obligations under VEOA and VP.

The following activities, at each level, qualify as CA:

1. State and local level CA activities by qualified VETS staff<sup>12</sup> at the state level and include:
  - a. Providing TA to potential claimants and to such claimant's employer, when appropriate.
  - b. Responding to inquiries from veterans, service members, members of the public, ESGR state-level volunteer ombuds, local military organizations, local organizations supporting underserved communities, and local employers.<sup>13</sup>

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<sup>11</sup> The three phases are: (1) proactive training and outreach to employees and employers discussing USERRA rights, benefits, and obligations; (2) investigations to enforce USERRA rights, benefits, and obligations; and (3) activities to enforce USERRA-related efforts and activities. For phase one, VETS partners with the Department of Defense's (DOD) Employer Support of the Guard and Reserve (ESGR). For phase two, VETS is the lead agency responsible for action, but does work in partnership with the OSC and the U.S. Department of Justice (DOJ). For phase three, VETS is in a supporting position to DOJ and OSC.

<sup>12</sup> Refer to [Training and Professional Development](#).

<sup>13</sup> In this context, VETS' interactions with ESGR state-level volunteer ombudspersons (ombuds) in providing USERRA education, information, and other neutral, informal services to assist employees and employers to resolve their disputes will also be considered state and local level activities. Inquiries from the media should be referred immediately to VETS' regional or national offices to coordinate with the DOL Office of Public Affairs (OPA) for appropriate response.

- c. Briefing and presenting.
  - d. Teaching and/or participating in training for ESGR ombuds.
  - e. Partnering, as available, with the Department's other outreach professionals by scheduling and reporting on regional USERRA CA outreach events and presenting on and sharing best practices with outreach professionals throughout the Department.
2. Regional level CA activities by designated VETS staff at the regional level and include:
    - a. If it cannot be addressed at the state level, then providing TA to potential claimants and that claimant's employer, when appropriate.<sup>14</sup>
    - b. If it cannot be addressed at the state level, then responding to inquiries from veterans, service members, members of the public, ESGR ombuds, local military organizations, local organizations supporting underserved communities, and local employers.
    - c. Responding to inquiries from attorneys, regional-level military organizations,<sup>15</sup> veteran service organizations, industry and trade associations, employers, and those referred from the national level.
    - d. Coordinating responses to media inquiries with the DOL's regional Office of Public Affairs (OPA).
    - e. Delivering regional briefings and presentations.
    - f. Delivering training for ESGR ombuds directors and state-level volunteer ombuds.
    - g. Partnering, as available, with the Department's other outreach professionals by scheduling and reporting on regional USERRA CA outreach events and presenting on and sharing best practices with outreach professionals throughout the Department, such as participating in communities of practice.
  3. National level CA activities by designated VETS staff at the national level and include:
    - a. Referring requests for TA from potential claimants and that claimant's employer, when appropriate, to the responsible office at the regional level and, if it can't be addressed at the regional level, then addressing those TA requests.
    - b. If it can't be addressed at the regional level, then responding to inquiries from veterans, service members, members of the public, attorneys, ESGR ombuds, local- and regional-level military organizations, local- and regional-level organizations supporting underserved communities, and local and regional employers.
    - c. Responding to inquiries from ESGR headquarters staff, federal executive agencies (for non-case-related inquiries), major-command-level military organizations, veteran service organizations, industry and trade associations, and national employers.

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<sup>14</sup> Remember that, while employers certainly can contact VETS for technical assistance (TA), you can't reach out to a potential claimant's employer without a signed Form 1010.

<sup>15</sup> These might include military units headquartered in the region. For example, the 8<sup>th</sup> Medical Brigade in New York, with subordinate units located throughout the Mid-Atlantic, as opposed to local units at the state level, or major commands at the national level.



- d. Coordinating responses to media inquiries with national and regional OPA.
- e. Delivering briefings, presentations, and webcasts at the national level.
- f. Delivering training for ESGR headquarters staff, ombuds subcommittee members, ombuds directors, and state-level volunteer ombuds.
- g. Issuing USERRA interpretation letters, when appropriate.
- h. Issuing fact sheets, frequently asked questions (FAQs), training materials, other CA products, and accompanying news releases.
- i. Maintaining the [e-laws USERRA Advisor](#), the [e-VETS Resource Advisor](#), and other web-based materials.
- j. Partnering with the Department's other outreach professionals, scheduling and reporting on regional USERRA compliance assistance outreach events and presenting on and sharing best practices with outreach professionals throughout the Department.

### *3.2.1 Provide CA to Groups and Organizations (USERRA, VEOA, and VP)*

Compliance assistance outreach activities are a subset of CA that includes proactive efforts to teach others to comply with USERRA, VEOA, and VP. VETS staff should initiate contacts with groups likely to be interested in understanding and properly following USERRA, VEOA, and VP. These organizations might include federal HR personnel, National Council of Field Labor Locals, Regional Executive Committees, local Reserve and National Guard units, veterans' organizations, ESGR committees, Judge Advocate General's Corps (JAGC) offices, organizations supporting underserved communities, personnel associations, and other groups.

To make initial contact, follow these steps:

- Find out who heads such groups.
- Phone or send out letters of introduction and promotional materials.
- Explain what USERRA, VEOA, and VP do.
- Invite the group(s) to ask questions and refer possible problems to VETS.
- Offer to make group presentations.

Presentations are an effective, efficient way to introduce USERRA, VEOA, and VP laws and regulations to groups. Presentations explain federal hiring preference laws and regulations, how to file complaints, and how we process complaints. The following are approved techniques for making presentations:

1. Ask the sponsoring organization for a written invitation or confirmation that will describe exactly when and where the presentation will be held. This documentation will support travel and absence from the office.
2. Determine the audience size and plan for handouts accordingly.
3. Schedule adequate time for a presentation and a question-and-answer (Q&A) session. Ask the point of contact in advance about any specific questions the group may have.
4. During the presentation, use questions to spark the audience's interest.

Agencies may choose to contact and coordinate with VETS on Reduction in Force (RIF) claims. If you receive a request about a RIF, contact the CSI before proceeding further. The CSI will coordinate questions, answers, and any potential support during the RIF process or claims that result from it.

### 3.2.2 *Provide TA to Individuals, Employers, and Federal Agencies (USERRA, VEOA, VP)*

TA is a subset of CA that answers specific questions that past, present, or future claimants and, as appropriate, their employers may have. Generally, TA requests fall into one of two categories:

1. How to follow USERRA, VEOA, or VP: These types of questions make you explain how the law might apply to a situation or type of job posting (for example, merit promotion).
  - a. Ask for as much information as you need to understand the question's scope.
  - b. Recap the conversation and information you hear on a VETS Form 1063 "Report of Contact/Attempted Contact" (Form 1063).<sup>16</sup>
  - c. Enter the activity in the [CAAPP](#).
2. General Questions: These offer a chance to create a good relationship. Answer verbally or refer the person to the [USERRA resources on the VETS website](#). Answers should be quick, polite, and right.

#### 3.2.2.1 Answer a TA Request

TA requests may come by email, online form, mail, phone, fax, or a personal visit to a VETS office. Someone doesn't have to file a complaint to receive compliance assistance or request TA. USERRA requires VETS provide TA upon request to a potential claimant about their USERRA complaint and, when appropriate, to that potential claimant's employer.<sup>17</sup>

Be prompt, accurate, and sure:

1. If the question isn't about USERRA, VEOA, or VP, promptly assist them in contacting the appropriate federal agency.
2. Don't answer if you're unsure. Talk to your SI. Ask your state or regional experts and mentors.
3. Make it clear that responding to their question isn't an official or legal position. If they ask for a legal opinion, tell the RSOL.
4. Don't answer in writing if USERRA, VEOA, or VP promotional or informational materials answer their question. Instead, direct them to those written materials.

You must use the IRAC method when you write down your analysis. IRAC stands for issue, rule, analysis, and conclusion. It's a time-tested analytical tool used by legal and business professionals. It provides a standard step-by-step approach for breaking down and resolving

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<sup>16</sup> A VCMS tab performs the function of this form. Once finalized, VCMS will turn the report into a printable and filled Form 1063. [VCMS Agency User Guide](#).

<sup>17</sup> See [38 U.S.C. § 4322\(c\)\(2\)](#).

complex problems, using available facts and applicable laws and regulations to arrive at a conclusion. You'll use this format for writing out your [analysis in an investigation](#) and whenever drafting a [request for assistance to RSOL](#). We encourage you to prepare any questions and draft analysis in this format for any situation in which you ask for clarification or assistance from VETS or SOL staff.

### **IRAC Template Analysis:**

1. *What is the issue(s)?*
  - a. Remember that each issue might have multiple potential violations within it.
  - b. For your convenience, VCMS lists the following types of potential violations for your use: military obligations discrimination, reinstatement, initial hiring discrimination, discrimination as retaliation for any action, status, pay rate, seniority, other non-seniority benefits, pension, layoff, promotion, vacation, health benefits, special protected period discharge, reasonable accommodations and/or retraining for disabled claimants, reasonable accommodations and/or retraining for non-qualified, non-disabled claimants, and other.
2. *What are the rules?*
  - a. Cite to relevant [USERRA](#), [VEOA](#), and [VP](#) statutes and regulations.
3. *What is the analysis?*
  - a. Outline what the rules require.
  - b. Fill in using statements of fact about whether the information you gathered meets these requirements.
  - c. Make sure to include the sources for any facts (interviews or documents) and their relevant dates.
4. *What is the conclusion?*
  - a. Outline the result of your analysis.
  - b. The result should not include inferences or assumptions.

#### **3.2.2.2 Provide CA to DOD's ESGR**

ESGR holds awareness and recognition programs for employers of RC service members to foster positive support for National Guard and Reserve service. It also helps prevent, resolve, and reduce employer and employee conflicts and misunderstandings about RC service, training, or duty requirements. ESGR teaches National Guard and Reserve members and employers about their rights and responsibilities under USERRA. ESGR also talks to military units to promote better understanding about the importance of keeping positive working relationships between employers and their RC employees to sustain military participation and readiness.

ESGR and VETS work closely by tracking problems, coordinating issues, and identifying trends as part of their efforts to protect service members' and employers' rights. VETS participates in ESGR's quarterly USERRA working group meetings. VETS also works with ESGR on TA and information requests, briefings, presentations, and internal USERRA training.

### 3.2.2.2.1 TA and Information Requests

VETS and ESGR work together to publish consistent informational materials and answers to TA. ESGR will share any materials on new or complex USERRA issues with VETS before publishing or sharing the materials. This helps ESGR and VETS give the same answers about how to read the law and regulations. Where practical, ESGR and VETS will co-publish fact sheets they share with the public. The [VETS](#) and [ESGR](#) websites cross-link, so users looking for USERRA information have easy access to both agencies' websites.

Generally, the agency that receives the request will answer the request. If one agency gets many questions, it will coordinate answering those questions with the other agency on a temporary basis, as appropriate. ESGR program staff may be federal employees or volunteers. If you receive a question from ESGR program staff about policy issues, national implications, or cases with complexity, send the question to the VETS office in the state where the question was received or to the NO for appropriate coordination. VETS will answer ESGR program concerns promptly. ESGR staff will ask VETS for help when they need to interpret USERRA and stay consistent with VETS' current USERRA interpretations. Volunteer ombuds should contact the VETS office in their state, and the ESGR NO will contact the VETS NO.

ESGR and VETS share relevant information that might affect interpreting or applying USERRA. This sharing could be about legislative initiatives, court decisions, or other relevant information. ESGR and VETS also share relevant statistics and data.

### 3.2.2.2.2 Briefings and Presentations

VETS will give proactive compliance assistance at the national, regional, state, and local levels to improve employers' knowledge of their responsibilities and employees' understanding of their rights to reduce the overall number of USERRA violations each year. Overall, these activities cover the many ways that VETS might answer questions about the rights, benefits, and obligations under USERRA. VETS actively participates at the national, regional, and state levels to collaborate and network with other compliance agencies within the Department. The VETS NO staff and SIs are the lead compliance assistance outreach professionals in their respective regions. We encourage other interested regional and state staff to join with the Department's other outreach professionals by scheduling and reporting on regional USERRA compliance assistance outreach events (e.g., USERRA briefings and web presentations). We encourage staff at all levels to present on and share best practices with outreach professionals across the Department.

Briefings and presentations are about employer and military outreach. VETS and ESGR look for times to talk to targeted audiences like employers, organizations supporting underserved communities, civic groups, and other members of the public. We present together whenever possible, especially when it's to a large group. ESGR invites local VETS representatives to attend and participate in ESGR local events. VETS will review and help write scripts for USERRA briefings.

VETS and ESGR will give regular briefings to National Guard and Reserve units about the rights, benefits, obligations, and processes for following USERRA, VEOA, and VP. If many Guard and Reserve units are called or ordered to active duty, close cooperation between VETS and ESGR will be essential. After talking with ESGR, VETS will write scripts for USERRA briefings that may be used or delivered by ESGR to affected service members.

#### 3.2.2.2.3 Internal USERRA Training

VETS invites ESGR staff to take National Veterans' Training Institute (NVTI) online or classroom USERRA courses, on a space-available basis, so ESGR staff can better help VETS meet its responsibility to respond to protected persons' and employers' questions and concerns about USERRA.

#### 3.2.2.3 Provide TA to Employers (USERRA)

While a potential claimant's employer can always contact VETS directly for assistance, VETS won't initiate contact with a potential claimant's employer to provide TA. VETS won't contact a claimant's employer to investigate a complaint until the claimant submits a signed and dated VETS Form 1010, or an [E-1010](#) complaint form.<sup>18</sup>

#### 3.2.3 Other Ways VETS Provides CA (USERRA, VEOA, and VP)

VETS also shares information through websites and publications. VETS coordinates publishing articles and opinion and editorial (op-ed) pieces. We publish news releases through OPA to tell the public about USERRA, upcoming events, and new CA resources. VETS works with the Department's Office of the Assistant Secretary for Policy (ASP) to maintain the [e-laws USERRA Advisor](#) and the [e-VETS Resource Advisor](#). We work with OPA to keep web-based materials updated, including worker.gov, employer.gov, and other web-based content (for example, fact sheets, FAQs, and employer toolkits). VETS is part of the Department's National Call Center, providing a toll-free number for the American public to get general information about the Department's programs, including VETS' role administering USERRA. VETS also works with SOL at the national and regional levels, as appropriate, so all CA briefings, presentations, and materials are legally sufficient.

In addition to our web-based content, VETS looks for innovative ways to provide CA to service members, employers, and other stakeholders in the virtual environment. VETS seeks opportunities to provide USERRA webinars for professional organizations, industry and trade associations, and employer groups. We often do these presentations in cooperation with ESGR and SOL. We seek out calls for, and submit, proposals to present at annual meetings, conferences, continuing legal education (CLE) courses, and webinars for:

- *Military organizations* (e.g., ESGR, United States Air Force (USAF)).

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<sup>18</sup> This follows the requirements of [20 C.F.R. § 1002.288](#).

- *Legal organizations* (e.g., American Bar Association (ABA), ABA Standing Committee on Legal Assistance for Military Personnel (LAMP); Federal Bar Association (FBA), FBA Veterans and Military Law Section (VMLS)).
- *Service organizations* (e.g., American Latino Veterans Association, Morehouse College, National Council for Urban Indian Health, and Paralyzed Veterans of America).
- *Industry and trade groups* (e.g., Major Cities Police Chiefs, Society for HR Management (SHRM), the International Public Management Association for HR (IPMA-HR)).

VETS also provides CA via USERRA interpretation letters outlining VETS' interpretation and analysis of specific statutory and regulatory provisions. These letters help publicize VETS' position on complex areas of law.

### 3.2.3.1 Procedures for Issuing USERRA Interpretation Letters

Refer topics for consideration to be a USERRA interpretation letter to the VETS Director of the CID, or their designee, to determine whether the topic is relevant broadly to various stakeholders. The Director of the CID, or their designee, will:

1. Assign the topic to an appropriate CID staff or VETS region to draft an interpretation letter.
2. Review the draft letter for tone, accuracy, and grammar. If there are edits, return it to the designated drafter for correction and resubmission.
3. Submit the draft interpretation letter to SOL to review for legal sufficiency and approval. An interpretation letter will only be released if SOL finds it legally sufficient.
  - a. SOL will return any edits or comments to the Director of the CID, or their designee, for correction and resubmission.
  - b. If there are no comments or edits, the draft interpretation letter will move on to the issuance phase.
4. Submit a Decision Memorandum to the Assistant Secretary for Veterans' Employment and Training (ASVET), or acting Agency head, for approval to release the interpretation letter.
5. Submit the draft interpretation letter to ASP for a determination of significance and processing through the Office of Information and Regulatory Affairs (OIRA), if necessary.
6. Upon approval, the Director of the CID, or their designee, will upload the USERRA interpretation letter in the Correspondence Tracking System (CTS) and coordinate with the VETS front office for signature and issuance, as appropriate.
7. Coordinate with OPA to post the USERRA interpretation letter on VETS' website.

### 3.2.3.2 Document Requirements for USERRA Interpretation Letters

VETS' USERRA interpretation letters use a numbering system that includes the prefix "USERRA" plus a number by year and consecutive number of issuance (for example, USERRA-

2020-01 is the first USERRA interpretation letter released in the year 2020). The number will be assigned once the letter is released by the ASVET, the acting Agency head, or their designee.

Draft USERRA interpretation letters in Microsoft Word using Times New Roman, 12-point black font on official ASVET letterhead. The number will be placed in bold on the far-left side of the first page of the letter and in the header of any subsequent pages, followed by the page number (e.g., USERRA-2020-01, page 2). Letters will include the following elements:

- Background that identifies the topic, including the appropriate statutory and/or regulatory provisions that apply.
- Content of the interpretation letter that sufficiently addresses the issue(s) and provides VETS' legal interpretation of specific statutory and/or regulatory provisions.
- Conclusion that articulates clear guidance written in plain English, as appropriate.

VETS' USERRA interpretation letters are posted on the VETS [CA webpage](#) under the heading "USERRA Interpretation Letters." The letters will be posted in a [Section 508-compliant](#) HTML format in the order of issuance.<sup>19</sup> These letters are official records and will be maintained following the VETS [record schedule](#).

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<sup>19</sup> Section 508 of the Rehabilitation Act of 1973 ([29 U.S.C. § 794d](#)) became enforceable on June 21, 2001, and requires that Information and Communication Technology (ICT) procured, developed, maintained, and used by federal departments and agencies is accessible to and usable by people with disabilities, unless one or more exceptions apply.

## Chapter 4 | Open a Claim and Assign a Case

This chapter outlines the process from a potential claim to an assigned case. You'll understand how to help someone prepare a VETS "USERRA/VP Form 1010" (Form 1010), how to file a claim, and how to open and assign a case using VCMS. An investigator may not contact the employer if the claimant does not submit a signed Form 1010.<sup>20</sup>

### 4.1 Help Someone Prepare a Form 1010

We encourage VETS staff to help potential claimants understand their rights, benefits, and obligations around USERRA, VEOA, and VP. When asked, you must help potential claimants file claims. Your TA activities include offering and helping potential claimants fill out Form 1010 and navigate the Form 1010 e-file portal.

#### 4.1.1 TA Request for Help Filing a Claim Comes by Phone or Personal Visit

1. Arrange your computer using the [side-by-side window method](#).
2. Use the [Form 1010](#) e-file portal to interview the person thoroughly. Refer to the [USERRA Advisor](#) and [VP Advisor](#), as appropriate.
3. Determine if the person is a:
  - [Preference eligible](#),
    - If yes, go to Step 4.
    - If no, move to next bullet.
  - [Service member or veteran](#), or
    - If yes, go to Step 4.
    - If no, move to next bullet.
  - [Potential victim of discrimination or potential victim of retaliation](#) for helping in a USERRA investigation.
    - If yes, go to Step 4.
    - If no:
      - Request any necessary information about the TA,
      - End the call, and
      - Log the TA event (navigate to the [CAAPP](#)<sup>21</sup>).
4. Determine if the person raised a [potential violation](#).
  - If yes, go to Step 5.
  - If no:
    - Request any necessary information about the TA,
    - End the call, and
    - Log the TA event (navigate to the [CAAPP](#)).

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<sup>20</sup> See [20 C.F.R. § 1002.288](#).

<sup>21</sup> Visit the Compliance SharePoint site to access the [CAAPP](#). On the main page under Compliance Tools, you can find a direct link to the current [CAAPP](#).



5. Advise them that they may wish to file a claim.
6. Offer the person the link to the [online Form 1010](#), e-Laws advisors with FAQs, and instructions about how to fill out the Form 1010.
7. End the call and log the TA event (navigate to the [CAAPP](#)<sup>22</sup>).

#### 4.1.2 TA Request for Help Filing a Claim Comes by Mail, Fax, or Email

VETS sometimes receives TA requests for help filing a claim via mail, fax, or email. In those instances, you should do the following:

1. Review the information received.
2. Determine if the person is a:
  - [Preference eligible](#),
    - If yes, go to Step 3.
    - If no, move to next bullet.
  - [Service member or veteran](#), or
    - If yes, go to Step 3.
    - If no, move to next bullet.
  - [Potential victim of discrimination or victim of retaliation](#) for helping in a USERRA investigation.
    - If yes, go to Step 3.
    - If no, request any missing information necessary to respond to the TA in your response email or letter and log the TA event (navigate to the [CAAPP](#)).
3. Determine if the person raised a [potential violation](#).
  - If yes, go to Step 4.
  - If no, request any missing information necessary to respond to the TA in your response email or letter, if applicable, and log the TA event (navigate to the [CAAPP](#)).
4. Draft a response to the person:
  - Include the link to the [online Form 1010](#), which features the e-Laws advisors with FAQs, as well as instructions about how to fill out the Form 1010.
  - If the response is a mailed letter, include a copy of Form 1010 along with the electronic website information.
    - You must pull a new copy of [online Form 1010](#) when you draft the letter; the website includes the most current version of the form.
    - These forms are important and provide certain notices to the claimant. We must always use the most updated version to ensure accuracy.

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<sup>22</sup> Visit the Compliance SharePoint site to access the [CAAPP](#). On the main page under Compliance Tools, you can find a direct link to the current [CAAPP](#).

5. Log the TA event (navigate to the [CAAPP](#)<sup>23</sup>).

## 4.2 File a Claim with VETS

Potential claimants can file a claim alleging their rights were violated. VETS must investigate claims alleging the improper application of USERRA, VEOA, and VP. The subsections below explain how to use the Form 1010 e-file portal; how to locate, share, and use the portable document form (PDF) Form 1010; and how to follow up on an incomplete Form 1010. VETS needs a signed, dated Form 1010 to open an investigation. Unless a claimant is unequivocally ineligible for USERRA, VEOA, or VP protections, or the employer is a member of the [intelligence community](#), an investigation can't occur without speaking to the employer. Form 1010 provides the claimant with proper notice of:

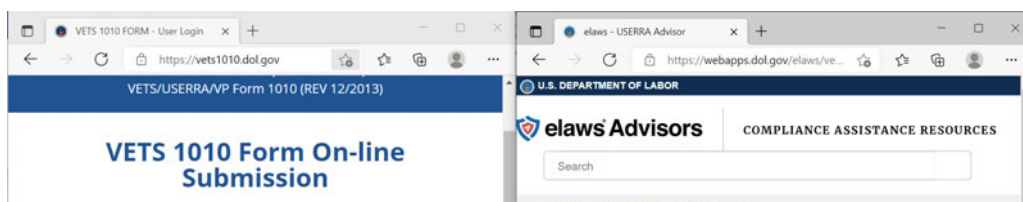
- Punishment for unlawful statements,
- Claimant's rights, and
- Privacy Act statements.

### 4.2.1 Form 1010 e-File Portal

As in Section 4.1, help potential claimants file a Form 1010. Direct potential claimants to file a Form 1010 using the [e-file portal system](#). Also, share the Department's eLaws Advisors that provide specific step-by-step instructions for Form 1010:

- [e-Laws USERRA Advisor](#) (scroll to "Specific Instructions") and
- [e-Laws VP Advisor](#) (scroll to "Specific Instructions").

You should share these resources during CA activities. Use them while helping potential claimants submit a Form 1010. During those times, we recommend you use side-by-side browser windows. Scroll through the fields, answering or following along with the potential claimant, as appropriate.



One window should show the Form 1010 e-file portal. The other window should show the appropriate e-Laws Advisor.

### Additional Resources:

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<sup>23</sup> Visit the Compliance SharePoint site to access the [CAAPP](#). On the main page under Compliance Tools, you can find a direct link to the current [CAAPP](#).

- Chapter 4: Intake of the [VCMS Agency User Guide](#)<sup>24</sup> for step-by-step instructions and screenshots for filling out Form 1010 using the e-file portal.
- [Help Someone Prepare a Form 1010](#) for instructions using side-by-side windows.
- [Respond to an Incomplete Form 1010](#) for instructions on what to do with an unsigned, hard-copy Form 1010 VETS receives.

At publication, there are three versions of the VCMS User Guide: Agency, Claimant, and DOJ-OSC, respectively. When using “VCMS User Guide,” this Manual refers to the [VCMS Agency User Guide](#). If referring to other guides, this Manual will state the full title (e.g., VCMS Claimant User Guide).

#### 4.2.2 *Form 1010*

The e-file portal is the fastest and most effective method for filing a claim with VETS. We strongly encourage that path, but not everyone will be able to use the portal. Potential claimants who need another way to file a claim should use the [Form 1010](#) (PDF version). VETS staff should also provide the option to email or mail a copy of the Form 1010. Refer to [Help Someone Prepare a Form 1010](#) for instructions.

#### 4.2.3 *Respond to an Incomplete Form 1010*

If VETS receives an incomplete Form 1010, VETS will open and assign a case unless the form is missing mandatory information (e.g., the name and address of the employer). Under those circumstances, a member of the VCDC will contact the person filing the claim and help them prepare the required fields. In 2023, Form 1010 began including additional demographics questions, e.g., self-identify a service-connected disability. Collecting this information helps VETS deliver higher-quality service to underserved populations. You should encourage potential claimants to fill out these fields. Note that these are not required fields; potential claimants may skip the demographics questions at their preference. After the case is opened and assigned, the investigator must contact the claimant to gather any missing non-mandatory information.<sup>25</sup> Refer to [Initial Contact with Claimant](#) for those instructions. Document the missing information on a Form 1063 and fill in the appropriate metadata fields in VCMS.<sup>26</sup> Metadata fields are data fields that help VCMS properly catalog templates created and documents gathered during an investigation.<sup>27</sup> Answering these questions creates a strong organizational foundation for the investigation.

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<sup>24</sup> VCMS User Guides can be found in the Compliance Policy-Documents SharePoint library. The links in this Manual labeled “[VCMS Agency User Guide](#)” are found in that folder using a similar file name. Note, there are several versions of the User Guide; this Manual specifies which user guide it references (e.g., [VCMS Agency User Guide 2.6](#)).

<sup>25</sup> [38 U.S.C. § 4322\(b\)](#).

<sup>26</sup> [VCMS Agency User Guide](#).

<sup>27</sup> In this context, we’re talking about the categories, document name, or any other field VCMS may ask you to complete as you upload a document.

The screenshot shows a web interface for uploading documents. At the top, there is a heading 'Upload Document(s)'. Below this heading are three dropdown menus labeled 'Primary Category \*', 'Secondary Category \*', and 'Tertiary Category \*'. Each dropdown menu has a placeholder text 'Filter by [Category]'. Below the dropdowns is a section labeled 'Document(s) \*'. This section contains an 'UPLOAD' button and a text area with a cursor icon and the text 'Drop files here'.

Figure 1. VCMS metadata fields for uploading documents.

### 4.3 Open and Assign a Case Based on a Claim

All claims must be sent to [VETS1010@dol.gov](mailto:VETS1010@dol.gov), and all referral requests must be sent to [USERRAreferral@dol.gov](mailto:USERRAreferral@dol.gov).<sup>28</sup> Claims filed will appear as a claim requiring assignment on VCMS My Cases page. This page is available to all assigner accounts covering the geographic area. Assign the case to an investigator upon receipt of an electronic VETS Form 1010 (E-1010).<sup>29</sup> Following assignment of a case, the investigator immediately starts to review and complete each page within the case file. As they complete their initial review, they note the gaps in information that exist. The investigator will obtain facts and information to fill in any missing information and data as they move through the investigation.

Where VETS received a hard-copy Form 1010 and the claimant did not include their email address, the investigator will send the claimant a notification letter within seven calendar days of VETS' initial receipt of the claim. This letter will include the enclosure "Your USERRA Claim Process Rights." If the claimant filed using the e-file portal or their hard-copy Form 1010 includes an email address, VCMS will automatically generate an email notification to the claimant.

#### 4.3.1 Establish Who Has Responsibility to Investigate the Claim

Generally, the VETS region that will investigate a claim follows these rules:

1. *Is it a claim alleging USERRA violation(s)?*
  - Assign the claim to the region where the employer who made the decision that prompted the USERRA claim is located. This is true even if it's not the region nearest to the claimant's residence or the first VETS region the claimant contacted.
  - Additional factors to consider for the "decision that prompted the USERRA claim" include worksites for the:
    - Claimant,
    - Immediate supervisor,
    - Deciding official,

<sup>28</sup> Veterans' Employment and Training Service (VETS) Compliance Data Center (VCDC) fulfills this role.

<sup>29</sup> NVTI 9605, USERRA Investigators Participant Guide, p 76.

- Personnel and payroll group,
  - Corporate headquarters, or
  - Where the adverse action occurred.
2. *Is it a claim alleging VEOA or VP violation(s)?*
- Assign the claim to the DVET's office where the claimant lives.

For cases where the employer or claimant are located outside the United States and its territories, speak to your SI for the appropriate VETS region. Before [reassigning a case](#), consult with the DVET and SI.

#### 4.3.2 *Actions Required by VCMS*

For step-by-step instructions, including screenshots, please review the [VCMS Agency User Guide](#) Open and Assign a Case Based on a Claim. To follow the steps required by VCMS, you'll need to collect and enter the:

- Name of the investigator who will be assigned the case,
- Case File Office for the appropriate regional or state designation,
- Issue code for the appropriate claim type(s) selected,
- Claimant code as indicated by the claimant, and
- Employer type (if the employer is a federal agency, select the correct agency and department).

Select the assign button to generate a case number for the claim and assign it to the selected investigator. Case numbers for USERRA, VEOA, and VP claims might use different internal naming conventions.<sup>30</sup> VCMS will provide you with the proper case number for assignment.

##### 4.3.2.1 Case Number

Case numbers in VCMS are a form of serial number that is unique to each USERRA, VEOA, and VP case. The case number is assigned after a claim is initially assigned to an investigator. Case numbers contain between four and seven components that are separated by hyphens (-). USERRA case numbers may contain the following elements:

- State Abbreviation (e.g., AK, AL, AR, etc.)
- Claim Submission Fiscal Year (e.g., 2021, 2022, 2023, etc.)
- 5-digit Unique Case Identifier (e.g., 00001, 00002, 00003, etc.)
- Employer Type Designation
  - Private Company (10)
  - State/Local Agency (20) (legacy cases only)
  - Federal Agency (30)
  - US Postal Service (40) (legacy cases only)

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<sup>30</sup> See [VCMS Agency User Guide](#).

- Local Agency (50)
- State Agency (60)
- Claimant Code
  - Applicant (A)
  - Active Duty (D)
  - Examinee/Rejectee (E)
  - National Guard (G)
  - Non-Service (N)
  - Reservist (R)
  - Veteran (V)
- Conflict Codes (added as electively provided by the Claimant after case assignment)
  - Afghanistan Tour (September 2001 - ) (AFG)
  - Bosnia (BOS)
  - Other Conflicts (CO)
  - Desert Storm/Desert Shield (DS)
  - El Salvador (ES)
  - Granada (GRN)
  - Global War on Terror Support (September 2001 - ) (GWT)
  - Haiti (HAT)
  - Iraq and Afghanistan (September 2001 - ) (IA)
  - Iraq Tour (September 2001 - ) (IRQ)
  - Korea (April 1952 – July 1955) (KOR)
  - Kosovo (KOS)
  - Lebanon (LEB)
  - Panama (PAN)
  - Somalia (SOM)
  - Vietnam (January 1955 – October 1976) (VN)
- Child Case Iteration ID (e.g., R, R1, R2, R3, R4, etc.)

VEOA and VP cases contain the following elements:

- State Abbreviation (e.g., AK, AL, AR, etc.)
- Claim Submission Fiscal Year (e.g., 2021, 2022, 2023, etc.)
- 3-digit Unique Case Identifier (e.g., 001, 002, 003, etc.)
- VP Claim Type
  - Federal Hiring (VPH)
  - Reduction in Force (VPR)

The two-letter state code that is applied to cases is based on the employer's address' state for USERRA, or the claimant's address' state for VEOA and VP. The state code applied to cases defines the jurisdiction of the case. The jurisdiction of a case identifies the state and associated region that is ultimately responsible for the investigation regardless of any other factors. However, international claims are identified with state code of "AP" and are the jurisdiction of the region of the investigator assigned to the case.

The three or five-digit unique case identifier is a number that is applied sequentially to all cases. The case identifier is applied in the order that each claim is filed for the state code of the case in each fiscal year. At the start of each fiscal year, the unique identifier number resets for each jurisdiction.

#### 4.4 Handle a Case with History

The following subsections outline how to reclassify, reassign within office, or reassign outside the office a case; reactivate a closed case; and why and how to properly maintain closed case files.

##### **Additional Resources:**

- Chapter 4: Open a Claim and Assign a Case of the [VCMS Agency User Guide](#) for step-by-step instructions and screenshots for filling out Form 1010 using the e-file portal.
- [Help Someone Prepare a Form 1010](#).
- [Establish Who Has Responsibility to Investigate the Claim](#).

##### *4.4.1 Reclassify, Reassign within Office, Reassign Outside Office, or Reopen a Previously Closed Case*

Under the circumstances below, a case can be reclassified, reassigned within office, reassigned outside office, or reactivated. Talk to your DVET and SI if you think these actions apply to your case. Only two VCMS roles can take these actions: regional assigner or national assigner.

###### *4.4.1.1 Reclassify*

There might be instances where you need to reclassify part of the initial claim. For example, when filling out Form 1010, the claimant might have misclassified their USERRA claim as a VEOA or VP claim, or their VEOA or VP claim as a USERRA claim. Note that a single claim may have multiple potential violations. VCMS allows you to reclassify a claim before the initial case assignment. For step-by-step instructions, see the [VCMS Agency User Guide](#), [Reclassify a Claim](#).

###### *4.4.1.2 Reassign within Office*

After a case has been assigned, you may reassign a case within VCMS. You may reassign the case within the same region. This commonly occurs if we need to change the investigator assigned. Reassignment helps VCMS and other systems properly track subsequent case forwarding actions. For step-by-step instructions, see the [VCMS Agency User Guide](#), [Reassign a Case to an Investigator within a Case's Jurisdiction](#). If a conflict prevents reassignment to anyone else within the office, contact the SI for resolution. If it can't be resolved within the office, the assigner and/or SI should contact the CSI.

#### 4.4.1.3 Reassign Outside Office

After a case has been assigned and the assigned investigator has contacted the claimant, the receiving VETS region may determine that the [case should be transferred](#) to another VETS state or region, as appropriate, because the address for the employer (in a USERRA case) or for the claimant (in a VEOA or VP case) was incorrect on the Form 1010. Within VCMS, this action is called “reassigning a case out of office to different region or state.” A national assigner can reassign the case out of the office to the correct region or state. The VCMS action occurs on the Related Actions tab. For step-by-step instructions, see the [VCMS Agency User Guide, Reassign and Change the Jurisdiction of a Case](#). The action can also be completed from the Summary page. If a conflict prevents reassignment to anyone else within the region, have the assigner and/or SI contact the CSI for resolution.

Cases might be reassigned to another region for several reasons, including but not limited to:

- Multiple claims from the same RIF action might be moved to the same investigator or VETS office.
- Claimant incorrectly identified where the employer was located or where the decision was made that prompted the USERRA claim.
- If the regions can’t agree on an assignment location, the CSI determines whether cases should be reassigned or worked from the same VETS region.

#### 4.4.1.4 Reopen a Previously Closed Case

A previously closed case can be reopened for various reasons. For example, VETS discovers it closed the case erroneously. A claimant might also notify VETS of [new and material evidence](#) that would warrant additional investigation. This covers cases closed for many reasons, including cases closed administratively.

- **New evidence** means information not previously considered or associated with the claim.
- **Material evidence** means information that could prove or disprove the allegations, either standing alone or in combination with other information.

For example, a case was closed by a settlement agreement. VETS later finds out the employer did not implement the terms of the settlement. Failure to implement the settlement agreement may be considered new and material evidence to reopen the case.

A reopened case will automatically receive the same [case number](#) it had originally with an “R” added. A case reopened more than once will also have a number next to the “R” (e.g., R1, R2). Assign reopened cases to the case’s original investigator unless circumstances require a different action. For step-by-step instructions, see guidance in the [VCMS Agency User Guide, Reopen a USERRA Case](#).

If you need to adjust data in a closed case, but that closed case doesn’t meet the requirements to be reopened, [contact the VCDC](#). They’ll determine if an “unclose” action might be appropriate to



adjust the information without reopening the case for investigation. VCDC can also change certain case elements directly after closure (e.g., closing code and dates associated with status changes in the case).

#### 4.4.2 *Maintain Closed Case Files*

Your case file records don't cease to be important after you close a case. Your investigative records might be used by:

1. DOJ or OSC to determine whether the case should be taken to a court proceeding in a subsequent referral action. Since there's no statute of limitations, referral could occur years after the case is closed.
2. A claimant or their attorney in a court proceeding before a federal district court or the MSPB.
3. A Freedom of Information Act (FOIA) request.
4. An employer or their attorney defending a court action, as obtained through a FOIA request.

It's important to organize and maintain your records. The steps for how to close a case are found in [Close a Case](#).

Checklist for Complete and Accurate Case Files:

- Check the VCMS case to see if any fields, notes, documents, or other information are missing.
- Enter any information that might be missing into VCMS.
- Upload any missing documents and enter the metadata fields about those documents.

## Chapter 5 | Determine USERRA Eligibility

The first question you ask in any case is whether someone is eligible for protection under:

- USERRA,
- VEOA, and/or
- Title 5, U.S.C., provisions relating to VP.

Preference laws are an earned benefit from public service in the uniformed services. Under the law, members and former members of the uniformed services get preferential treatment in federal hiring and in returning to civilian employment after uniformed service. The subsections below outline the eligibility requirements for USERRA. VEOA and VP eligibility are discussed in subsections where comparable with USERRA, but they are primarily described in the next chapter, [Determine VEOA and VP Eligibility](#).

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**Pro Tip:** This Manual includes an overview and the required steps for [analyzing potential VEOA and VP violations](#). If you can't find information in this Manual, please check the [OPM Vet Guide](#) for additional guidance before approaching your SI.

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### 5.1 Claims Available Under Multiple Statutes

There might be circumstances where claimants have rights available to them under multiple federal laws, state laws, and/or collective bargaining agreements (CBAs). VETS can only investigate claims under its authority. We outlined the authority and tasks the investigator should complete in the subsections below.

There may be some state veterans' preference laws that are outside our jurisdiction, such as veterans' preference claims against state agencies as employers.<sup>31</sup> When evaluating the circumstances, there's a possibility that these claims could make out an initial hiring discrimination type of violation under USERRA. In such cases, the initial hiring discrimination would fall under USERRA, but the veterans' preference claim would be outside our jurisdiction because it's not covered by the VEOA or VP statutes.

#### 5.1.1 Claimant Has USERRA and VEOA or VP Potential Violations

In extremely rare circumstances, someone may wish to file claims under both USERRA and VP statutes. Claimants in those circumstances must submit one Form 1010 for USERRA and one Form 1010 for VEOA and/or VP. VETS will open two cases for investigation. Case assignments

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<sup>31</sup> Note that in this Manual, VP refers only to the federal Veteran's Preference statute. All instances of veterans' preference outside the federal preference structure are referred to as veterans' preference.

for USERRA and VP follow different paths within VETS. If VETS receives a single claim and you determine there could be potential VEOA or VP and USERRA violations, you should recommend the claimant file an additional claim. You should also notify your SI to coordinate assignment of that additional claim, especially if the claim might otherwise be assigned in another jurisdiction. When a claimant asserts both USERRA and VEOA or VP claims, a VCMS regional or national assigner can assign both claims to the region that would have otherwise received the USERRA complaint. If the regional or national assigner is different than the RAVET, they should coordinate the assignment with the RAVET and SI. If the regions can't agree about assignment, the CSI determines the assignment.

### VEOA/VP vs. USERRA Filings

Issue	VEOA/VP	USERRA
Filing with DOL	An individual must (in the absence of equitable tolling) file a complaint with DOL within 60 days after the date of the potential violation (5 U.S.C. § 3330a(d)(1)).	An individual has the option to file a complaint with VETS but can seek redress without first filing a complaint with DOL (38 U.S.C. §§ 4321-25; 20 C.F.R. § 1002.303).
Exhaustion of Remedies at DOL	If VETS hasn't resolved the complaint after 60 days, an individual may file an appeal with MSPB after notifying DOL of the intent to file with MSPB (5 U.S.C. § 3330a(d)(1)).	Individuals don't need to file a USERRA claim with VETS. However, if an individual opted to file a claim with VETS, the individual must wait for their VETS investigation to be completed before requesting referral. An individual always retains the right to file a private action in federal district court (38 U.S.C. §§ 4322-4323; 20 C.F.R. § 1002.291).
Deadlines to File	In the absence of equitable tolling, the claimant can't file: (1) before the 61 <sup>st</sup> day after the date on which the complaint is filed; or (2) no later than 15 days after the date on which the individual receives written notification from the Secretary that the matter is closed (5 U.S.C. § 3330a(d)(1)).	USERRA doesn't have a deadline to file, but VETS encourages individuals to file as soon as reasonably possible. If a claim arose prior to 2008, consult with your SI and RSOL. Although there's no deadline, consult your SI and RSOL if it appears the claimant has taken a long time to file their claim (i.e., many years; 38 U.S.C. § 4327(b)).

Issue	VEOA/VP	USERRA
Burden of Proof	The claimant must prove the validity of the claim by preponderance of evidence ( <a href="#">5 U.S.C. § 3330a(4)(c)(1)(B)</a> ).	In a potential <i>discrimination</i> violation, the claimant must prove the validity of the claim by a preponderance of the evidence. If that burden is met, the employer may avoid relief if they show by a preponderance of the evidence that it would have taken the same action even in the absence of the improper motivation ( <a href="#">20 C.F.R. § 1002.139(d)</a> ).  In a potential <i>reemployment</i> violation, the employer bears the burden of proving, by a preponderance of the evidence, that it met its statutory obligations to reemploy the individual with the appropriate level of career advancement and benefits ( <a href="#">20 C.F.R. § 1002.139(d)</a> ).
OSC Role	OSC can't pursue corrective action on the claimant's behalf ( <a href="#">5 U.S.C. § 1214</a> ).	OSC may appear on the claimant's behalf ( <a href="#">38 U.S.C. § 4324</a> ).
Right to a Hearing	No right to a hearing (VEOA, <a href="#">5 C.F.R. § 1208.23(b)</a> ).	Right to a hearing ( <a href="#">38 U.S.C. §§ 4321-25</a> ; <a href="#">5 C.F.R. § 1208.13(b)</a> ; <a href="#">20 C.F.R. § 1002.303</a> ).

Expanded Quick Reference Resources in this Manual:

- [USERRA Relevant Citations Explained](#) and
- [VEOA and VP Relevant Citations Explained](#).

### 5.1.2 Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action

There might be times where a claimant has rights under USERRA and a state reemployment law or a CBA. A claimant also has the right to hire a private attorney, which may result in that attorney filing a parallel court action in another state court, federal district court, or the MSPB. VETS interprets USERRA as not requiring a claimant exhaust administrative or arbitration remedies outlined in any state law, CBA, or employer policy before requesting assistance under USERRA.

The CBA and state laws can't diminish any of the claimant's rights under USERRA. They also can't impose additional eligibility conditions beyond those required by USERRA. Sometimes the claimant's reemployment rights might be greater under the state law. VETS doesn't have authority to investigate or enforce state reemployment rights. If you experience this situation in your case, please follow the basic guidelines below.

If the claimant files a claim with VETS and:

1. Claimant is already involved in a similar state court action for their state rights or begins one at the same time:
  - a. VETS will process the claim alleging a USERRA violation(s) in VCMS and assign it to an investigator.
  - b. As the investigator, you:
    - i. Complete the initial contact with the claimant, including collecting any missing or incomplete information from Form 1010.
    - ii. Request the case or docket number of the pending court action and a copy of the court complaint.
    - iii. Compare the copy of the court complaint to the allegations of Form 1010 and information collected during the initial contact with the claimant.
    - iv. Summarize what you discovered during this comparison in a Word document and share it with your SI.
  - c. SI will share your comparison with the RSOL. Together, they'll determine whether the information overlaps to the point where the other court action covers the same potential violations.
    - i. If RSOL recommends that the potential violations don't overlap, continue the investigation. Ask for a copy of any information from the other court action that demonstrates its outcome.
    - ii. If RSOL recommends that the potential violations overlap, the investigator and SI should prepare the case for administrative closure to the CSI. The investigator will do all actions to prepare for [the administrative closure](#), including drafting closing letters using the situationally appropriate template. The CSI will take [the closing action](#).
  - d. When the claimant tells VETS after the state court action ends that they wish to proceed with a VETS investigation, contact your SI. They may determine whether it's appropriate to [reopen the case](#).
2. Claimant is already involved in a similar grievance, arbitration, or other proceeding under a CBA, or begins one at the same time:
  - a. VETS will process the claim alleging a USERRA violation(s) in VCMS and assign it to an investigator.
  - b. As the investigator, you proceed with the case as a normal investigation notwithstanding the pending grievance or arbitration proceeding under the CBA.
3. Employer refuses to cooperate with the VETS investigation based on the asserted application of a binding arbitration agreement:
  - a. Refer to [STOP and Ask for Help](#).
4. Claimant is eligible for rights under state law, but not under USERRA:
  - o As the investigator, if after contacting the claimant, you determine the claimant isn't eligible for rights under USERRA, enter all information and evidence used to reach this determination, and close the case using the [Not Eligible closing code](#) using the appropriate closing procedure.

- Enter the documentation and information into VCMS that you used to support the determination that the claimant, or claim, wasn't eligible.
  - Warmly hand the claimant over to the appropriate state agency or office that does have enforcement authority over potential rights under state law.
  - Notify the claimant of their right to seek private counsel, as appropriate.
5. Claimant is eligible for rights under USERRA and potentially under a state law, but the facts are complicated:
- As the investigator, if after contacting the claimant you determine the claimant is eligible for rights under USERRA and potentially under a state law, but the facts are complicated, talk to your DVET and SI about how to proceed.

## 5.2 USERRA Eligibility

Courts apply liberal construction to USERRA. This means they interpret the aspects of the law generously based on who the law was supposed to protect. An employer must not deny:

- initial employment,
- reemployment,
- retention in employment,
- promotion, or
- any benefit of employment (as defined in [38 U.S.C. § 4302\(2\)](#))

based on their membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services ([20 C.F.R. § 1002.18](#)).

This section will explain eligibility under three types of potential violations a claimant can make under USERRA: discrimination, retaliation, or reemployment. When investigating a potential USERRA violation, the easiest course of action is to ask yourself three basic questions:

1. What is the potential violation? For example, discrimination, retaliation, or reemployment.
2. Did the claimant establish a *prima facie* case of discrimination or retaliation, or the prerequisites to reemployment, under USERRA? The facts and evidence show the claimant meets the required elements for the potential violation you identified.
3. Assuming a *prima facie* case of discrimination or retaliation, or the prerequisites to reemployment, exists, would the employer have taken the action regardless of the protected status or activity? The employer must explain and provide evidence showing this.

### 5.2.1 Discrimination Eligibility (USERRA)

Claimants don't have to meet USERRA's [reemployment eligibility requirements](#) to have a viable discrimination violation. USERRA protects current employees, job applicants, and former employees from employment discrimination. Claimants don't need to perform in the uniformed

service to be protected. Protections apply to all positions of employment, including brief, non-recurrent positions. If a claimant received a dishonorable or bad conduct discharge, we need to involve the RSOL. For investigators, contact your SI. For SIs, [contact the RSOL](#) to determine if the claimant is still entitled to USERRA protections.

***Prima Facie Discrimination Case:***

1. Did the claimant have [protected status](#)?
2. Did the claimant suffer an [adverse employment action](#)?
3. Was the claimant’s adverse employment action [motivated, at least in part](#), by their protected status?

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**Pro Tip:** VETS has a statutory obligation to investigate fully all claims. Claimants may allege potential violations not at issue or misidentify the potential violations in their case. A submitted Form 1010 alone may not demonstrate a [prima facie](#) case without additional investigation. An initial conversation with the claimant and/or employer alone may not demonstrate a [prima facie](#) case without additional investigation. You must go through the steps of establishing a [prima facie](#) case in all discrimination and retaliation cases with all facts as you develop them and continue to investigate reemployment potential violations alongside.

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Only discrimination and retaliation potential violations require a claimant establish a [prima facie](#) case.<sup>32</sup> You don’t need to establish a [prima facie](#) case for reemployment potential violations. Cases may include multiple potential violations (e.g., discrimination and reemployment). If the claimant establishes a [prima facie](#) case, the burden of proof then shifts to the employer: Would the employer have taken the adverse employment action anyway, regardless of the claimant’s protected status and activity?

5.2.1.1 Protected Status (USERRA)

To have protected status, the claimant must meet three basic requirements. First, the claimant is an [employee, or prospective employee \(i.e., applicant\)](#). Second, the employee [served qualifying uniformed service](#). Third, the employee was [not discharged from uniformed service with a disqualifying character of service](#). The subsections below describe the nuances of these requirements.

5.2.1.1.1 Is the Person an Employee, Prospective Employee, Former Employee, or Independent Contractor? (USERRA)

USERRA protections extend to employees or prospective employees. USERRA protections don’t extend to other kinds of employment relationships, such as to independent contractors. The [employer](#) doesn’t get to determine a person’s status as an independent contractor and then tell the

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<sup>32</sup> [38 U.S.C. § 4322\(a\)](#) provides that the Secretary shall investigate claims of USERRA violations.

VETS investigator the employer's determination as though it were a matter of fact. A person is an [employee](#) if, based on the facts, they meet the statutory definition of employee ([38 U.S.C. § 4303\(3\)](#); [20 C.F.R. § 1002.5\(c\)](#)). It doesn't matter if the employer classifies them as something different (such as an independent contractor).

To determine whether someone is an independent contractor for USERRA purposes, evaluate the following factors:

1. The extent of the employer's right to control the way the person's work is to be performed (i.e., the more control, the more likely an employee).
2. The opportunity for profit or loss that depends upon the person's managerial skill (i.e., the more opportunity, the more likely an independent contractor).
3. Any investment in equipment or materials required for the individual's tasks, or their employment of helpers (i.e., the more investment, the more likely an independent contractor).
4. Whether the service the person performs requires a special skill (i.e., the more specialized the skill, the more likely an independent contractor).
5. The degree of permanence of the individual's working relationship (i.e., the more permanence, the more likely an employee).
6. Whether the service the person performs is an integral part of the employer's business (i.e., the more specialized the skill, the more likely an independent contractor; [20 C.F.R. § 1002.44](#)).

No single factor controls the analysis, but all are relevant to determine whether someone is an employee or independent contractor for USERRA purposes. If an employer asserts that a claimant is an independent contractor, [contact your SI](#).

#### 5.2.1.1.2 What Qualifies as Uniformed Service? (USERRA)

Under [38 U.S.C. § 4303\(13\)](#), [uniformed service](#) means duty performed on a voluntary or involuntary basis when engaged in active duty training, inactive duty training, funeral duty, or full-time duty in one of the following:

1. The [Armed Forces](#) (i.e., Army, Air Force, Coast Guard, Marine Corps, Navy, and Space Force), Army National Guard, and the Air National Guard (when engaged in active duty for training, inactive duty training, or full-time National Guard duty);
2. The Commissioned Corps of the Public Health Service;
3. The Commissioned Officer Corps of the National Oceanic and Atmospheric Administration;



4. System Members of the National Urban Search and Rescue Response System during a period of appointment into federal service under §327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act;<sup>33</sup>
5. Intermittent personnel appointed into Federal Emergency Management Agency (FEMA) service under §306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or to train for such service;<sup>34</sup> and
6. Any other category of persons designated by the President in time of war or national emergency.<sup>35</sup>
7. For National Guard, on or after January 5, 2021, performing state active duty for a period of 14 days or more;
8. For National Guard, on or after January 5, 2021, performing state active duty in response to a national emergency declared by the President under the National Emergencies Act ([50 U.S.C. § 1601 et seq.](#));
9. For National Guard, on or after January 5, 2021, performing state active duty in response to a major disaster declared by the President under §401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. § 5170](#)).

#### 5.2.1.1.3 What is a Disqualifying Discharge? (USERRA)

A claimant otherwise eligible for reemployment will be disqualified if the characterization of service falls within one of four categories:

1. Separated from uniformed service with a dishonorable or bad conduct discharge;
2. Separated from uniformed service under other than honorable conditions, as characterized by regulations of uniformed service;
3. A commissioned officer dismissed as permitted under 10 U.S.C. § 1161(a) by sentence of a general court martial, in commutation of a sentence of a general court martial, or, in time of war, by order of the president;
4. A commissioned officer dropped from the rolls under 10 U.S.C. § 1161(b) due to absence without authority for at least three months, separation by reason of a sentence to confinement adjudged by a court-martial, or a sentence to confinement in a federal or state penitentiary or correctional institution.

USERRA requires that the employee must not have received one of these types of discharges ([38 U.S.C. § 4304](#); [20 C.F.R. § 1002.134](#)).

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<sup>33</sup> The Stafford Act provides for events other than a major disaster. The major disaster classification is necessary for USERRA protection. Other Stafford Act classifications don't apply under USERRA. [38 U.S.C. § 4303\(13\)](#).

<sup>34</sup> Otherwise known as FEMA Reservists, to whom USERRA protections were extended pursuant to the CREW Act, effective September 29, 2022, 42 U.S.C. 5149(b)(1).

<sup>35</sup> [38 U.S.C. § 4303\(13\)](#); [20 C.F.R. §§ 1002.5](#) and [1002.6](#).

#### 5.2.1.1.3.1 Separation from Uniformed Service (USERRA)

Separation from the uniformed services (e.g., the Armed Forces, the Army National Guard, and the Air National Guard) is a term that encompasses discharge, release from active duty, release from custody and control of the military services, transfer to the Individual Ready Reserve, and similar changes in active or reserve status. Separation may occur at the expiration of a definite term of service or when a service member chooses, or is required, to leave military service. Separation could be for medical, administrative, disciplinary, or punitive reasons.

Note that the Commissioned Corps of the Public Health Service uses the term “separation” instead of “discharge.” We included all military discharges and other applicable uniformed services separations under the next subsection.

#### 5.2.1.1.3.2 Discharge Forms

In addition to separations under other uniformed service, a discharge results in a complete severance of all military status. The discharge might include dismissal and separation or release from active or inactive military status. The term discharge also includes an assigned reason for the discharge and a characterization of the service.<sup>36</sup> Discharges are documented on four types of forms:

- DD-214: Service members discharged from the Armed Forces receive a DOD Form 214 “Certificate of Release or Discharge from Active Duty” (DD-214; see sample images on next page).<sup>37</sup>
- DD-215: Corrections to DD-214 are documented on a DOD Form 215 “Correction to DD Form 214, Certificate of Release or Discharge from Active Duty.”
- [NGB-22](#): Service members discharged from the Army National Guard and the Air National Guard receive a National Guard Bureau Form 22 “Report of Separation and Record of Service” (NGB-22; see sample images on next page).
- PHS-1867: Service members separated from the Commissioned Corps of the Public Health Service receive a Public Health Service Form 1867 “Statement of Service: Verification of Status of Commissioned Officers of the U.S. Public Health Service” (PHS-1867).

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<sup>36</sup> For additional explanation, see [USERRA Fact Sheet #3: FAQ Separations from Uniformed Service, Characterizations of Service, and Effects on Rights and Benefits under USERRA](#).

<sup>37</sup> [38 U.S.C. § 4303](#); [32 C.F.R. § 70.3\(d\)](#); [DOD Instruction \(DODI\) 1332.14](#), Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 56. The U.S. National Archives and Records Administration ([NARA](#)) [lists the information required on a DD-214](#), which you may review for assistance in evaluating Form DD-214.

CERTIFICATE OR RELEASE OR DISCHARGE FROM ACTIVE DUTY						
1 NAME (Last, First, Middle) Millan, Joseph B.		2 DEPARTMENT, COMPONENT AND BRANCH USNG/R		3 SOCIAL SECURITY NO 123-45-6666		
4a GRADE, RATE OR RANK Captain	4b PAY GRADE 0-3	5 DATE OF BIRTH (YYMMDD) 900302	6 RESERVE OBLIG TERM DATE			
			Year 22	Month 05	Day 06	
7a PLACE OF ENTRY INTO ACTIVE DUTY St. Mary's, CA		7b HOME OF RECORD AT TIME OF ENTRY (City and State, or complete address if known) St. Mary's, CA				
8a LAST DUTY ASSIGNMENT AND MAJOR COMMAND N/A		8b STATION WHERE SEPARATED St. Mary's, CA				
9 COMMAND TO WHICH TRANSFERRED N/A			10 SGLI COVERAGE <input type="checkbox"/> None Amount \$50,000			
11 PRIMARY SPECIALTY (List number, title and years and months in specialty List additional specialty numbers and titles involving periods of one or more years  14A		12 RECORD OF SERVICE				
		a Date Entered AD This Period		Year (s) 2018	Month (s) 10	Day (s) 13
		b Separation Date This Period		2019	03	25
		c Net Active Service This Period		00	05	12
		d Total Prior Active Service		00	06	14

20 MEMBER REQUESTS COPY 6 BE SENT TO DIR OF VET AFFAIRS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		22 OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)	
21 SIGNATURE OF MEMBER BEING SEPARATED			

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)			
23 TYPE OF SEPARATION	24 CHARACTER OF SERVICE (Include upgrades) Honorable		
25 SEPARATION AUTHORITY	26 SEPARATION CODE	27 REENTRY CODE	
28 NARRATIVE REASON FOR SEPARATION			
29 DATES OF TIME LOST DURING THIS PERIOD		30 MEMBER REQUESTS COPY 4	

DD FORM 214

Previous editions are obsolete

NATIONAL GUARD REPORT OF SEPARATION AND RECORD OF SERVICE						
The proponent agency is ARNG-HRH. The prescribing directive is NGR 600-200.						
<b>PRIVACY ACT STATEMENT</b>						
1. AUTHORITY: Title 10 USC 12101 and 12103, Title 32 USC 301 and 304, and Executive Order 9397.						
2. PURPOSE: Official discharge document, which records the National Guard member's (ARNG & ANG) service in the National Guard. The original and one copy will be provided to the soldier. A copy will be maintained by the MILPO for state records. For organizational use only.						
3. ROUTINE USES: None.						
4. DISCLOSURE: Voluntary; However, failure to provide Service Number may result in a delayed or erroneous processing of NGB Form 22A.						
Report of separation and record of service in the		National Guard of		Select State		and as a Reserve of the
1. LAST NAME- FIRST NAME- MIDDLE NAME		2. DEPARTMENT, COMPONENT AND BRANCH		3. SOCIAL SECURITY NUMBER		
4. DATE OF ENLISTMENT		5a. RANK	5b. PAY GRADE	6. DATE OF RANK	7. DATE OF BIRTH	
23. AUTHORITY AND REASON						
24. CHARACTER OF SERVICE		25. TYPE OF CERTIFICATE USED		26. REENLISTMENT ELIGIBILITY		
27. <input type="checkbox"/> REQUEST		<input type="checkbox"/> DECLINE COPIES OF MY NGB FORM 22		INITIALS		

**NGB FORM 22, 20140731**

(USE PREVIOUS EDITIONS UNTIL EXHAUSTED)

On the DD-214 and NGB-22, the military service member's characterization of service will be in block 24, Character of Service, at the bottom of the form. The Member-1 copy of the DD-214 won't have block 24.<sup>38</sup> If you receive a Member-4 copy, please request an alternate copy of the DD-214 form for your investigation.

A veteran can request the appropriate DD-214, DD-215, NGB-22, or PHS-1867:

- Online through the [National Archives](#) website.
- Online through [Veterans Affairs eBenefits](#) site.
- By mail with [Standard Form 180 \(SF-180\)](#) to National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138.
- By fax with SF-180 to the National Personnel Records Center, (314) 801-9049.

#### 5.2.1.1.3.3 Character of Service upon Discharge or Separation (USERRA)

The branch of service in which the service member performs the tour of duty determines the characterization of service.<sup>39</sup> For all uniformed services, USERRA coverage applies to an Uncharacterized Discharge (see [38 U.S.C. § 4304](#)).<sup>40</sup> These discharges generally come from entry-level separation, void enlistment or induction, or dropping from the rolls.<sup>41</sup>

The Armed Services, Army National Guard, and Air National Guard use six discharge characterizations of service for military service members.<sup>42</sup> Not all are eligible for USERRA protections.<sup>43</sup>

1. *Honorable*: USERRA coverage applies.
2. *Under Honorable Conditions (General)*: USERRA coverage applies.
3. *Under Other Than Honorable Conditions*: USERRA coverage doesn't apply.

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<sup>38</sup> [DODI 1336.01](#), Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 13-14, 18-26; National Guard Regulation 600-200, Enlisted Personnel Management, July 31, 2009, at 75.

<sup>39</sup> [20 C.F.R. § 1002.136](#).

<sup>40</sup> Note that the Commissioned Corps of the Public Health Services doesn't use uncharacterized discharge to characterize separations. [38 U.S.C. § 4304](#); [DODI 1332.14](#), Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 33-35; [DODI 1336.01](#), Certificate of Release or Discharge from Active Duty (DD Form 214/215 Series), August 20, 2019, Incorporating Change 3, Effective January 23, 2019, at 14.

<sup>41</sup> For more information, please read the [USERRA Fact Sheet #3](#).

<sup>42</sup> [DODI 1336.01](#), Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 13-14.

<sup>43</sup> USERRA benefits terminate upon the occurrence of any of the following events: (1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge. (2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned. (3) A dismissal of such person permitted under section [10 U.S.C. § 1161\(a\)](#) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President. (4) A commissioned officer dropped from the rolls under §1161(b) due to absence without authority for at least three months, separation by reason of a sentence to confinement adjudged by a court-martial, or a sentence to confinement in a federal or state penitentiary or correctional institution. [38 U.S.C. § 4304](#); [20 C.F.R. § 1002.134](#).

4. *Bad Conduct*: USERRA coverage doesn't apply.
5. *Dishonorable*: USERRA coverage doesn't apply.
6. *Uncharacterized*: USERRA coverage applies.

Note that Under Other Than Honorable (OTH) Conditions doesn't mean "anything other than an honorable discharge." Instead, OTH is a defined term within the [Armed Services](#) that does not fall under USERRA coverage.

The Commissioned Corps of the Public Health Service uses six separation characterizations of service.<sup>44</sup> They do not use dishonorable or bad conduct characterizations or discharge. Not all characterizations are eligible for USERRA protections.

1. *Honorable*: USERRA coverage applies.
2. *Honorable with the Notation "for the Good of the Service"*: USERRA coverage applies.
3. *Under Honorable Conditions*: USERRA coverage applies.
4. *Under Other Than Honorable Conditions*: USERRA coverage doesn't apply.
5. *Dismissed*: USERRA coverage doesn't apply.
6. *Dropped from the Roll*: USERRA coverage doesn't apply.

A military review board has the authority to upgrade a disqualifying discharge or release prospectively or retroactively. A retroactive upgrade would restore USERRA rights, provided the employee otherwise meets [USERRA's eligibility criteria](#).<sup>45</sup> Remember that the most common location for characterizations of service is on the DD-214 or DD-215.

### 5.2.1.2 Adverse Act (USERRA)

An adverse action is when an employer takes an action that negatively impacts the employee's terms, conditions, or benefits of employment. Common examples of adverse actions include termination, failure to hire, failure to consider an individual for a position, failure to promote, and failure to grant leave. Remember there can be many types of adverse actions.

In 2011, Congress amended the definition of "benefit of employment" to make it clear that a hostile work environment is a type of adverse act an employer may commit in violation of USERRA. For USERRA, a hostile work environment is harassing behavior related to uniformed service sufficiently severe or pervasive that alters the conditions of employment. The harassment must be both objectively and subjectively offensive. Unlike some other adverse actions (e.g., termination), the creation of a work environment isn't clear-cut. To help determine whether there was a hostile work environment, you should ask:

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<sup>44</sup> [HHS Commissioned Corps Directive \(CCD\) 111.02](#), Disciplinary Action, July 16, 2020, at 5, 11-12; [HHS CCD 123.01](#), Involuntary Separation, July 6, 2020, at 7; [HHS CCI 387.01](#), Separation of Commissioned Officer, April 11, 2018, at 5.

<sup>45</sup> [38 U.S.C. § 4304](#); [20 C.F.R. § 1002.137](#).

- How frequent was the conduct? Was it isolated? How many times did it occur [within a specified timeframe]?
- How severe was the conduct? Who was present? Were physical contact or physical boundaries crossed?
- Was the conduct threatening or humiliating, or was it a mere offensive utterance?
- Did the conduct unreasonably interfere with the claimant's work performance?
- Are the circumstances hostile from an objective perspective of a reasonable person?
- Was the claimant subjectively offended by the conduct?
- Were others present for the conduct? Who? What were their titles?

After you gather this information, you'll share it with your SI, who will further [contact RSOL](#), as necessary. Together, you'll determine whether a hostile work environment is at issue in your USERRA investigation.

### 5.2.1.3 Motivating Factor: Employer Defenses Shift the Burden of Proof (USERRA)

Discrimination and retaliation both involve adverse employment actions. Remember, a potential USERRA violation fails (i.e., not substantiated) where the evidence shows the employer would have taken the same action in the absence of the claimant's past, present, or future uniformed service or protected activity ([38 U.S.C. § 4311\(c\)\(1\)](#)). This section applies to potential discrimination and retaliation violations. Once the claimant establishes a *prima facie* case, then the burden shifts to the employer to prove that it would have taken the adverse action without regard to the [protected status](#) or [activity](#).

The VCMS Employer Defense subsection allows you to add one or more employer defenses (as appropriate) to the Discrimination subsection of the Issue Analysis page ([VCMS Agency User Guide](#), Issues Analysis Pages). VCMS displays each defense provided in a grid that shows the defense type, evidence for each defense, analysis of the defense, and an action plan. An employer defense can be added to the grid by selecting Add Employer Defense at the top of the employer defense page. Subsequent defenses may be added to the grid by selecting the Add button found at the bottom-right of the section. VCMS will prompt you to select a defense from the drop-down list of available defenses. There are generally [three employer defenses identified explicitly by statute](#). The drop-down list contains Other, which will prompt you to provide a description for this defense (e.g., most commonly used if the reason for the adverse act was due to a legitimate, non-discriminatory reason, or if the claimant is in a position with an employer that isn't covered by USERRA).

You should support each defense added by one or more pieces of evidence. The evidence drop-down field allows you to connect multiple documents to each defense type. The VCMS employer defense section contains fields for you to explain how you analyzed the defense against the information collected and an action plan for obtaining more information about each defense

provided.<sup>46</sup> You can edit the information by selecting the blue box with the pencil to the right of each defense. Defenses may also be deleted by selecting the red X to the right of each defense.

#### 5.2.1.3.1 What is a Motivating Factor? (USERRA)

A motivating factor is one of the factors that a truthful employer would list if asked the reasons for its decision. A motivating factor is if the employer relied on, considered, or conditioned the decision to take the adverse action on the protected status or activity. There's no requirement that it be the only factor that led to the adverse action. It can be one of many. For example, poor performance or the person is often absent.

#### 5.2.1.3.2 How Can You Use Circumstantial Evidence to Demonstrate a Motivating Factor? (USERRA)

A discriminatory motive can be inferred using circumstantial evidence, which requires applying the factors set forth in *Sheehan v. Dept. of the Navy*, 240 F.3d 1009 (Fed. Cir. 2001).

*Sheehan* Factors:

1. Proximity in time between the claimant's status or activity and the adverse action.
2. Employer's expressed hostility toward uniformed service or the uniformed services, together with knowledge of the claimant's status or activity.
3. Inconsistencies between the employer's stated reasons for the adverse action taken and other actions the employer took.
4. Disparate treatment toward the claimant compared to other employees with similar work records or offenses.

#### 5.2.2 Retaliation Eligibility (USERRA)

Employers may not retaliate or take adverse employment action based on a person's action to enforce anyone's USERRA rights.<sup>47</sup> An employment action covers hiring, promoting, retaining, reemploying, or any other benefit of employment. USERRA can apply to a non-service member if an employer took retaliatory action against them for assisting with or providing information as part of a USERRA investigation. One example might be that another employee is a [witness](#) in the investigation. When their employer discovers the employee's involvement, the employer demotes or fires them. The employee could file a USERRA claim and receive whistleblower-like protections. For more information on how to determine this, refer to [Analyze Potential Retaliation Violations](#).

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<sup>46</sup> Refer to [VCMS Agency User Guide](#), Issues Analysis Pages

<sup>47</sup> [38 U.S.C. § 4311\(b\)](#).

### ***Prima Facie Retaliation Case:***

1. Did the claimant engage in a protected activity?
2. Did the claimant suffer an adverse employment action?
3. Was the claimant's adverse employment action motivated, at least in part, by their protected activity?

If the claimant establishes a *prima facie* case, the burden of proof then shifts to the employer: Would the employer have taken the adverse employment action anyway, regardless of the claimant's protected status and activity?

#### 5.2.2.1 Protected Activity (USERRA)

A protected activity is an action that works to enforce a protection or exercise a right afforded by USERRA.

#### **Who Is Protected?**

- Any person who took action to enforce anyone's USERRA rights.
- Any person who testified or made another statement in connection with a USERRA proceeding.
- Any person who participated in a USERRA investigation.
- Any person who exercised a USERRA right.

Claimants don't have to meet USERRA's [reemployment eligibility requirements](#) to have a viable retaliation violation. Claimants don't need to perform the uniformed service to be protected. Protections apply to all positions of employment, including brief, non-recurrent positions. If a claimant received a dishonorable or bad conduct discharge, we need to involve the RSOL. For investigators, contact your SI. For SIs, [contact the RSOL](#) to determine if the claimant is still entitled to USERRA protections.

#### 5.2.3 Reemployment Eligibility (USERRA)

Someone is eligible for USERRA protections if they meet five elements. Note that brief, nonrecurrent positions don't have reemployment protection under USERRA.

##### 5.2.3.1 Reemployment Legal Standard (USERRA)

#### **USERRA Reemployment Standard:**

1. Person is a service member who was absent from a position of civilian employment due to [uniformed service](#).
2. The service member or an appropriate office of the uniformed service gave the employer [advance notice](#) of the uniformed service.



3. The service member's [non-exempt uniformed service totals less than five years](#) while working for that employer.
4. The service member must [return to work or apply for reemployment](#) within the timelines specified.
5. The service member did not separate from uniformed service with a [disqualifying discharge](#).<sup>48</sup>

Items one and five are discussed in the sections above.<sup>49</sup> For information on how to apply these elements to case-specific facts, please refer to [Initial Contact with the Claimant](#) and [Analyze a Potential Violation](#).

#### 5.2.3.1.1 What Does Advance Notice Mean? (USERRA)

To understand if an employee provided advance notice to the employer, ask yourself:

- Was the employee excused from telling their employer in advance?
- When did the employee provide notice?
- How did the employee provide notice (i.e., verbal or written)?
- How can you prove the employee provided notice?

USERRA requires providing notice to the employer, not requesting permission from the employer.<sup>50</sup> Employees should share their service orders as soon as they reasonably can, but there's no exact time required. For example, an employee may receive notice today for a deployment in two days. Another employee may receive notice today for a deployment in four months. In both situations, the employees should contact their employers as soon as they reasonably can.

#### 5.2.3.1.1.1 Type of Notice (USERRA)

Notice can be verbal or written.<sup>51</sup> We recommend service members notify their employers in writing. We recommend you ask the service member how they provided notice and to share evidence of that method. For more information on applying this to case-specific facts, see [Establish This Claimant's Eligibility](#).

#### 5.2.3.1.1.2 Multiple, Short Deployments and Service Extensions (USERRA)

“Any person whose absence from a position of employment is necessitated by reason of service in the uniformed service shall be entitled to USERRA reemployment rights and other employment benefits if, in addition to other

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<sup>48</sup> [VETS USERRA Fact Sheet #3: FAQ – Separations from Uniformed Service, Characterizations of Service, and Effects on Rights and Benefits under USERRA](#).

<sup>49</sup> See [Protected Status](#) and [What Is a Disqualifying Discharge?](#)

<sup>50</sup> [20 C.F.R. § 1002.87](#).

<sup>51</sup> [38 U.S.C. §§ 4303\(8\), 4312\(a\)\(1\)](#).

requirements, the person or an appropriate office of the uniformed services in which the service is performed, has given advance written or verbal notice of such service to such person's employer.” ([38 U.S.C. § 4312\(a\)\(1\)](#)).

Some employees may perform uniformed service multiple times for short durations or have their service continuously extended once they begin the service period. For example, someone may be called to training one weekend a month for a year. This person may provide advance notice to the employer of the anticipated annual schedule, but also choose not to give notice again to their employer each month of the year, unless something changes. Another example might be if someone called to service provided advance notice of the service, but while away, their orders changed to extend the service period. They might not provide additional notice to the employer of this change, having already provided advance notice of their initial absence, but would instead simply provide notice of their intent to return to civilian work, as required under USERRA.<sup>52</sup>

While we recommend service members keep their employers informed, USERRA doesn't require the employee again provide advance notice prior to each continuing short deployment or service extension if they already provided initial notice of their absence.<sup>53</sup> If this happened in your case, review the periods of service one-by-one alongside [38 U.S.C. § 4312\(b\)](#) to determine whether:

- A. Additional advance notice was necessary due to a break in service, or
- B. Notice was prevented by military necessity.

#### 5.2.3.1.1.3 Employer Requests for Orders and Discharge or Separation Documents from Employees (USERRA)

An employer may ask a prospective employee about their military status if the employer has a non-discriminatory business interest for asking. Some states prohibit employers from asking a service member or veteran about their discharge status during the application or hiring process. Employers should check applicable state laws and may wish to consult legal counsel before requesting discharge information from prospective employees.<sup>54</sup> Questions of this nature that are in violation of state law may be evidence of initial hiring discrimination if the applicant isn't hired.

An employer can't require written orders before an employee deploys. An employer may require an employee submit copies of their orders for paid leave for military service, or other documentation, if absent for more than 30 days, when they apply for reemployment.<sup>55</sup> The

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<sup>52</sup> [38 U.S.C. § 4312\(a\)\(1\)](#).

<sup>53</sup> See generally [38 U.S.C. § 4312\(b\)](#); [20 C.F.R. § 1002.104](#).

<sup>54</sup> See generally [38 U.S.C. § 4311\(a\)](#); [20 C.F.R. §§ 1002.18, 1002.40](#).

<sup>55</sup> If a service-member employee is absent from their civilian employment for more than 30 days and submits an application for reemployment, the employer can request the employee submit documentation establishing: (1) the

employer can't delay reemployment by demanding documentation that doesn't exist or isn't readily available.<sup>56</sup> If the documents later show the employee didn't have reemployment rights, then the employer may terminate the employment and any rights or benefits the employee may have been granted, as appropriate.<sup>57</sup> An employee can't be punished if their uniformed service authority experiences administrative delays in providing documentation. For more information, see [Analyze Potential Reemployment Violations](#). Employers can ask the uniformed service authority to adjust orders for timing, frequency, or duration of service.<sup>58</sup>

If the employee was absent for service longer than 90 days, the employer may require the employee provide the employer with documentation before beginning to treat the employee as though they didn't have a break in employment for pension purposes.

#### 5.2.3.1.2 How to Calculate Cumulative Uniformed Service Time? (USERRA)

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**Pro Tip:** Investigators should make a spreadsheet or table to track all orders or other supporting documentation for uniformed service. The spreadsheet should list the document type, statutory reference for the service, the length of service in days, and whether the service was exempt. This will help you determine whether a period of uniformed service falls under an exemption.

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The service member's non-exempt uniformed service must total less than five years while working for that employer. For federal employees, the five-year cumulative limit applies to employment by the federal government, not employment with individual agencies ([5 C.F.R. § 353.203](#)). When requesting the employment start date, you must find the date that claimant first entered federal civilian service, excluding any breaks in service. Exempt service doesn't apply toward the five-year period. Investigators must document the appropriate statutory citation for each set of orders received. These citations demonstrate whether service was exempt and support how the investigator calculated the total amount of non-exempt service. Investigators will use VCMS's Five-Year Service Limit Tool to add each mobilization period, which will calculate the amount of time elapsed.<sup>59</sup>

ESGR's website houses several official letters from Armed Forces branches that outline certain service exemptions:

- [Air Force, Space Operations, Air National Guard, and Air Force Reserve.](#)
- [Army, Army Reserve, and Army National Guard.](#)

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reemployment application was timely; (2) the employee hasn't exceeded the five-year limit on the duration of service, less any exceptions; and (3) the employee's separation or dismissal from the service wasn't disqualifying ([20 C.F.R. § 1002.121](#)).

<sup>56</sup> [20 C.F.R. §§ 1002.121-1002.122.](#)

<sup>57</sup> [20 C.F.R. § 1002.122.](#)

<sup>58</sup> [20 C.F.R. § 1002.104.](#)

<sup>59</sup> [VCMS Agency User Guide](#), Issues Analysis.

- [Coast Guard](#), and [Navy and Marine Corps](#).<sup>60</sup>

#### 5.2.3.1.2.1 Exempt Service (USERRA)

Exempt service is defined as:

- Service required beyond five years to complete an initial period of obligated service.
- Service for which the employee, through no fault of their own, can't obtain orders releasing them from uniformed services before the expiration of the five-year period.
- Service performed to fulfill periodic National Guard and Reserve training requirements:
  - As outlined in [10 U.S.C. § 10147](#) and [32 U.S.C. §§ 502\(a\)](#) and [503](#).
  - Additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development or to complete skill training or retraining.<sup>61</sup>
- Service performed in a uniformed service if they were ordered to or retained on active duty under:
  - Involuntary active duty by military retiree ([10 U.S.C. § 688](#)),
  - Involuntary active duty in wartime ([10 U.S.C. § 12301\(a\)](#)),
  - Retention on active duty while in captive status ([10 U.S.C. § 12301\(g\)](#)),
  - Involuntary active duty during a national emergency for up to 24 months ([10 U.S.C. § 12302](#)),
  - Involuntary active duty for an operational mission for up to 270 days ([10 U.S.C. § 12304](#)),
  - Involuntary active duty in response to a major disaster or emergency for up to 120 days ([10 U.S.C. § 12304a](#)),
  - Involuntary active duty for a preplanned mission for up to 365 days ([10 U.S.C. § 12304b](#)), or
  - Involuntary retention on active duty of a critical person during a time of crisis or other specific conditions ([10 U.S.C. § 12305](#)).<sup>62</sup>
- Service performed in a uniformed service if they were ordered to or retained on active duty in the Coast Guard under:
  - Involuntary active duty by a retired Coast Guard officer ([14 U.S.C. § 2127](#), formerly §331);
  - Voluntary active duty by a retired Coast Guard officer ([14 U.S.C. § 2128](#), formerly §332);
  - Involuntary active duty by a retired Coast Guard enlisted member ([14 U.S.C. § 2308](#), formerly §359);

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<sup>60</sup> ESGR may replace these letters between editions of this Manual. If a link doesn't work, we recommend, you use the [ESGR website's search feature and the terms "service memo"](#).

<sup>61</sup> [38 U.S.C. § 4312\(c\)\(1\)-\(3\)](#); [20 C.F.R. § 1002.103\(a\)\(1\)-\(3\)](#); [DODI 1205.12](#).

<sup>62</sup> [38 U.S.C. § 4312\(C\)\(4\)\(A\)](#); [20 C.F.R. § 1002.103\(a\)\(4\)\(i\)-\(vi\)](#); [DODI 1205.12](#).

- Voluntary active duty by a retired Coast Guard enlisted member ([14 U.S.C. § 2309](#), formerly §360);
- Involuntary retention of a Coast Guard enlisted member on active duty ([14 U.S.C. § 2314](#), formerly §367); or
- Involuntary active duty by a Coast Guard Reserve member for natural or man-made disasters ([14 U.S.C. § 3713](#), formerly §712).<sup>63</sup>
- Service performed in a uniformed service if the employee was:
  - Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress, as determined by the Secretary concerned;
  - Ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under [10 U.S.C. § 12304](#), as determined by the proper military authority; or
  - Ordered to active duty in support of a critical mission or requirement of the uniformed services, as determined by the Secretary concerned.<sup>64</sup>
- Service performed as a member of the National Guard if the employee were:
  - Called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States; or
  - Ordered to full-time National Guard duty (other than for training) under [32 U.S.C. § 502\(f\)\(2\)\(A\)](#) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by federal funds, as determined by the Secretary concerned.<sup>65</sup>
- Service performed to mitigate economic harm where the employee's employer is in violation of its employment or reemployment obligations to them.<sup>66</sup>

If the orders reference [32 U.S.C. § 502\(f\)](#), you must gather additional information to analyze whether those orders are exempt.

1. The duty performed is classified under what subsection of § 502(f)?
  - a. If under subsections (f)(1)(A) or (f)(1)(B), was it in support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense?
    - i. If yes, move to Question 2.
    - ii. If no, it's not exempt service.
  - b. If under subsection (f)(2)(A), move to Question 2.
  - c. If under subsection (f)(2)(B), it's not exempt service.

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<sup>63</sup> The Coast Guard changed its legal citations. This manual provides both references because older orders will contain citations to the previously used sections. [38 U.S.C. § 4312\(c\)\(4\)\(A\)](#); [20 C.F.R. § 1002.103\(a\)\(4\)\(vii\)–\(xii\)](#); [DODI 1205.12](#).

<sup>64</sup> [38 U.S.C. § 4312\(c\)\(4\)\(B\)–\(D\)](#); [20 C.F.R. § 1002.103\(a\)\(5\)–\(7\)](#); [DODI 1205.12](#).

<sup>65</sup> [38 U.S.C. § 4312\(c\)\(4\)\(E\)–\(F\)](#); [20 C.F.R. § 1002.103\(a\)\(8\) and \(b\)](#); [DODI 1205.12](#).

<sup>66</sup> [20 C.F.R. § 1002.103](#).

2. Was it authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by federal funds?
  - a. If yes, move to Question 3.
  - b. If no, it's not exempt service.
3. Was a determination made by the Secretary concerned?<sup>67</sup>
  - a. If yes, it's exempt service under [38 U.S.C. § 4312\(c\)\(4\)\(F\)](#).
  - b. If no, it's not exempt service.

#### 5.2.3.1.2.2 How to Read Service Orders, Discharges, and Separations (USERRA)

Always analyze the full, four corners of the document. There's not yet a standard format for orders from every uniformed service. Each service uses a different structure and format for its orders. Go to your SI with questions about how to read the documents. Orders will have a block of text explaining the orders at the top. This section generally includes the authority and statutory reference for the service and may contain a reference to a USERRA exemption. Another place to look is the bottom-left corner of the document or at the end of the text.

#### 5.2.3.1.3 When Do They Need to Return to Work or Apply for Reemployment? (USERRA)

Employees must make a timely return from uniformed service. Timely depends on the length of service:

- *Service was 1–30 days:* Report to the employer by the start of the first full, regularly scheduled work period.<sup>68</sup> This includes the ability to take enough time to travel safely from the place of service to the employee's home, plus an eight-hour rest period after arriving at home.
- *Service was 31–180 days:* Report, or apply to report, to the employer 14 days after returning home. If this is impossible or unreasonable through no fault of the employee, then report, or apply to report, the next full calendar day after it becomes possible to do so.<sup>69</sup>
- *Service was over 181 days:* Report, or apply to report, to the employer 90 days after returning home.

An employee doesn't automatically lose their reemployment rights by reporting back, or applying to report back, late to the employer.<sup>70</sup> A service-related injury or illness can extend the time to apply for reemployment. Often the employee is hospitalized or incapacitated by the injury or illness. The employee would report, or apply to report, to the employer at the end of the

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<sup>67</sup> These are done either individually in the specific orders or globally for all orders issued under a specific authority by policy memorandum from the Service Secretaries every two years.

<sup>68</sup> See [38 U.S.C. § 4312\(e\)\(1\)\(A\)\(i\)](#); [20 C.F.R. § 1002.115\(a\)](#).

<sup>69</sup> [20 C.F.R. § 1002.115\(b\)](#).

<sup>70</sup> [38 U.S.C. § 4312\(e\)\(3\)](#); [20 C.F.R. § 1002.117](#).

time necessary for the employee's recovery. This is sometimes called a convalescence period. The extension must not be longer than two years unless returning earlier is unreasonable or impossible.<sup>71</sup> Absences after reemployment due to service-related injury or illness won't extend this time.<sup>72</sup>

### 5.2.3.2 Understand the Escalator Position and Other Positions (USERRA)

Generally, a returning service-member employee is entitled to reemployment in the job position that they would have attained with [reasonable certainty](#) if not for the absence due to uniformed service. This idea requires the employer look to the employee's circumstances and reemploy them to an appropriate position. The claimant must be qualified for the position to which they're reemployed, but the employer must make reasonable efforts to qualify them for that position. The following subsections outline how the escalator principle applies to reemployment.

#### 5.2.3.2.1 Importance of Claimant Qualifications and the Employer's Obligations (USERRA Reemployment)

The claimant must be qualified for the reemployment position. The employer must make reasonable efforts to help the claimant become qualified to perform the duties and tasks of this position. The employer isn't required to reemploy the claimant on their return from service if the claimant can't, after reasonable efforts by the employer, qualify for the appropriate reemployment position. Note, the employer should always make a reasonable effort to find a position for which the claimant qualifies to perform.

The claimant must be qualified for the essential tasks of the job. Ways to demonstrate these qualifications and the employer's efforts to qualify the claimant include, but are not limited to:

- Written job description,
- Terms of a CBA,
- Current experience of colleagues in similar jobs,
- Work experience of past incumbents,
- Time spent on the task,
- Consequences of not performing the task, and
- Employer's judgement.

While employees are getting trained or certified (as required by law for a position), they can be temporarily assigned to a comparable position.

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<sup>71</sup> [38 U.S.C. § 4312\(e\)\(2\)\(A\)](#); [20 C.F.R. § 1002.116](#).

<sup>72</sup> They might be covered by another statute or additional rules.

#### 5.2.3.2.2 Escalator Position (USERRA Reemployment)

The [escalator principle](#) states that a returning claimant must be promptly reemployed in the position they would have held had the claimant been continuously employed and not away for military service.<sup>73</sup> This includes pay, benefits, seniority, and other job prerequisites (perks) that the claimant would have attained if not for the period of service. This may include status, pay, wage increases, promotions, additional responsibility, and/or pension benefits treated as no break in employment.<sup>74</sup> The escalator principle operates on the [reasonable certainty standard](#). Remember, much like its namesake, the escalator position can go up or down (e.g., transfer, layoff, or termination). Active duty doesn't toll (i.e., stop or pause) contractual periods or term appointments.

#### 5.2.3.2.3 Determine the Reemployment Position (USERRA)

The reemployment position a claimant is entitled to depends on a few factors, such as length of service, qualifications, and service-related disability. These factors may allow or require the employer to reemploy the claimant in a position other than the escalator position.

##### 5.2.3.2.3.1 Length of Service is Fewer Than 91 Days (USERRA Reemployment)

If the length of service is less than 91 days,<sup>75</sup> then the employee must be reemployed according to the following priority:

- a. **Escalator Position:** Start here. The employer must make reasonable efforts to qualify the employee to do the escalator position's duties. If the employee is still not qualified, move to the next position.
- b. **Pre-Service Position:** The employer must make reasonable efforts to qualify the employee to do the pre-service position's duties.<sup>76</sup> If the employee is still not qualified, move to the next position.
- c. **Nearest Approximation, First to Escalator Position, Then to Pre-Service Position:** The employer must make reasonable efforts to qualify the employee to do the duties of any other position that's the nearest approximation, first, to the escalator position, and then to the pre-service position.

At every step, the employee must be qualified to perform the duties of the position and the employer must make reasonable efforts to help the employee become qualified for to perform the duties of the position.

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<sup>73</sup> [38 U.S.C. § 4313](#); [20 C.F.R. Part 1002, Subpart E](#).

<sup>74</sup> [20 C.F.R. § 1002.191](#).

<sup>76</sup> The pre-service position is the position in which the employee was employed on the date the period of service began.



#### 5.2.3.2.3.2 Length of Service is More Than 90 Days (USERRA Reemployment)

Following a period of service of more than 90 days,<sup>77</sup> the employee must be reemployed according to the following priority:

1. **Escalator Position or Like Position:** Start here. The employer must make reasonable efforts to qualify the employee to do the duties of the escalator position or a like position (i.e., position of “like seniority, status, and pay”). If the employee is still not qualified, move to the next position.
2. **Pre-Service Position or Like Position:** The employer must make reasonable efforts to qualify the employee to do the duties of the pre-service position<sup>78</sup> or a like position. If the employee is still not qualified, move to the next position.
3. **Nearest Approximation First to Escalator Position, Then to Pre-Service Position:** The employer must make reasonable efforts to qualify the employee to do the duties of any other position that’s the nearest approximation first to the escalator position and then to the pre-service position.

At every step, the employee must be qualified to perform the duties of the position and the employer must make reasonable efforts to help the employee become qualified to perform the duties of the position. For a length of service longer than 90 days, “like status” can be found by evaluating opportunities for advancement, general working conditions, job location, shift assignment, rank, and responsibility.

#### 5.2.3.2.3.3 Reemployment and Disability (USERRA Reemployment)

If the claimant has a disability incurred in, or aggravated during the uniformed service,<sup>79</sup> then the claimant must be reemployed according to the following priority:

1. **Escalator or Like Position:** Start here. The employer must make reasonable efforts to qualify the employee to do the duties of the escalator position or a like position (i.e., position of “like seniority, status, and pay”). If the employee is still not qualified, move to the next position.
2. **Equivalent Position:** The employer must make reasonable efforts to qualify the employee to do the duties of an equivalent position (i.e., any other position equivalent in seniority, status, and pay to the escalator position).
3. **Nearest Approximation to Equivalent Position:** The employer must make reasonable efforts to qualify the employee to do the duties of the nearest approximation to the equivalent position. Note that a position that’s the nearest approximation to the

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<sup>77</sup> [38 U.S.C. §§ 4313\(a\)\(2\) and 4313\(a\)\(4\)](#); [20 C.F.R. § 1002.197](#).

<sup>78</sup> The pre-service position is the position in which the employee was employed on the date the period of service began.

<sup>79</sup> [38 U.S.C. § 4313\(3\)](#); [20 C.F.R. §§ 1002.225—1002.226](#).

equivalent position may be a higher or lower position, depending on the circumstances. If the employee is still not qualified, move to the final step.

4. If the employee doesn't qualify for any of the positions above, the **employer isn't required to create a position** if one doesn't exist.

At every step, the employee must be qualified to perform the duties of the position. At every step, the employer must make reasonable efforts to: (a) help the employee become qualified to perform the duties of the position and (b) accommodate the disability.

An employee under these circumstances might need a convalescent period between the uniformed service and applying for reemployment. Review [When Do They Need to Return to Work or Apply for Reemployment](#) for how convalescent periods impact reemployment and disability. Disability accommodations for service-incurred or service-aggravated illness, injury, or disability unrelated to the reemployment action are not covered under USERRA ([38 U.S.C. § 4312\(e\)\(2\)\(A\)](#); [20 C.F.R. § 1002.116](#)). Accommodations after reemployment are not part of the potential USERRA violation. They're separate potential violations under other law.

#### 5.2.3.2.3.4 Reemployment of Two or More Employees (USERRA)

If two or more employees are entitled to reemployment in the same position, the following procedures applies ([38 U.S.C. § 4313](#); [20 C.F.R. § 1002.199](#)). The employee who first left the position has the superior right and priority to the position. The remaining employee is entitled to reemployment in a position similar to the position they would have been reemployed to according to the escalator principle and rules related to other reemployment positions.

#### 5.2.3.2.3.5 Protected Period (USERRA Reemployment)

Upon return from service of more than 30 days, a reemployed employee may not be terminated without cause:

- For 180 days after the date of reemployment (if the period of service was for 31 to 180 days), or
- For one year after the date of reemployment (if the period of service was for more than 181 days, [38 U.S.C. § 4316](#); [20 C.F.R. §§ 1002.247—248](#)).

Cause for termination may be based on conduct or the application of legitimate nondiscriminatory reasons. For example, unauthorized absences, insubordination, or theft. Persons who serve for less than 31 days are not protected from termination without cause. They're protected from [discrimination](#) because of their uniformed service.

#### 5.2.3.2.4 How Reemployment Eligibility Impacts Benefits (USERRA)

While away for uniformed service, employees are deemed to be on leave of absence or furlough ([38 U.S.C. §§ 4311-16](#); [20 C.F.R. Part 1002, Subpart D](#)). These employees may elect to use accrued vacation, paid time off (PTO), or similar leave. They can't be compelled to use any

accrued leave. These employees are entitled to non-seniority rights and benefits available to other employees on leave of absence or furlough. Non-seniority rights and benefits are those not based on seniority or length of service, such as accrual of vacation leave.

An employee may elect to continue employer-sponsored health plan coverage upon leaving for uniformed service ([38 U.S.C. § 4317](#)). The plan must allow the employee to elect to continue coverage for a period that's the lesser of:

- The 24-month period beginning when absent from employment for purpose of performing service, or
- Period beginning when absent for the purpose of performing service and ending when the employee fails to return or apply for a position of employment.

Upon reemployment, the employer must reinstate the health plan with no waiting period if no waiting period would have been imposed had coverage not been terminated due to uniformed service.<sup>80</sup>

An employee performing uniformed services is still entitled to some pension rights while away ([38 U.S.C. § 4318](#); [20 C.F.R. §§ 1002.259—1002.267](#); [VETS USERRA Fact Sheet #1: FAQ – Employers' Pension Obligations to Reemployed Service Members under USERRA](#)). Employers aren't required to make pension contributions until the service-member employee returns to work. If the service member returns to work, then the employer contribution depends on the type of plan.

- *Non-Contributory Plans*: The employer contributes as if the employee was continuously employed.
- *Contributory Plans*: The employer makes contributions contingent on the employee's contributions.

The contribution amount is the total amount, including overtime, the employee would have received with [reasonable certainty](#) had the employee remained continuously employed. If there's not enough evidence to support reasonable certainty, then average the rate of pay during the 12-month period prior to the uniformed service.

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<sup>80</sup> [38 U.S.C. § 4317\(b\)\(1\)](#).

## Chapter 6 | Determine VEOA and VP Eligibility

Before reading this section, we encourage all VETS investigators and designated reviewers to read through and become familiar with the contents in [OPM's Vet Guide for HR Professionals](#) (OPM Vet Guide). A huge part of the investigative process is putting yourself in the shoes of the person at the federal agency who made the hiring decision. You must evaluate whether they followed the correct steps to verify and place those with VEOA or VP preference. Bookmark and download a copy the OPM Vet Guide. Store it near this Manual. Together, they'll help you determine every step you need to conduct a complete, accurate investigation.

By law ([Title 5 U.S.C., Section 2108](#)), disabled veterans and veterans who serve in certain time periods or under certain military campaigns or expeditions are entitled to preference over other non-veterans in both federal hiring practices and retention during [reductions in force \(RIF\)](#). It's not a goal of preference to place a veteran in every vacant federal job; this would be incompatible with the merit principle of public employment. Preference doesn't apply to promotions or other in-service actions. It does provide a uniform method to give special consideration to qualified veterans seeking federal employment.<sup>81</sup> We call people eligible under VEOA and VP [preference eligibles](#). To be VEOA eligible, a person must either be a preference eligible or a veteran separated from the Armed Forces after three or more years of continuous active service performed under honorable conditions.

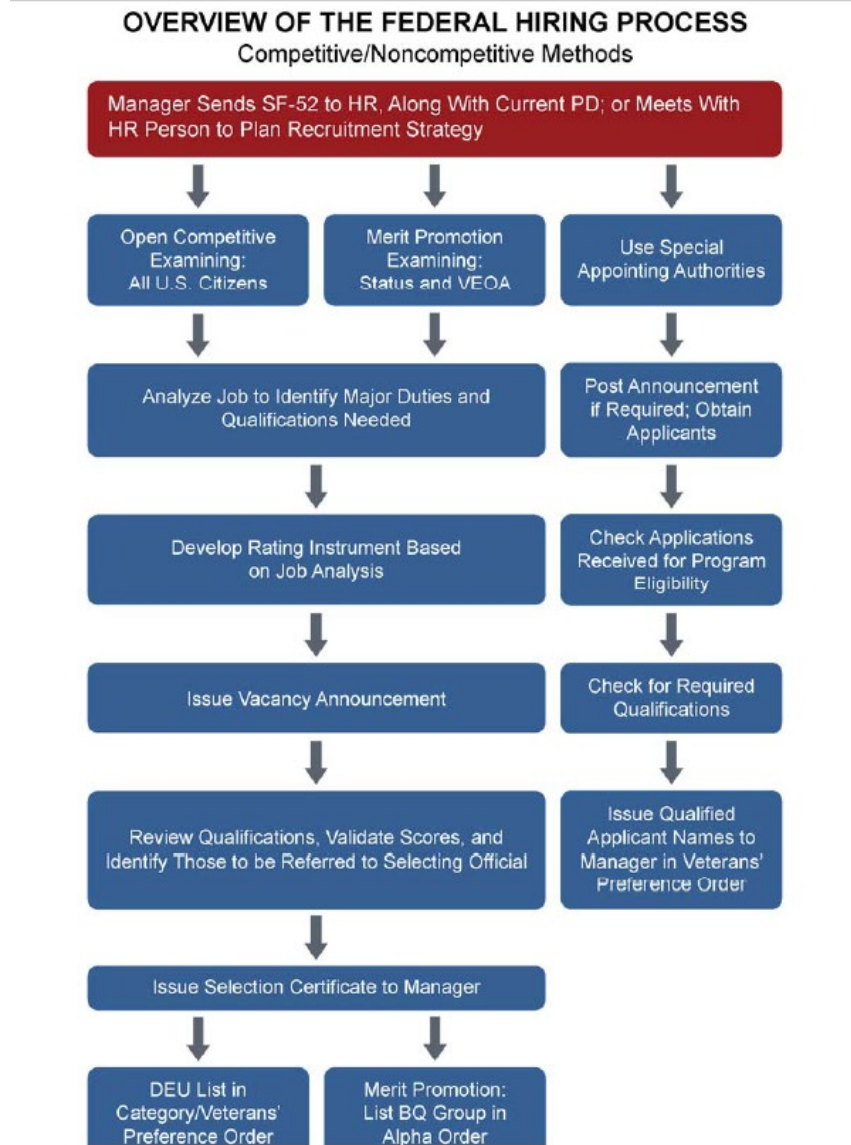
An important distinction between VEOA and VP is that while all VEOA potential violations fall under VP, not all VP potential violations are also VEOA potential violations. A similar analogy might be that all thumbs (i.e., VEOA) are fingers (i.e., VP), but not all fingers are thumbs. This distinction is important because a preference eligible can file a claim alleging a VEOA or a VP violation if they meet the other required conditions. VETS staff need to understand the requirements involved in filling federal positions so they may properly evaluate whether a hiring agency followed the federal hiring practices concerning VEOA and VP.

### 6.1 Basics of the Federal Hiring Process

The chart below shows an overview of the steps followed by human resources (HR) offices to fill federal jobs through the various means available. As illustrated in the chart below, the responsible selecting official or supervisor of the position typically interacts with HR staff when a vacancy occurs to select the most appropriate sources from which to identify candidates. Consistency is key in federal hiring. The agency identifies the most qualified applicants. For example, if an applicant submits an incomplete package or is missing a document, an agency must choose whether to notify the applicant. If they notify one applicant, they must notify every applicant who has an incomplete package or is missing a document. Some federal positions receive a thousand applicants.

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<sup>81</sup> DOL eLaws [Veterans' Preference Advisor](#).



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### 6.1.1 Merit System Principles (MSPs)

The federal government uses the MSPs as the rules of the road for proper and consistent hiring ([5 U.S.C. § 2301\(b\)](#)). The list includes:

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely based on relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color,

<sup>82</sup> NVTI 9606 VEOA/VP Instructor’s Guide, p 2-1-6.

- religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
  4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
  5. The federal work force should be used efficiently and effectively.
  6. Employees should be retained based on the adequacy of their performance, inadequate performance should be corrected, and employees who can't or won't improve their performance to meet required standards should be separated.
  7. Employees should be provided effective education and training in circumstances where such education and training would result in better organizational and individual performance.
  8. Employees should be:
    - a. Protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
    - b. Prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
  9. Employees should be protected against reprisal for the lawful disclosure of information that the employees reasonably believe proves:
    - a. A violation of any law, rule, or regulation; or
    - b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

### 6.1.2 *Prohibited Personnel Practices (PPPs)*

The other side of the MSPs are the PPPs, which point out certain actions that go against and violate the MSPs. The full list of PPPs can be found in [5 U.S.C. § 2302\(b\)](#) or on the [MSPB website](#).

It's a PPP to:

- Illegally discriminate for, or against, any employee or applicant.<sup>83</sup>
- Solicit or consider improper employment recommendations.
- Coerce an employee's political activity.
- Obstruct a person's right to compete for employment.
- Influence any person to withdraw from competition for a position.
- Give unauthorized preference or improper advantage.
- Employ or promote a relative.

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<sup>83</sup> See generally, [EO 14035](#), "Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce," (June 25, 2021).

- Retaliate against a whistleblower, whether an employee or applicant.
- Retaliate against employees or applicants for filing an appeal.
- Unlawfully discriminate for off-duty conduct.
- Violate any law, rule, or regulation that implements or directly concerns the MSPs.
- Knowingly violate VP requirements.
- Impose a nondisclosure agreement that doesn't allow whistleblowing.
- Access medical records in furtherance of another PPP.

### 6.1.3 Reinstatement (VEOA and VP)

Preference eligibles, including those with derived preference, who served for any period under career or career-conditional appointment have lifetime reinstatement eligibility to any competitive service position for which they're qualified ([5 U.S.C. § 3316](#); [5 C.F.R. Part 315, Subpart D](#)). They have this eligibility regardless of whether their uniformed service occurred before or after career or career-conditional appointment. Competition under the agency's Merit Promotion (MP) plan is required if the position is at a higher grade level or has more promotional potential than a position previously held.<sup>84</sup>

### 6.1.4 Types of Preference (VEOA and VP)

To receive preference, a veteran must have left the [Armed Forces](#)<sup>85</sup> with an honorable or general discharge. The veteran must also fall into one of the following three categories:

1. Military retirees at the rank of major, lieutenant commander, or higher, are only eligible for preference in competitive service appointment if they're disabled veterans. (This doesn't apply to Reservists who won't begin drawing military retired pay until age 60).
2. If not disabled, National Guard or Reserve active-duty training doesn't qualify as "active duty" for preference.
3. For disabled veterans, active duty includes training service in the Reserves or National Guard.<sup>86</sup>

The [OPM Vet Guide](#) outlines the following preference types contained in [5 U.S.C. §§ 2108, 3309](#), as modified by a length of service requirement in [38 U.S.C. § 5303A\(d\)](#). The letters at the front of each category (e.g., SSP) are shorthand reference codes used by OPM in [competitive examinations](#).

#### **Types of Preference:**

- *SSP (0-Point Preference):*

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<sup>84</sup> [OPM Vet Guide](#), "Reinstatement."

<sup>85</sup> [5 U.S.C. § 2102\(2\)](#).

<sup>86</sup> [OPM Vet Guide](#), "Types of Preference."

- No points are added to the passing examination score or rating of a veteran who is the only surviving child in a family in which the father, mother, or one or more siblings:
  - Served in the Armed Forces; and
  - Was killed; died from wounds, accident, or disease; is in a captured or missing in action status; or is permanently 100 percent disabled or hospitalized on a continuing basis (and isn't employed gainfully because of the disability or hospitalization); and
  - Where the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and wasn't incurred during a period of unauthorized absence.
- Listed ahead of non-preference eligibles:
  - With the same score on an examination or
  - In the same quality category under [CATRAT](#).
- Receive the same pass-over rights as other preference eligibles.
- Receive credit experience in the Armed Forces to meet the qualification requirements for federal jobs.<sup>87</sup>
- *TP (5-Point Preference)*: Five points are added to the passing examination score or rating of a veteran who served:
  - During a war;
  - During the period April 28, 1952, through July 1, 1955;
  - For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976;
  - During the Gulf War from August 2, 1990, through January 2, 1992;
  - For more than 180 consecutive days, other than for training, any part of which occurred during the period between September 11, 2001, and August 31, 2010; *or*
  - In a campaign or expedition for which a campaign medal has been authorized (i.e., any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference).
- *CP (10-point Compensable Disability Preference)*: Ten points are added to the passing examination score or rating of a veteran who served any time and now has a compensable service-connected disability rating from 10–29.99 percent.
- *CPS (10-Point 30 Percent Compensable Disability Preference)*: Ten points are added to the passing examination score or rating of a veteran who served at any time and who has a compensable service-connected disability rating over 30 percent.
- *XP (10-Point Disability Preference)*: Ten points are added to the passing examination score or rating of a:
  - Veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the

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<sup>87</sup> [OPM Vet Guide](#), “Types of Preference.”



- military or Department of Veterans Affairs (VA), but who doesn't otherwise qualify as a CP or CPS; or
- Veteran who received a purple heart.
- *XP (10-point Derived Preference)*: Ten points are added to the passing score or rating of spouses, widows, widowers, or mothers of veterans.<sup>88</sup>
  - **Spouse**: Ten points are added to the passing score or rating of the spouse of a disabled veteran who is disqualified for a federal position along the general lines of their usual occupation because of a service-connected disability. The disqualification is presumed when the veteran is unemployed and:
    - Is rated by appropriate military or VA authorities to be 100 percent disabled and/or unemployable; or
    - Has retired, been separated, or resigned from civil service position on the basis of a disability that's service connected in origin; or
    - Has attempted to obtain a civil service position or other position along the lines of their usual occupation and has failed to qualify because of a service-connected disability.<sup>89</sup>
  - **Widow or Widower**: Ten points are added to the passing score or rating of the widow or widower of a veteran who wasn't divorced from the veteran, hasn't remarried, or the remarriage was annulled, *and* the veteran either:
    - Served during a war or from April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal was authorized; or
    - Died while on active duty that included service described immediately above under conditions that wouldn't have been the basis of other than an honorable or general discharge.
  - **Mother of a Deceased Veteran**: Ten points are added to the passing score or rating of the mother of a veteran who died under honorable conditions while on active duty during a war or between April 28, 1955, and July 1, 1955, or in a campaign or expedition for which a campaign medal was authorized; *and* the mother:
    - Is or was married to the father of the veteran; *and*
    - Lives with their totally and permanently disabled husband (either the veteran's father or their husband through remarriage); *or*
    - Is widowed, divorced, or separated from the veteran's father and hasn't remarried; *or*
    - Remarried but is widowed, divorced, or legally separated from their husband when they claim preference.
  - **Mother of a Disabled Veteran**: Ten points are added to the passing score or rating of the mother of a living disabled veteran if the veteran was separated with

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<sup>88</sup> Both a mother and a spouse (including widow or widower) may be entitled to preference based on the same veterans' service if they both meet the requirements. Neither may receive preference if the veteran is living *and* qualified for federal employment. [OPM Vet Guide](#), "10-Point Derived Preference (XP)."

<sup>89</sup> [OPM Vet Guide](#), "Spouse."

an honorable or general discharge from active duty, including training service in the Reserves or National Guard, performed at any time, and is permanently and totally disabled from a service-connected injury or illness; *and* the mother:

- Is or was married to the father of the veteran; *and*
- Lives with their totally and permanently disabled husband (either the veteran's father or their husband through remarriage); *or*
- Is widowed, divorced, or separated from the veteran's father and hasn't remarried; *or*
- Remarried but is widowed, divorced, or legally separated from their husband when they claim preference.

**Note:** If TP 5-Point Preference involves service in the Gulf War or Man-Day Tours, refer to the [OPM Vet Guide](#), pages 3-7, for further guidance. Also, VP for spouses is different than preference the DOD must extend to spouses of active-duty members in filling its civilian positions.<sup>90</sup>

## 6.2 Three Paths: Differences Between VEOA and VP

A candidate eligible for VEOA or VP within federal hiring may travel along one of three common paths. Each path has many specific guidelines, restrictions, laws, and agency policies that govern its use. These three paths are:

1. [VP in Competitive Examining](#): All U.S. citizens may apply. This is used to fill temporary, term, and permanent jobs.
2. [VP in Reduction in Force \(RIF\)](#).
3. [VEOA and VP in Special Appointing Authorities \(SAA\)](#): Used to fill temporary, term, and permanent jobs. For most of these, no job announcement is required. VP applies to SAAs. This Manual covers preference as applied to the [Veterans' Recruitment Appointment \(VRA\) Authority](#) and [VEOA Appointments](#).

You might hear VEOA and VP used interchangeably in conversation. They aren't interchangeable, but they're parts of the same idea: special hiring circumstances that apply to those who qualify for preference based on uniformed service.

- VP refers to the rights, benefits, and obligations concerning preference for veterans in federal hiring practices under [Title 5 of the United States Code](#).
- VEOA, in 1998, made specific changes to the previously defined rights, benefits, and obligations under Title 5.

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<sup>90</sup> Feds HIRE Vets, "[Derived Preference](#)."

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**Pro Tip:** Remember, VEOA is a subset of VP. That means, someone can be VEOA and VP eligible, but never only VEOA eligible.

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A candidate applying, who asserts they're VEOA eligible or preference eligible for VP, may travel down one of three distinct paths:

1. [Applying to an open competitive announcement](#) (VP),
2. [Asserting preference to compete in a RIF action](#) (VP), and
3. [Applying to merit promotion announcements under SAAs](#) (VEOA and VP).

This section reviews how VEOA, VP, or both laws apply to each hiring path. First, VP applies to open competitive announcements where [preference eligibles](#) can apply. Second, VP within a RIF action. Third, Special Hiring Authorities can appoint people, and VEOA applies to MP announcements when an agency accepts applications from individuals outside its own workforce. These three core subsections also briefly cover how the relevant hiring path works and how preference impacts it.

### *6.2.1 VP Eligibility in Competitive Examining (VP)*

Competitive examining refers to open competitive positions within the federal government to which all U.S. citizens may apply. This section outlines the eligibility requirements to assert VP in competitive examining positions, as well as how to use category rating (CATRAT) and how the numerical ranking process impacts someone's preference. Historically, agencies used the numerical ranking process, or "[rule of three](#)," to rate candidates.<sup>91</sup> This is an outdated process for most agencies. Agencies now use CATRAT. The highest score a candidate can receive is 110 points (e.g., a disabled veteran who earned a score of 100 has 10 extra points added). In every job posting, all eligible applicants are listed in the ranked order in which they're eligible for selection to the position based on their ratings. Depending on the agency and position, this might be called a register, an eligibles register, or a certificate.

Competitor inventories are certificates established from which selections will be made over a period and used for filling competitive positions in which a register is used to fill a single position or a group of positions and is closed after the necessary selection(s) is made. For scientific and professional positions in [General Schedule](#), Grade 9 (GS-9) or higher, qualified applicants are listed on the competitor inventories in the order of their ratings, augmented by VP. For all other positions, [CP and CPS](#) 10-point preference eligibles are listed at the top of the register in the order of their ratings ahead of all other eligibles. All other applicants are listed in the order of their numerical ratings, which include other preference types. A preference eligible

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<sup>91</sup> The "rule of three" has a rare and narrow application; if you believe it applies to your case, call your SI immediately.

is always listed ahead of a non-preference eligible with the same final rating ([5 U.S.C. §§ 3309, 3313](#); [5 C.F.R. §§ 332.401, 337.101](#)).

**Additional Resources:**

- [OPM Vet Guide](#), “Preference in Competitive Examinations,” pp. 10-14.
- NVTI 9606 VP and VEOA Investigators Participant Guide, Lesson 4: Open Competitive Examining, pp. 57-71.

To be eligible for VP in competitive examining, the candidate must meet the following five elements, which are described in further detail in the subsections below.

1. Claimant [properly filed a federal job application](#), meaning they:
  - a. [Applied for a position with a federal agency](#),
  - b. [Asserted their preference eligibility in writing](#),
  - c. [Timely filed a complete job application within federal guidelines](#), and
  - d. [Are qualified for the position, as determined by the hiring authority](#).
2. Claimant [wasn't interviewed and/or selected for the position](#).
3. Claimant [is preference eligible](#).
4. Claimant [had their VP improperly applied during the hiring process](#).
5. Claimant [timely filed their claim with VETS](#).

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**Pro Tip:** VETS investigators determine whether the hiring authority properly considered VEOA and/or VP eligibility. Investigators should compare the hiring authority’s required process for hiring or promoting an applicant against the steps the agency documented taking for this claimant on this job posting.

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### 6.2.1.1 Claimant Properly Filed a Federal Job Application (VP)

Claimants must follow the basic requirements of properly filing a federal job application, which requires the claimant follow four basic steps:

- a. [Apply for a position with a federal agency](#),
- b. [Assert their preference eligibility in writing](#),
- c. [Timely file a complete job application within federal guidelines](#), and
- d. [Be qualified for the position, as determined by the hiring authority](#).

Each of these is described in additional detail in the subsections below. When describing agencies who are considering hiring candidates, this Manual refers to the agency as a “hiring authority.” This will avoid any confusion when the term agency is used to mean something other than specifically an agency seeking to fill an open employment position.

#### 6.2.1.1.1 Apply for a Position with a Federal Agency (VP)

To establish a VP claim, a candidate must show that they applied for a position with a federal agency. VETS doesn't have authority to investigate VEOA or VP cases involving [intelligence community agencies](#).<sup>92</sup> Claimants who apply to work for intelligence agencies have substantially the same VEOA and VP rights, but the Office of the Inspector General (OIG) for the agency to which they applied for a position investigates their claims. The respective intelligence agency's regulations govern those investigations, rather than OPM, and have different appeal rights.

VETS investigates alleged violations of VP for all other federal executive agencies, including the U.S. Postal Service, Postal Rate Commission, or nonappropriated fund activity.<sup>93</sup> During a VEOA or VP investigation, the objective for contacting the federal agency is to inform them of the claim, to explain VETS' role in the process, and to solicit the agency's position regarding the allegations.

#### 6.2.1.1.2 Assert Preference Eligibility in Writing (VP)

When applying for federal jobs, eligible veterans should state their eligibility for preference on their application or resume. Applicants stating 10-point preference must complete Standard Form (SF) 15, [Application for 10-Point Veteran Preference](#), and submit the requested documentation. Declaring eligibility for preference on the application or resume satisfies the requirement that the claimant establish their preference "in writing."

Agencies are required to accept, process, and grant tentative VP to active-duty service members who submit a certification in lieu of a DD-214 or DD-215 when applying for federal jobs. Many service members begin their civilian job search prior to being discharged or released from active-duty service, so they may not yet have a DD-214 or DD-215. A "certification" is any written document from the Armed Forces that certifies the service member is expected to be discharged or released under honorable conditions within 120 days after the certification is submitted by the applicant. The certification letter should be on letterhead from the relevant military branch of service and contain:

1. Military service dates including the expected discharge or release date, and
2. Character of service.

If the certification expires, an agency must request other documentation (e.g., DD-214) that demonstrates the candidate is a preference eligible ([5 U.S.C. § 2108](#)) before VP can be awarded.<sup>94</sup>

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<sup>92</sup> [5 U.S.C. § 2302\(a\)\(2\)\(C\)\(ii\)](#).

<sup>93</sup> [38 U.S.C. § 4303\(5\)-\(6\)](#); [5 C.F.R. Part 353](#). [OPM VET Guide](#), "Restoration after Uniformed Service: Basic Entitlement."

<sup>94</sup> [OPM Vet Guide](#), "A word about the VOW (Veterans Opportunity to Work) Act."

### 6.2.1.1.3 Timely File a Complete Job Application within Federal Guidelines (VP)

Hiring authorities are responsible for accepting, retaining, and considering their applications as required by law and regulation, regardless of whether its agency uses case examining or maintains a continuing register of eligibles. The list below outlines reasons a late job application might still be considered proper.

#### Acceptable Reasons Not to File a Timely Job Application<sup>95</sup>

1. *10-Point Preference Eligibles*: May file a job application with an agency at any time (*see* [5 C.F.R. § 332.311](#)).
  - a. If the applicant is qualified for positions filled from a register, the hiring authority must add the candidate to the register, even if the register is closed to other applicants.
  - b. If the applicant is qualified for positions filled through case examining, the agency will ensure the applicant is referred on a certificate as soon as possible.
2. *Preference Eligible*:
  - a. Entitled to be reentered on each register (or its successor) if they apply within 90 days after resignation without delinquency or misconduct from a career or career-conditional appointment ([5 C.F.R. § 332.321](#)).
  - b. Entitled to be entered on an appropriate existing register if:
    - i. Apply within 90 days after a furlough or separation without delinquency or misconduct from a career or career-conditional appointment, or
    - ii. Found eligible to apply after successfully appealing a furlough or discharge from a career or career-conditional appointment ([5 C.F.R. § 332.313](#)).
3. *Someone Who Lost Eligibility for an Appointment from a Register Due to Active Duty in the Armed Forces*: Entitled to be restored to the register (or its successor) and receive priority consideration when certain conditions are met ([5 C.F.R. § 332.322](#)).
4. *Someone Unable to File for an Open Competitive Examination or Appear for a Test Due to Service in the Armed Forces, Hospitalization, or Certain Overseas Service*:
  - a. May file after closing if the register of eligibles still exists.
  - b. Relevant hospitalization may continue for up to one year following discharge from active duty.
  - c. Applies to someone unable to file because of “overseas service with a federal agency or with an international organization in which the United States Government participates ([5 C.F.R. § 332.312](#)).
5. *Federal Employee Unable to File for an Open Competitive Examination or Appear for a Test Due to Active Reserve Duty Continuing Beyond 15 Days*: May file after the closing date of an existing register ([5 C.F.R. § 332.312](#)).

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<sup>95</sup> [OPM Vet Guide](#), “Filing Late Applications;” *see also*, [5 U.S.C. §§ 3305, 3314-3316](#).

#### 6.2.1.1.4 Qualify for the Position, As Determined by the Hiring Authority (VP)

Even if a person has preference eligible status, they must meet all the other position qualifications to get the job. The investigation should determine the hiring process. This doesn't mean accepting what happened as accurate. Instead, it means comparing the hiring process requirements against what happened during the hiring process for this claimant and this position. As the investigator, compare the resume to the position posting to see if the qualifications match. All required qualifications must match. You'll also want to ask the hiring team or agency's HR team how they analyzed the claimant's resume against the job posting.

#### **Additional Resources:**

- [OPM Vet Guide](#), “Crediting Experience of Preference Eligibles,”<sup>96</sup> “Physical Qualifications,”<sup>97</sup> and “Age Qualifications.”
- NVTI 9606 VP and VEOA Investigators Participant Guide, Lesson 3: Qualifications and Ranking, pp. 38-56.
- [Qualifications Standard for the General Schedule](#).

#### 6.2.1.2 Claimant Wasn't Interviewed and/or Selected for the Position (VP)

For the claimant to qualify, the hiring agency must have taken an adverse action against the claimant.<sup>98</sup> The most common example of an adverse action is not selecting the claimant when VP might otherwise have put the claimant at the top of the selection pool. Another way might be not interviewing a claimant when VP might otherwise have placed the claimant on the list of those selected for interviews.

#### 6.2.1.3 Claimant is Preference Eligible (VP)

The claimant must be [preference eligible](#) ([5 U.S.C. § 2108\(3\)](#); [5 U.S.C. § 3304\(f\)\(1\)](#)).

#### 6.2.1.4 Claimant Had their VP Improperly Applied During the Hiring Process (VP)

The investigation will ask you to put yourself into the shoes of the rater and selector for this position, as part of determining if preference was applied correctly. You'll need to analyze how preference was applied at each step to determine if the agency properly followed the hiring process. This requires understanding the CATRAT process, certificate, and how to select, pass over, or disqualify those on the certificate properly.

With CATRAT, the applicants are referred for selection in quality groups, rather than giving each candidate a numerical score.<sup>99</sup> Preference eligibles are listed ahead of non-preference

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<sup>96</sup> [5 U.S.C. § 3331](#), [5 C.F.R. § 337.101](#).

<sup>97</sup> [5 U.S.C. § 3312](#), [5 C.F.R. § 339.204](#).

<sup>98</sup> [5 U.S.C. Chapter 75](#), [5 C.F.R. Part 752](#).

<sup>99</sup> [5 U.S.C. § 3319](#).

eligibles within each category. VP is absolute within each category. For further instruction about how to conduct the CATRAT process and develop a proper certificate, refer to the [Delegated Examining Operations Handbook](#), Chapter 5.

#### 6.2.1.4.1 Rule of Three and Veteran Pass Overs (VP)

The “rule of three” means selection must be made from the highest three eligibles on the certificate who are available for the job. An agency may not pass over a preference eligible to select a lower ranked non-preference eligible or a non-preference eligible with the same or lower examination score. The following examples demonstrate how this works:

- If the top person on a certificate is a [CP or CPS eligible](#) and the second and third persons are TP eligible, the appointing authority may choose any of the three.
- If the top person on a certificate is a CP or CPS eligible, the second person is non-preference eligible, and the third person is a TP eligible, the appointing authority may choose either of the preference eligibles. The appointing authority may not pass over the CP or CPS eligible unless there’s a sustained objection.

#### 6.2.1.4.2 Disqualifications (VP)

An agency can object to the preference eligible for adequate reason. For example, by reason of medical disqualification ([5 C.F.R. Part 339](#)) or suitability disqualification ([5 C.F.R. Part 731](#)). Agencies have delegated authority for determining suitability.<sup>100</sup> The reason must be recorded. Based on the objection, OPM, or the agency under its delegated authority, must sustain the objection (i.e., reason) for it to become a disqualification. The preference eligible (or their representative) may request a copy of the agency’s reasons for the proposed pass-over and the examining office’s response.

##### 6.2.1.4.2.1 Preference Eligibles (Disqualifications, VP)

OPM must approve the sufficiency of an agency reason to medically disqualify or pass over a preference eligible to select a non-preference eligible ([5 C.F.R. Part 339](#)). There’s no requirement for an appointing official to consider:

- A candidate three times passed over with appropriate approval or
- A candidate already considered for three separate appointments from the same or different certificates for the same position ([5 U.S.C. §§ 3317, 3318](#); [5 C.F.R. §§ 332.402, 332.404, 332.405, 332.406](#), and [Parts 339](#) and [731](#)).

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<sup>100</sup> [5 C.F.R. Part 731](#).



In each of these considerations, the person must have been within reach under the rule of three, and a selection must have been made from that group of three. Also, the preference eligible is entitled advance notice of discontinuance of the certificate.

#### 6.2.1.4.2.2 30 Percent or More Disabled Veterans (Disqualifications, VP)

Special provisions apply if an agency wants to pass over a 30 percent or more disabled veteran to select a non-preference eligible or disqualify the veteran based on the position's physical requirements. OPM may not delegate its authority under these provisions.

1. Agency must notify both OPM and the disabled veteran at the same time, which includes the reasons for the determination and the veteran's right to respond to OPM within 15 days of the notification.
2. Agency must provide evidence to OPM that the notice was sent timely to the disabled veteran's last known address.
3. OPM must decide on the disabled veteran's physical ability to perform the position's duties, considering any additional information provided by the veteran.
4. OPM will notify both the agency and the disabled veteran of its decision. The agency must follow OPM's decision.
  - a. If OPM agrees that the veteran can't fulfill the physical requirements of the position, the agency may select another person from the certificate of eligibles.
  - b. If OPM finds the veteran able to perform the job, the agency may not pass over the veteran ([5 U.S.C. §§ 3312, 3318](#)).

#### 6.2.1.4.2.3 30 Percent or More Disabled Veterans in Excepted Service Employment (Disqualifications, VP)

Title 5 requires an appointing authority in the executive branch to select from among qualified applicants for appointment to excepted service vacancies in the same manner and under the same conditions [required for the competitive service](#) ([5 U.S.C. § 3320](#); [5 C.F.R. Part 302](#)).

Appointments made with the advice and consent of the Senate are exempt. If an agency wishes to pass over a 30 percent or more disabled veteran for a non-preference eligible, it must send its objection and reason to OPM, following the steps in the [preceding section](#). This doesn't apply to hiring for positions (e.g., attorneys) exempt from Part 302 procedures<sup>101</sup> pursuant to [5 C.F.R. § 302.101\(c\)](#). This doesn't overturn OPM's standard that agencies filling positions exempt from Part 302 need only follow VP as far as administratively feasible. They must consider veteran status as a positive factor when reviewing applications.

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<sup>101</sup> Part 302 procedures apply only to excepted service positions covered under Title 5, United States Code, which have been excepted from the competitive service by the President or OPM.

### 6.2.1.5 Claimant Timely Filed Their Claim with VETS (VEOA and VP)

MSPB case law indicates a claimant can't simply wait until they have formal notice of a potential VEOA or VP violation to file their claim. In other words, the claimant must be diligent in filing a claim from the time they become aware (or should have become aware) of their non-selection. Determine whether the claimant filed a timely claim within 60 calendar days from the time of the potential violation ([5 U.S.C. § 3330a\(a\)\(2\)\(A\)](#)). If it has been more than 60 calendar days, draft and send a letter to the claimant telling them that VETS determined the claim was late and intends to close the case pursuant to 5 U.S.C. § 3330a(a)(2)(A) unless they provide additional information to refute this determination or provide a basis for waiving the 60-day deadline. VETS gives the claimant 10 calendar days to contact VETS and provide information explaining why their claim was late.

#### 6.2.1.5.1 Claimant Doesn't Respond (VEOA and VP)

If you don't receive an answer within 10 calendar days, notify the claimant via [authorized carrier](#) that you must [close the claim as untimely](#). The [closing letter](#) must advise the claimant of their MSPB appeal rights.

#### 6.2.1.5.2 Claimant Responds Explaining Late Filing (VEOA and VP)

If the claimant provides information explaining the late filing, you must carefully review the information to determine whether the late filing should be excused. **Waivers of the filing deadline should be granted sparingly.** To determine if a waiver is appropriate, consider:

1. The agency didn't notify the claimant timely that they weren't selected for the position.
2. The claimant was away on uniformed service in a situation that prevented their knowledge that their VEOA or VP rights might have been violated.
3. Claimant diligently filed a claim once they became aware of the alleged action.
4. Claimant suffered from a mental incapacity that prevented them from filing a timely claim.
5. VETS or the hiring agency provided the claimant with misleading information or VETS mishandled the claim.
6. The claimant filed timely, but in the wrong forum.
7. The claimant has in some exceptional way been prevented from exercising their rights.

A waiver may be appropriate if the claimant can satisfy one of the conditions. Compare the information provided by the claimant (including any necessary follow-up responses) to the factors above. Summarize your analysis in a Word document, and share it to your SI, who may involve the DVET, as appropriate. If the claimant's response doesn't meet the conditions above, send the claimant a [closing letter](#) via [authorized carrier](#). The closing letter must advise the claimant of their MSPB appeal rights.

## 6.2.2 VP Eligibility in RIF (VP)

Under RIF procedures, agency employees compete to retain their jobs. Competition is based on qualifications and on retention standing. Employees are ranked on retention registers for competitive levels (groups of similar jobs) based on four factors: tenure, VP, length of service, and performance. Actions have a domino effect. A RIF occurs when an agency is obliged to demote, separate, or furlough one or more employees because of lack of work, shortage of funds, or reorganization. A RIF might come from Congress, the President, the OMB, or from an agency head or official authorized to make such a decision.

Employees in temporary positions don't compete under the RIF, as they serve at the will of the agency and aren't covered by RIF procedures. The agency separates them, as necessary. Excepted service positions also don't compete. However, the agency may choose to conduct a separate RIF for their excepted service employees, using similar groups and subgroups as for the competitive service. Remember that this includes VRA appointees, while still in the first two years of appointment.

### **Additional Resources:**

- [OPM Vet Guide](#), “Veterans’ Preference in Reduction of Force,” pp. 14-20.
- NVTI 9606 VP and VEOA Investigators Participant Guide, Lesson 7, pp. 92-101.

### 6.2.2.1 Eligibility for VP in RIF: How to Order the Retention Register (VP)

Determinations of VP eligibility within a RIF are made following the requirements laid out in [Eligibility for VP in Competitive Examining](#). Note that retired members of a uniformed service must meet an additional condition to be considered preference eligible in a RIF ([5 U.S.C. § 3501](#); [5 C.F.R. § 351.501](#)). The condition is rank-dependent. If this applies to the circumstances of your case, see [OPM Vet Guide](#), page 15, for more detailed instruction.

In addition to the standard eligibility requirements, a person's service computation date (SCD), used to help determine their preference level, can be adjusted based on performance appraisals on record. Many investigations require that you go over how candidates were scored and placed on the retention register. For that reason, the subsections below explain how someone can move up on a list based on their SCDs and past performance appraisal ratings.

#### 6.2.2.1.1 How SCDs and Performance Appraisal Ratings Can Increase Scores (VP)

Employees on each retention register are listed in order of the SCD with the tenure group and subgroup to which they belong. The “oldest” adjusted SCD dates are listed first because they represent more years of service. Individuals can receive adjusted SCD dates based on their length of uniformed service and their three most recent rating appraisals of record during the past four years. The performance appraisal scores can add years of service to the SCD:

- Add 20 years of service for each annual rating of Level 5 (Outstanding or equivalent).

- Add 16 years of service for each annual rating of Level 4 (Exceeds Fully Successful or equivalent).
- Add 12 years of service for each annual rating of Level 3 (Fully Successful or equivalent).
- Note: Employees with fewer than three ratings within the past four years will still get credit based on the appraisals they do have during that time. If there's only one appraisal, use that score.

Employees who have no performance appraisals on record for the past four years will get the modal rating. This is a rating most assigned for the organization, as determined by the agency. An agency can consider a mix of patterns of summary levels and provide additional retention service credit for performance if the agency has employees in a competitive area who have “ratings of record” (i.e., signed performance rating on file with the agency) under more than one pattern of summary levels. For an agency to do this, they express these ratings in additional years of service following the guidelines in [5 C.F.R. § 351.504\(e\)](#).

Ultimately, the number of years assigned using the guidance outlined here is added together and divided by the number of appraisals. If this results in a fraction, the number is rounded up to the next whole number.

**Example:**

Year 1 Rating: Outstanding (20 years)  
Year 2 Rating: Fully Successful (+12 years)  
Year 3 Rating: Outstanding (+20 years)  
= 52 years divided by 3 (number of ratings)  
GRAND TOTAL: 18 years

6.2.2.1.2 Process to Adjust the Candidate's Score (VP)

The number of additional years the employee receives based on their performance appraisal ratings on record gets subtracted from the current SCD, giving additional years of service.

**Example:**

- Marcus' SCD on record was 01-05-95. Marcus received 18 additional years based on three recent performance ratings on record.
- Take 01-05-95 and subtract 00/00/18 (the additional 18 years).
- The final adjusted SCD for the retention register is 01-05-77.

6.2.2.2 RIF Retention Standing: Two Rounds of Competition (VP)

There are two rounds of competition in a RIF. In the first, employees compete to stay in the competitive level. In the second round, employees compete for assignment to positions in different competition levels based on bump and retreat rights.

#### 6.2.2.2.1 Round 1: Compete to Stay (VP)

When a position in a competitive level is abolished, employees are released from the retention register in the inverse order of their retention standing. This means the employee with the lowest standing is the individual reached (i.e., set to be separated or furloughed) for a RIF action. All employees in Group III are released before those in Group II, and so on. Within the subgroups, all employees in Subgroup B are released before employees in Subgroup A, and so on. Special exceptions can be made in certain instances ([5 U.S.C. § 3502](#)). Any employee reached for release out of this regular order must be notified of the reasons.

#### 6.2.2.2.2 Round 2: Compete to Move Levels (Bump and Retreat, VP)

Assignment rights mean the right of an employee released from their competitive level to be assigned by bump or retreat to a different position in the second round of competition. A released employee who has no assignment rights is separated or furloughed.

To be eligible for assignment rights ([5 C.F.R. § 351.701\(a\)](#)), the released employee must:

1. Hold a position under a competitive service appointment;
2. Be in retention tenure Group I or II; and
3. Have a current performance rating of at least Minimally Successful or the equivalent.

A bump is the assignment of an employee to a position held by another employee in a different competition level who is in a **lower** tenure group, or in a **lower** subgroup within the *same* tenure group. The released employee must be qualified for a position. The position may be a position the employee hasn't previously held. The position must be at the same grade, or within three grades or grade intervals, of the employee's present position.

A retreat is the assignment of an employee to a position held by another employee in a different competitive level who has **lower** retention standing in the **same** subgroup. The position must be at the same grade, or within three grades or grade intervals, of the employee's present position. An employee in retention Subgroup AD (CPS veteran) has expanded retreat rights to positions up to five grades or grade intervals lower than the position held by the released employee. The position to which the employee retreats must also be the same (or an essentially identical position) previously held by the released employee in any federal agency on a permanent basis. An employee with a current annual performance rating of Minimally Successful only has retreat rights to positions held by employees with the same or lower rankings.

The grade limits of an employee's assignment rights are determined by the grade progression of the position from which the employee is released. For example, an employee released from a GS-11 Biologist position has bump and retreat rights from GS-11 through GS-5 (three two-grade intervals). A GS-9 Accounting Technician has bump and retreat rights down to a GS-6 (three grade intervals).

## Grade Structure System for GS Positions: Normal Line Progression for Federal Jobs<sup>102</sup>

- *Clerical and Administrative Support Positions:*
  - One-Grade Interval Progression – GS-2 / 3 / 4 / 5 / 6 / 7 / 8 / 9, etc.
  - Examples: Administrative Assistant, GS-303; Program Assistant, GS-303; HR Assistant, GS-203.
- *Technical and Medical Support Positions:*
  - One-Grade Interval Progression – GS-2 / 3 / 4 / 5 / 6 / 7 / 8 / 9 / 10 / 11 / 12
  - Examples: Engineering Technician, GS-802; Biological Science Technician, GS-1311.
- *Administrative and Managerial Positions:*
  - Two-Grade Interval Progression: GS-5 / 7 / 9 / 11 / \*12 / 13 / 14 / 15
  - Examples: HR Specialist, GS-201; Administrative Officer, GS-301; Finance Specialist, GS-501; Environmental Protection Specialist, GS-028; Management Analyst, GS-343.
- *Professional and Scientific Positions:*
  - Two-Grade Interval Progression: GS-5 / 7 / 9 / 11 / \*12 / 13 / 14 / 15
  - Examples: Civil Engineer, GS-810; Accountant, GS-510; Community Planner, GS-020; Librarian, GS-1410.

\*Notice that after GS-11, the 2-grade interval positions begin advancing in single-grade fashion.

### 6.2.2.3 Reemployment Priority for Separated Employees (VP)

After a RIF, separated competitive service employees in tenure Groups I and II are listed on the agency's Reemployment Priority List. The agency generally may not hire from most outside sources when qualified employees are on the List. In hiring from the List, preference eligibles receive preference over other employees. Excepted service employees separated by a RIF receive similar priority in excepted employment.<sup>103</sup>

### 6.2.3 VEOA and VP Eligibility in SAAs (VEOA and VP)

Dozens of hiring authorities can be used to fill federal jobs non-competitively. Many of them don't require that agencies post announcements before considering applicants. Note that the Pathways Hiring Program for student interns and Presidential management interns *does* require agencies post the announcements before considering applicants. SAAs that VETS investigators might encounter include:

- VRA Authority,
- VEOA Authority,

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<sup>102</sup> The OPM website maintains information on [General Schedule Classification and Pay](#), which includes several helpful sub-pages (e.g., [salary tables](#), [position tables](#)).

<sup>103</sup> [5 U.S.C. § 3315](#); [5 C.F.R. Part 330, Subpart B](#), and [Part 302](#).

- 30 Percent Disabled Veteran Appointment Authority,
- Disabled Veterans Training Program, and
- Pathways.

This Manual outlines the two most common (VRA Authority and VEOA Authority) in remaining sections of this chapter.

**Additional Resources:**

- [OPM Vet Guide](#), “Special Appointing Authorities for Veterans,” pp 20-26.
- NVTI Course VP and VEOA Investigators 9606 Participant Guide, Lesson 6: Special Hiring Authorities for Veterans and Others, pp 83-91.

**6.2.3.1 VRA Authority (or VP in Excepted Service Examining)**

VRA is a special authority that allows agencies to appoint eligible veterans without competition to positions at any grade level through GS-11, or equivalent. A veteran who is eligible for a VRA is not automatically eligible for VP. If the agency has more than one VRA candidate for the same job, and one (or more) are preference eligible, the agency must apply the VP procedures prescribed in [5 C.F.R. Part 302](#) (excepted service examining). After two years of satisfactory service, the agency must convert the veteran to career or career-conditional appointment, as appropriate. Provided the person is otherwise eligible, there’s no limitation on the number of VRAs the person may receive.

**6.2.3.1.1 VRA Eligibility (VP)**

To be eligible for a VRA, the veteran must have an honorable or general discharge. In addition, they must meet one of the following criteria:

- Disabled veteran; or
- Veteran who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge was authorized; or
- Veteran who, while serving on active duty in the Armed Forces, participated in a U.S. military operation for which an Armed Forces Service Medal was awarded; or
- Recently separated veteran ([38 U.S.C. § 4214](#)).

Veterans declaring that they have eligibility based on a medal or badge must be already in receipt of the medal or badge. Under the criteria above, not all TP preference eligible veterans may be eligible for a VRA. For example, a veteran who served during the Gulf War from August 2, 1990, through January 2, 1992, would be eligible for VP solely based on that service. Service during that time, in and of itself, doesn’t confer VRA eligibility on the veteran unless they also meet one of the above eligibility criteria.

#### 6.2.3.1.2 Making VRAs (VP)

Ordinarily, an agency may simply appoint any VRA eligible who meets the basic qualification requirements for the position, without having to announce the job or rate and rank the candidates. If an agency has two or more VRA candidates and one or more are preference eligible, then the agency must apply VP following the requirements for excepted service examining ([5 C.F.R. Part 302](#)). An agency must consider all VRA candidates on file who are qualified for the position and could reasonably expect to be considered for the opportunity. The agency can't place VRA candidates in separate groups or consider them as separate sources to avoid applying VP or reach a favored candidate.

*Example:*

- Applicant A is VRA eligible based on receiving an Armed Forces Service Medal. This medal doesn't confer VP eligibility.
- Applicant B is VRA eligible based on being a disabled veteran. This confers VP eligibility.
- Both are VRA eligible, but only one is VP eligible. Applicant B receives the VRA.

Refer to the [OPM Vet Guide](#), "Making Appointments," for more information about the terms and conditions of employment, appeal rights, non-permanent appointments based on VRA eligibility, 30 percent or more disabled veterans,<sup>104</sup> and disabled veterans enrolled in a VA training program.<sup>105</sup>

#### 6.2.3.2 VEOA Appointments (or MP Examining, VEOA)

Under VEOA, agencies must allow preference eligibles or eligible veterans to apply for positions announced under MP procedures when the agency recruits from outside its own workforce. This can be referred to as a VEOA appointment or MP examining ("agency" in this context means the parent agency, e.g., Treasury, not the Internal Revenue Service; the Department of Defense, not the Department of the Army). A VEOA eligible who competes and is selected under MP procedures will be given a career or career-conditional appointment. VP doesn't apply to these appointments.

##### 6.2.3.2.1 Eligibility Criteria for VEOA Appointments (VEOA)

To be VEOA eligible for access and opportunity to compete for MP announcements, the candidate must meet the following four elements, which are described in further detail in the subsections below. A candidate must:

1. [Apply to an MP announcement open to candidates from outside the agency,](#)

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<sup>104</sup> [5 U.S.C. § 3112](#); [5 C.F.R. §§ 315.707, 316.302](#), and [316.402](#).

<sup>105</sup> [38 U.S.C. Chapter 31](#); [5 C.F.R. §§ 3.1](#) and [315.604](#).



2. [Timely file their job application](#),
3. Be [preference eligible](#) or [VEOA eligible](#), and
4. [Be denied access and opportunity to apply for the position](#).

#### 6.2.3.2.1.1 MP Advertised Outside the Agency (VEOA)

VEOA gives [preferences eligibles](#) or VEOA eligible [veterans](#) access and opportunity to apply for positions when an agency is accepting applications beyond its own workforce under MP procedures.<sup>106</sup> VP doesn't apply to MP examining. Many agencies list who can apply for a position on the job announcement in the area of consideration. Not all agencies do. All agencies must have written plans dictating how they'll handle VEOA in various hiring situations. Ask the agency for that plan to determine if they met their requirements for this element.

#### **Additional Resources:**

- [OPM Vet Guide](#), “A Word about VEOA,” pp 23-26.
- NVTI 9606 VP and VEOA Investigators Participant Guide, Lesson 4: Merit Promotion, pp 72-82.

#### 6.2.3.2.1.2 Be VEOA Eligible (VEOA)

A status applicant is a current career or career-conditional employee in the competitive civil service and a person with reinstatement eligibility based on previously having held such a position in the competitive civil service. Those who have status can apply under “internal” vacancy announcements. VEOA eligibles have status to compete alongside status applicants. They **don't** receive VP points or priority over others.

To be a VEOA eligible, an applicant must:

- Be a preference eligible or
- Be a veteran separated from the Armed Forces after three or more years of continuous active-duty service performed under honorable conditions.

Veterans released shortly before completing a three-year term are considered eligible. “Active service” means active duty in the uniformed services and includes full-time duty training; annual training duty; full-time National Guard duty; and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the military department concerned. When establishing eligibility, consider the information outlined in [VEOA and VP Relevant Citations Explained](#).

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<sup>106</sup> [5 U.S.C. §§ 3304, 3330](#); [5 C.F.R. §§ 213.3202\(n\), 335.106](#).

### 6.2.3.2.1.3 Denied Access and Opportunity to Apply for the Position (VEOA Improperly Applied)

VEOA access is also called “access and opportunity to apply for MP.”<sup>107</sup> VEOA is specifically intended to open opportunities to veterans that would otherwise be closed to them because the hiring agency was limiting its announcement to “status” candidates. Agencies that announce a permanent competitive service job under MP for which they’re accepting candidates outside their own agency must make it known in the announcement that VEOA candidates can apply. (VEOA eligibles can’t apply if the agency limits the vacancy announcement to current agency employees only.)

#### Access Eligibility:

- Must be a VP eligible ([OPM's preference reference codes](#) TP, XP, CP, or CPS), or
- Most recent military separation must be an honorable discharge after substantially completing three or more years of service ([5 U.S.C. § 3304\(f\)\(1\)](#)).

OPM has clarified that “substantially” means a veteran released under honorable conditions shortly before (i.e., a few days) completing the three-year tour is eligible. Active service, as used here, is different from “active duty.”<sup>108</sup> Under the VEOA definition, a former National Guard member who was honorably separated after three-plus years of continuous active service meets this criterion. This same service doesn’t qualify for VP unless the member had a compensable disability as a result of the service.

### 6.2.3.2.2 Making Appointments (VEOA)

MP Examining covers roughly three paths whereby an agency can appoint a VEOA eligible candidate. First, the agency could [post an MP “internal” vacancy announcement](#). Second, the agency could [post a delegated examining unit \(DEU\) “external” vacancy announcement](#). Third, the agency could [post two separate vacancy announcements: one DEU and one MP](#).

#### 6.2.3.2.2.1 MP “Internal” Vacancy Announcement (VEOA)

An agency might seek to fill a competitive service vacancy by considering internal candidates (i.e., those already within the federal service system). Agencies can limit the area of consideration for merit promotion if they receive sufficient well-qualified candidates so that fair competition occurs. VEOA eligibility is not subject to geographic limitations, even if the MP announcement is limited in this way.<sup>109</sup> VEOA can’t be used to circumvent time-in-grade restrictions.

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<sup>107</sup> [OPM Vet Guide](#), “A Word about VEOA.”

<sup>108</sup> [5 U.S.C. § 3304\(f\)\(1\)](#).

<sup>109</sup> See OPM Memorandum for Chief Human Capital Officers (CHCO), “[Consideration under the Veterans Employment Opportunities Act of 1998](#).”

Only status candidates within the area of consideration and VEOA eligibles can apply to MP announcements. This means there are two eligibility criteria to meet: (a) candidate lives within the area of consideration and (b) candidate is VEOA eligible. There are a few exceptions where federal organizations or agencies have entered into [Interchange Agreements](#) with OPM. These agreements might allow the agency’s employees to compete under federal agency MP announcements. They might also cover the new hiring authority for military spouses affected by a Permanent Change of Station (PCS) move.

**What You Need to Know:**

- VP points and/or priority don’t apply.
- The applicant ranking process results in a score for each candidate. The hiring agency must conduct a job analysis for the position and develop job-related rating criteria to rank candidates.
- The applicant score is used as the basis for making determinations as to who gets into the “best qualified group” (BQ) for selection consideration.
- The selection certificate lists the BQ group in alphabetical order. All are within reach for selection.

6.2.3.2.2.2 Delegated Examining Unit (DEU) “External” Vacancy Announcement (VEOA)

An agency might seek to fill a position by posting an announcement to “all sources.” An “all sources” announcement allows agencies to consider applicants under a variety of other appointing authorities, such as MP, VRA, or Schedule A of the excepted service. In these announcements, the VEOA eligible is treated the same as any other applicant. If the VEOA eligible is qualified and within reach for referral to select, they’re referred on the DEU list of eligibles. If the agency chooses to consider VEOA eligibles with MP candidates, they must include specific application instructions for the VEOA eligible in the announcement. The instructions must be consistent with the agency’s policies and procedures for accepting and processing applications.

6.2.3.2.2.3 Post Two Separate Vacancy Announcements: MP and DEU (VEOA)

An agency might post two separate vacancy announcements for the same position: one MP announcement and one DEU announcement. The VEOA eligible may apply for both announcements, as the announcements were posted separately. The VEOA eligible has two opportunities to be considered for one position. If eligible under the application procedures, they must be referred and considered on both lists. The agency can’t remove the VEOA eligible from either list to select. This means the agency may not deny consideration under one referral (e.g., DEU) because the VEOA eligible is being considered under a different referral (e.g., MP).

## Chapter 7 | Document and Organize Everything Received and Collected Using the Case Investigative Plan (CIP) and VCMS Report of Investigation (ROI) Tools

Always keep the big picture of your investigation in mind. The investigator should:

- Correctly identify all potential USERRA, VEOA, or VP violations in the case.
- Collect sufficient evidence to justify the determination.
- Apply and analyze the evidence under the proper legal standard.
- Maintain a complete and fungible case file. (Could an experienced investigator begin working on the case at any point without having to rework it?)
- Complete the investigation within the statutory deadline, or within a time extension agreed to by the claimant.<sup>110</sup>

The CIP is used in VEOA and VP cases; the ROI is used in USERRA cases. Note that the ROI is a consolidated report of information and data entered into the various VCMS tools. Use all the VCMS tools to create a complete and accurate case file.<sup>111</sup> Use the ROI and CIP to evaluate the overall case file to see which portions of the investigation you have completed and/or may need more attention.

### 7.1 Document Everything Received and Collected

Information can be obtained not only from the employer, the claimant, and [witnesses](#), but also from federal and state agencies, unions, military organizations, and others. Request information and supporting documentation from all sources as early as possible during the investigation. Refer to and complete the VCMS Chronology of Facts, Documents, Eligibility, Issue Analysis, Potential Violations, and Witnesses pages to record, capture, and analyze the evidence and information obtained or to be obtained in the case. If information is not provided promptly and voluntarily, contact your RO to discuss using a [subpoena](#) to obtain the information.

#### 7.1.1 Protect the Privacy of Information in Your Care

[Personally Identifiable Information](#) (PII), as defined by the Office of Management and Budget (OMB) in [Memorandum M-17-12](#), is “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that’s linked or linkable to a specific individual. Because there are many different types of information that can be used to distinguish or trace an individual’s identity, the term PII is necessarily broad. It’s important to recognize that information that’s not PII can become PII whenever additional information becomes available—in any medium or from any source—that would make it possible to identify an individual.” DOL makes two additional distinctions about PII:

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<sup>110</sup> [38 U.S.C. § 4322\(f\)](#). See also, NVTI 9605 USERRA Investigators Participant Guide, p 38.

<sup>111</sup> [VCMS Agency User Guide](#), Chapter 4 “The VCMS Case File.”

- *Non-Sensitive PII* is PII whose disclosure can't reasonably be expected to result in personal harm. Examples include first/last name, email address, business address, business phone, and general education credentials that are not linked to or associated with any protected PII.
- *Protected PII* is PII whose disclosure could result in harm to the individual whose name or identity is linked to that information. Examples include, but are not limited to, social security number; credit card number; bank account number; residential address; residential or personal phone; biometric identifier (e.g., image, fingerprint, iris); date of birth; place of birth; mother's maiden name; criminal records; medical records; and financial records. The conjunction of one data element with one or more additional elements increases the level of sensitivity and/or propensity to cause harm in the event of compromise.

Information permitting the physical or online contacting of a specific individual is the same as PII. This information can be maintained in either paper, electronic, or other media.

Safeguarding sensitive information is a critical responsibility that must always be taken seriously. DOL internal policy specifies the following security policies for the protection of PII and other sensitive data: "It's the responsibility of the individual user to protect data to which they have access. Users must adhere to the rules of behavior defined in applicable Systems Security Plans, and DOL and agency guidance. DOL federal employees and contractors who have access to personal information shall respect the confidentiality of such information, and refrain from any conduct that would indicate a careless or negligent attitude toward such information. DOL employees and contractors must also avoid office gossip and shouldn't permit any unauthorized viewing of records contained in a DOL system of records."<sup>112</sup>

Only individuals who have a "need to know" in their official capacity shall have access to such systems of records. The loss of PII can result in substantial harm to individuals, including identity theft or other fraudulent use of the information. Because DOL employees and contractors may have access to PII concerning individuals and other sensitive data, we have a special responsibility to protect that information from loss and misuse. With these responsibilities, federal employees and contractors should ensure to:

1. Safeguard DOL information always.
2. Obtain DOL management's written approval prior to taking any DOL sensitive information away from the office.
  - a. The DOL manager's approval must identify the business necessity for removing such information from the DOL facility.
  - b. When approval is granted to take sensitive information away from the office, the employee must adhere to the security policies described above.

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<sup>112</sup> Department of Labor (DOL), [Guidance on the Protection of Personal Identifiable Information](#).

3. If any employee or contractor experiences or becomes aware of a disclosure, theft, or loss of PII, they must immediately inform their DOL contract manager or the VETS Information Security Officer (ISO) (Refer to LaborNet for the name of the [current VETS ISO](#)).

In the event an employee or contractor's DOL contract manager is not available, they should immediately report the theft or loss to the DOL Computer Security Incident Response Capability (CSIRC) team at [dolcsirc@dol.gov](mailto:dolcsirc@dol.gov).

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**Pro Tip:** If you or your case file are subject to either a [subpoena](#) or [FOIA request](#), stop and immediately contact your supervisor and SI, who will loop in the RSOL or any other appropriate DOL staff to complete these requests timely.

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#### 7.1.1.1 Use Privacy Act Releases for Federal Agencies

When requesting medical, military, employment, or other records needed for claim processing that are maintained by a federal agency, investigators should have the claimant sign a [Federal Privacy Act release form](#).<sup>113</sup>

#### 7.1.1.2 Use Private Physician or Hospital Forms to Obtain Records

If the claimant agrees and signs a [release form](#), you may use that signed form to obtain records from physicians and hospitals.<sup>114</sup> Requests for medical information must be narrow, specific, and date-limited to relevant information. Bear those in mind as you draft requests.

#### 7.1.1.3 Use Unemployment Compensation Claim Forms to Obtain Records

When necessary, obtain these release forms from the appropriate state office responsible for Unemployment Compensation Claims. We recommend you search for the forms from the state's Workers' Compensation Board, or equivalent. Many states offer downloadable versions of their forms. Download the form from a state-run website, not a private website.

### 7.1.2 Create Effective and Organized Case Documentation

Information can be obtained not only from the employer, the claimant, and [witnesses](#), but also from federal and state agencies, unions, military organizations, and others.

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<sup>113</sup> [DOL Manual Series \(DLMS\) 7-1300](#). The form referenced is a dynamic PDF. For best viewing, download and edit a local copy using Adobe, rather than an internet browser.

<sup>114</sup> The form referenced is a dynamic PDF. For best viewing, download and edit a local copy using Adobe, rather than an internet browser.

Documentary evidence is only part of the evidence you need to collect in your investigation. Interviews are the most effective and preferred means of gathering information from a claimant, employer, or witness. Refer to and complete VCMS Witnesses page about persons with relevant knowledge interviewed or to be interviewed in the case.<sup>115</sup> During the investigation, conduct in-person interviews of all available persons who may have knowledge of relevant facts, if practicable. [Witnesses](#) should be interviewed separately. A signed statement from each person who supplied relevant information should be sought at the end of the interview. Persons interviewed should understand that signing the statement is voluntary. The claimant shouldn't have access to the records of other employees and shouldn't be present when a witness is being interviewed.

For specific instructions on both methods, refer to:

- [Write Effective Requests for Gathering Evidence](#), and
- [Structure Effective Meetings and Conferences](#).

#### 7.1.2.1 File Maintenance

VETS investigators must keep careful records of all contacts and attempted contacts with all parties during all stages of the investigation. Your case files might later be used in federal court or an MSPB hearing to assist in litigation involving the claimant and employer. Required complaint, release, and other official forms must be filled out completely by the claimant (e.g., Form 1010, Privacy Act Release form). All letters and other documents gathered during an investigation must be filed and safeguarded. The claimant's original documents, such as the Form DD-214 or DD-215 and certificates, should be copied and uploaded to the VCMS case file. In the exceedingly rare circumstances that you receive an original, hard-copy document, upload it into VCMS and return the originals to the sender at your earliest convenience (i.e., considering the volume of documentation and access to scanning equipment).

The following legal considerations apply regarding file preparation and maintenance:

- Upload hard-copy correspondence, as well as all other hard-copy documents related to the case, as PDF documents in VCMS.<sup>116</sup>
  - Use the "Action Date" within VCMS to record the date the document was received.
  - The naming convention for the uploaded documents will add "Action Date" as a prefix on the document name with YYYYMMDD.
  - Investigators should take steps to ensure that the final uploaded document is flattened (i.e., doesn't contain form fields, controls, or embedded documents). For questions about this, email NO Senior Compliance Analyst for further instruction.

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<sup>115</sup> [VCMS Agency User Guide](#), Witnesses.

<sup>116</sup> [VCMS Agency User Guide](#), Upload Documents.

- The “Action Date” for email messages should be consistent with a header or footer containing a date.
- Outgoing documents and documentation of contacts and attempted contacts with the employer, claimant, or other interested parties should always be dated.
- Don’t write on or highlight incoming hard-copy documents. If you need to write on an incoming hard document for working purposes, upload a copy of the file under a different document name, and file it as an “internal” document. In this way, you can alter or modify the internal document copy, while maintaining the integrity of the external label document. You can also highlight that internal document. Analysis of lengthy or technical documents should be recorded on a [VETS Form 1063](#)<sup>117</sup> and placed in the file on top of the analyzed document.
- Don’t editorialize when writing Form 1063. Stick to the facts. Separate Forms 1063 should be used to document each contact and attempted contact.
- Don’t discard any documents or information forwarded by outside parties, including the claimant and employer, from the case file.
- Obtain signed, first-person statements from all [witnesses](#) on a Witness Statement form.
  - If this is not possible, memorialize the conversation and email or send it to the witness (in PDF whenever possible), asking them to correct and sign it indicating that they agree with its content.
  - Remind the witness to cross out, write next to, and initial any edits required, or, if in electronic format, use strikethrough, and add any edits in a different color font, as required.
- If the employer refuses to put its position in writing following a phone discussion, send a confirming letter to the employer detailing the discussion, and provide the employer with an opportunity to respond.

### 7.1.2.2 Case File Organization

As of April 1, 2020, all new USERRA, VEOA, and VP investigative files are electronic and tracked using the VCMS. For cases filed on or before March 31, 2020, and for older, closed cases, you might be called upon to pull a hard-copy case file or prepare it for sharing with another agency, in a court action, or under FOIA. If you are called upon to pull a hard-copy case file, it must be organized using the following requirements before you submit it to the next person who will work on that case file:

1. The following documents should be kept on the left side of the folder:
  - a. Quality Assurance Review (QAR), CIP, and ROI forms;
  - b. Memos to file, investigative notes, or other informal materials not meant to be released as part of the official case file;
  - c. Any VETS internal memos related to investigative matters that aren’t to be released as part of the official case file, including internal email messages; and

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<sup>117</sup> [VCMS Agency User Guide](#)



- d. All communication between VETS, DOJ, OSC, and various SOL offices, including the MOR.
2. The following documents should be kept on the right side of the folder:
  - a. All case file documents.
  - b. The 1010 complaint form should always be the bottom document on the right side of the folder, even if other documents were received prior to it.
3. All documents should be filed in [reverse chronological order](#).

### 7.1.2.3 Case Notes in VCMS

The “Notes” tab in VCMS is for internal notes, where you are deliberating and deciding what information is relevant or what gaps you might need to close to complete the investigation. Your notes should include professional language, and we recommend avoiding the use of jargon and opinion. Refer to [VCMS Agency User Guide](#), Investigator Notes.

### 7.1.3 *Document All Communication Attempts (VETS Form 1063 “Report of Contact/Attempted Contact”), Findings, and Potential Investigatory Issues*

Communications with relevant persons only assist your investigation when you properly document those communications. The same goes for requests for information. If you don’t craft a strong request for information, you might receive no answer. Worse, you might receive irrelevant information and must spend the time to request the information you need again. USERRA, VEOA, and VP investigations must be completed under tight time constraints. Planning makes conducting the investigation easier. The section below outlines how best to use fax, email, and Form 1063 to support your investigation. Many of the reminders in this section are repeated for ease of use in subsections describing activities that might require the use of these communication tools, but we recommend you review and revisit this section often. These are the core tools you’ll use in every investigation.

#### 7.1.3.1 Use of Faxes and Emails

Any documents or communications (e.g., letters) you send by traditional fax should be followed up with an original. For example, if you send a letter to an employer by fax, the original letter should be annotated: (1) “copy via fax”; and (2) “original via mail.” The original letter should then be sent to the employer. You must ensure the fax receipt is attached to the copy of the letter in the case file. If the employer sends a letter or document(s) via fax, you must ensure the employer also provides copies of the original documents. Retain both the fax and the original in the case file.

Treat emails as the equivalent of letters sent on official letterhead. This means you must write them in a professional and courteous tone. Unlike traditional fax transmissions, emails need not be followed up with an original by mail, unless the email is forwarding an attached letter, in which case the original letter should then be sent to the employer. Avoid the development of

long email “chains.” All official email correspondence will include a confidentiality note that states (in general):

**CONFIDENTIAL:** The information transmitted is intended only for the person or entity to which it’s addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you think you have received this email in error, please notify me immediately by email or by phone at (XXX) XXX-XXXX.

### 7.1.3.2 Use of Phone

The phone provides a quick way to gather basic information, clarify points, verify information, obtain [witnesses](#)’ names and addresses, relay offers and counteroffers of settlement, explain administrative processing of cases, and schedule appointments. However, phone contacts should **not** be used as the exclusive or even the primary method of investigation. The importance of employer disclosures to the VETS investigator can’t be overemphasized. If properly noted and confirmed in writing by letter or witness statement, incriminating statements by supervisors or managers can be used as evidence in court.

1. All significant information obtained over the phone or otherwise obtained verbally (e.g., the employer’s position) must be documented on Form 1063.
2. Use the Form 1063 in the VCMS and enter any associated metadata fields.
3. Finally, confirm the information by follow-up correspondence (i.e., letter or email).

If there’s reason to believe the addressee might deny receipt of VETS’ correspondence, attempt to misconstrue information provided by the VETS investigator, or change their position later, the correspondence should be sent by [authorized carrier](#).

### 7.1.3.3 Form 1063 (Report of Contact)

The Form 1063 you complete becomes the documented record and potential evidence that a conversation took place. Others may see and/or work on your case file. It may eventually be used in a court proceeding. You want that form to be clear and able to stand on its own. You’ll use Form 1063 frequently throughout your investigation. On this form, you’ll prepare a summary of information about any meetings or conversations that occur.

Form 1063 is a built-in feature within VCMS. You select a VCMS tab to create a Form 1063. You can manage draft and final versions of the various Forms 1063 used in your case. You may only edit draft Forms 1063; VCMS locks finalized Form 1063s. VCMS allows filtering to display sort through the Form 1063s in your case (e.g., sort by party identification and/or draft status). VCMS allows multiple filters simultaneously. Note that VCMS will require certain data fields depending on the type of contact you select. For example, a phone contact will require you fill in a phone number to finalize the form. VCMS applies serialization and Section 508 accessibility compliance to file names. Investigators should create descriptive names for their

Forms 1063 to help them identify the documents later. VCMS will rename the documents using the required file formatting.<sup>118</sup>

There should be one Form 1063 created for each contact or attempt to contact. For example, if you conduct an onsite interview of five people, create a single Form 1063 for the onsite investigation interview day. You'll, however, also need to prepare an individual Witness Statement for each of the five people interviewed. Remember, you may attach any relevant documents to the Form 1063 in VCMS.

A well-written Form 1063 should cover the basic questions:

1. Where did the contact, or attempt to contact, occur?
2. When did the contact, or attempt to contact, occur?
3. Who did the contact, or attempt to contact, involve?
4. What, if anything, was said by the participants of the conversation during the contact, or attempt to contact? Be as precise as possible.

The first sentence should be as descriptive as possible. Any time you mention a person on a Form 1063, make sure to outline their exact details (i.e., who they are, what is the basis of their firsthand knowledge, and why is their firsthand knowledge relevant to the case). For example, "Investigator Garcia spoke with Evelyn Li, the claimant's supervisor, by phone on April 10, 2021." You also want to include whether any third parties were monitoring the conversation and anything about the conduct of the speaker. For example, what emotions did they express? Were they angry, nervous, difficult, or reluctant? What did you observe to make you think that? "Evelyn Li responded hesitantly that the claimant was a difficult employee." Remember to include details such as the time the interview was conducted or the length of the conversation.

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**Pro Tip:** VCMS includes Action Dates for every document within the system that mark the date the document became a part of the case file. For Form 1063, the Action Date is the date of the actual contact or attempt to contact.

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A Form 1063 is about a communication event. A Witness Statement is about a specific person's statement of their knowledge. [Witness](#) interviews *must* go on a Witness Statement, not a Form 1063. Use Form 1063 for the conversation to set up the interview and record both logistical and contextual information about the interview from the investigator's perspective. If the witness refuses to sign a Witness Statement, either while onsite or after sending it to them, write, "Refused to sign" at the bottom. If they don't return a signed copy of the Witness Statement

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<sup>118</sup> [VCMS Agency User Guide](#), 1063 Page. For additional tips about the VCMS 1063 page, refer to the [VCMS Fiscal Year \(FY\) 2023, Release 3 Compliance Jam Session presentation](#).

form, create a Form 1063 to document your repeated attempts to get a signed copy of the statement and confirm the accuracy of the statement as told to you.

#### *7.1.4 How and When to Use Electronic Recordings as Evidence*

The use of audio or video tapes as evidence differs based on federal, state, and local laws. Don't tape or video record conversations. You must discourage any participants from recording conversations, even if the other participants are aware of the recording and don't object. Recording tends to restrict a free flow of information. If a party to a conversation insists on recording a conversation, contact your SI before continuing with the meeting, [who will loop in RSOL as appropriate](#). If you can't reach your SI, immediately adjourn the meeting pending further direction from your SI. If the SI recommends continuing the meeting with the recording in progress, then the VETS investigator should arrange to receive a copy of the unedited recording, as well as any transcripts made thereof.

Should either party approach you with audio or video tapes they want to offer as "evidence," [contact RSOL through the SI for further advice](#). If you reference a recording, make sure to identify in the citation the exact time in the recording when the statement occurs. It should also be clear who made the statement and the context in which the statement was given. For example, "On October 2, 2013, X was terminated by Y and was told at that time by Y that 'it's because [X] is a lazy worker and is always away on military service.' (Ex. 8; Ex. 9 at 16:23 min)." In this example, Exhibit 8 refers to something that supports the date that X was terminated, such as X's statement, and Exhibit 9 is the recording that contains the statement.

#### **7.2 Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the Report of Investigation (ROI) (USERRA)**

The ROI is made up of a various information obtained from the pages and tools within VCMS. These tools, and the completed ROI, are investigative, analytical, and assessment tools designed for investigators, designated reviewers, and QA reviewers (periodic LSS case reviews) to use in all VETS USERRA investigations. VCMS case file tools provide ready reference to applicable legal standards under USERRA, the relevant documentary evidence to be obtained, and persons with relevant knowledge to be interviewed. These tools also offer the ability to map an action plan tailored to elements necessary to establish a violation under USERRA. They provide space to document issue analysis of the investigator's application of the relevant facts to the applicable law to determine the validity of the claim at the conclusion of the investigation. VCMS tools cover all attempts at case resolution. The compiled ROIs serve as self-assessment tools for investigators and a QA mechanism for reviewers to use in measuring and improving individual agency effectiveness, efficiency, timeliness, and service.

**Pro Tip:** If you don't properly examine the potential issues, then the ROI won't key you to evaluate them. You must properly take the time to spot potential issues and list them out. Stay in the moment, take these things one step at a time. The tools will help you move forward. If you skip a step, the tools won't help you get caught up.

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For USERRA cases, VCMS includes a Case Quality Measures tab to track the case file for completeness and accuracy across 12 categorical measures:

1. Timeliness
2. VCMS Summary tab
3. Forms 1063
4. USERRA eligibility
5. Potential USERRA violations
6. Chronology of Facts tab
7. Witnesses tab
8. Issue Analysis tab for USERRA reemployment
9. Issue Analysis tab for USERRA discrimination
10. Issue Analysis tab for USERRA retaliation
11. Settlements tab, and
12. Case Documents tab.

Case Quality Measures track over 100 elements found in the case file and provide a score visualizing what is left to complete or might be missing from the case file. Case Quality Measures also identify any potential reasons VCMS would prevent closing the case (e.g., perhaps you have pending draft Forms 1063 or have zero Witness Statements). The Case Quality Measures tab is valuable to both investigators and reviewers. Case Quality Measures [track investigative details](#), [visualize the case review elements](#), and create a communication tool to overcome obstacles.

Points Achieved	Points Possible	Quality Score
32	66	48.48 %

**Closure Type**

Planned Closure Code: Administrative

**Deficiencies**

**Timeliness**

- Case assignment time exceed one business day...
- Time until initial contact with the claimant exceeds three business days
- Time until initial contact with the employer exceeds three business days.
- Review of the Preclosing ROI occurred more than three business days after submission.
- The case file was not updated at least once every 10 days.

5 items

**1063s**

- Initial contact with the claimant is missing...

Most importantly, VCMS integrates the ROI and the connected investigative tools as its backbone. The information summarized in the ROI becomes the skeleton, and the information you gather during your investigation becomes the muscles that animate your investigative narrative to tell those outside the investigation what occurred from an impartial perspective. This Manual also integrates VCMS tools that compromise the ROI as the skeleton of the USERRA investigation. This section breaks down the basic case file VCMS tools contained within the ROI, but the chapters that follow each incorporate the ROI. If you have questions about a specific section of the ROI, we encourage you to use the search function of this document and search the name of the relevant VCMS case file page (e.g., Chronology of Facts, Issue Analysis).

There are three types of ROIs completed prior to case closing: [Preliminary](#), [Prenotification](#), and [Preclosing](#). The Preliminary and Prenotification ROIs are completed during the fact gathering and issue analysis stages of the investigation, prior to notifying the parties of VETS' determination. The Preclosing ROI is completed when resolution efforts are concluded and closing letters are drafted and ready for review by the designated ROI reviewer.

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**Pro Tip:** You know you are conducting and organizing your investigation correctly if everything relevant can be found in the ROI.

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The ROI is used to collect and report data entered and processed in separate pages of VCMS. The sections of the ROI include:

- Case Data displays logistical information about the case and ROI, including information about the filing and processing of the claim and those staff involved in case and ROI processing.

- Contact Information displays contact information for the claimant, employer, and any representatives involved in the case.
- Employer Information displays contact information for the employer and employer's representatives.
- Statutory Investigative Deadline displays the current and past deadlines, including information about when deadlines were negotiated and if any lapses in deadlines occurred.
- Eligibility displays all work you completed within the Eligibility section of the case, establishing whether the claimant is eligible for coverage based on the potential violations identified.
- Violations displays all work you completed within the Potential Violations subsections.
- [Chronology of Facts](#) displays all the work you completed within the Chronology of Facts page(s).
- [Witnesses displays all work you completed](#) within VCMS Witness page(s).
- Issue Analysis contains three subsections in which to describe the evidence, facts, and investigator analysis related to Discrimination, Retaliation, and/or Reemployment (plus Rights and Benefits) violation types.

### 7.3 Plan and Track Your Investigation Using a Case Investigative Plan (CIP, under VEOA and VP)

Before starting a VEOA or VP investigation, develop a written [CIP](#). While the ROI doesn't map yet to VEOA and VP cases, we encourage you to consider recreating the aspects of the framework relevant to your investigation. Read the advice given in preparing and updating the ROI and associated VCMS tools. Incorporate this guidance, as appropriate, into your VEOA or VP investigation. A CIP should identify the potential violations in the case, taking applicable statutes, regulations, case law, and VETS policies into account. It should also identify any evidence needed to make a factual determination, how that evidence is to be obtained (e.g., interview, records review), and all steps necessary to determine the claim's validity.

Investigations should be completed within 60 calendar days from the claim being filed. However, it's most important to ensure the case is processed in accordance with VETS' investigative procedures and QA guidelines. If deemed appropriate and the case is still open after 45 calendar days from the claim being filed, VETS should assign the investigator a mentor. They'll help the investigator revise a CIP to include a timetable for completing the investigation. In revising the CIP, consider the VETS investigation can continue beyond 60 days if:

- VETS determines there's still the prospect of resolving the complaint,
- The claimant desires VETS continue the investigation (and agrees in writing to permit VETS to continue the investigation beyond 60 days, until a date certain), and
- Additional information is necessary.

## 7.4 Reviewer Responsibilities

The ROI in cases alleging USERRA violations, and the [CIP](#), Open Case Report, and QAR in cases alleging VEOA and VP violations, are critical to conducting a proper review of an investigation at any stage. The responsibilities of reviewers are to review and approve ROIs, CIPs, and QARs, provide verbal and written feedback to investigators during their investigations, and identify professional development and training needs. Each of these items is explained in greater detail throughout this Manual. Investigators and reviewers should read each of these sections in detail to understand the responsibilities and tasks assigned to a reviewer.

### **Reviewer Responsibilities:**

- Conduct a thorough review of the case file to date and [complete the Preliminary ROI review](#) (USERRA).
- Conduct a thorough review of the case file to date and [complete the Prenotification ROI review](#) (USERRA).
- Conduct a thorough review of the case file to date and [complete the Preclosing ROI review](#) (USERRA).
- Conduct a thorough review of the case file to date and [complete the CIP review](#) (VEOA and VP).
- Create and implement a Corrective Action Plan (CAP) (if necessary).
- Comply with the [time periods allowed to complete the Review](#).
- Conduct the appropriate Level of Review:
  - [Responsibilities of First Level Reviewer](#),
  - [Responsibilities of Other Reviewers](#), and
  - [QA Levels of Review](#).



## Chapter 8 | Initial Contact with Claimants and Employers

Let's review. So far, someone filed a claim, VETS opened an investigation, and VETS assigned that investigation to you, the investigator. The person who filed a claim may be a service member, veteran, and/or employee depending on their circumstances. From this point forward, this Manual refers to the person who filed a claim as a "claimant."

The beginning of a case is a hectic time. Within ten calendar days of a claim being filed:

1. VCMS sends the claimant an automated notification that VETS received their claim.
2. VETS must [assign an investigator](#) within three calendar days.
3. VCMS sends the claimant an automated notification that an investigator has been assigned to their claim and will be in touch.
4. The investigator must [contact, or attempt to contact \(in person, phone, or video conference only\), the claimant](#) within five calendar days.<sup>119</sup>
5. The investigator [must contact, or attempt to contact \(in person, phone, or video conference\), the employer](#) within:
  - a. Five calendar days (of the claim being filed) if the claimant is unemployed, threatened with unemployment because of a termination due to uniformed service obligations, or wasn't reinstated after returning from uniformed service obligations and is currently unemployed (USERRA), or
  - b. Seven calendar days (of the claim being filed) for all other circumstances, even if no contact has yet been made with the claimant (USERRA, VEOA, and VP).<sup>120</sup>
  - c. You must also send a copy of the employer letter to the hiring agency's Chief Human Capital Officer (CHCO). Although not a complete list, you may be able to find current contact information for the appropriate CHCO at the CHCO Registry in the Compliance Folder on SharePoint at [COMPLIANCE - CHCO-LIST - CHCO-CONTACT-CARDS \(sharepoint.com\)](#).
6. In addition to the above, the investigator must send the [claimant an opening letter](#) within:
  - a. Ten calendar days (of the claim being filed) for claims involving potential USERRA violations.
  - b. Seven calendar days (of the claim being filed) for claims involving potential VEOA or VP violations.

As investigators, make sure you stay on top of your case assignments and calendars, so you don't miss important case deadlines. For case assigners, you must assign cases within three calendar

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<sup>119</sup> Only after multiple unsuccessful attempts (such as no voicemail, or mailbox is full and not accepting messages) to contact the claimant in-person or by phone is contact by email acceptable.

<sup>120</sup> Only after multiple unsuccessful attempts (such as no voicemail, or mailbox is full and not accepting messages) to contact the claimant in person or by phone is contact by email acceptable. Note that this includes other steps. Cases involving federal agency employers, a copy of the employer opening letter needs to be sent to the [CHCO](#). Also, a copy of the employer opening letter needs to go to the claimant. These are discussed in greater detail as you get to the steps where you create opening letters.

days of the claim being filed; make sure you have a backup for assigning cases when you are unavailable.

A VETS investigation requires, at a minimum, that the investigator interview the claimant and employer.<sup>121</sup> These contacts are critical for an organized, timely, and complete investigation. Take the time to set yourself up for success. Use the checklists, tools, and additional resources outlined in this chapter to follow the four steps for contact with any person involved in the investigation:

1. Plan for contact,
2. Make contact,
3. Document contact (Form 1063 or Witness Statement), and
4. Follow up in writing (to confirm what was discussed during the contact).

Document all contacts or attempts to contact the claimant and employer on a Form 1063. VCMS makes it easy for you to create a Form 1063 directly from your case file. For step-by-step instructions, refer to the [VCMS Agency User Guide, 1063 Page](#). For more information about what goes into a Form 1063, refer to [Form 1063 \(Report of Contact\)](#).

At any point in time, if you discover the claimant previously worked with a DOD ESGR ombuds, don't request information or documentation about ESGR's efforts. ESGR's policies limit the sharing of case information. If you believe you need information from those efforts, [stop and ask for help](#). If they agree with your assessment, they'll contact the NO.

## 8.1 Initial Contact with Claimant

After receiving a VETS USERRA/VEOA/VP Form 1010 (Form 1010) from the VCDC, the investigator must contact or attempt to contact the claimant to go over the claim and make any necessary corrections to the form. For all claims, you must contact the claimant within Five calendar days. Form 1010s may take time to route to you, leaving you limited time to make the initial contact. Don't put off reviewing Form 1010 and creating an outline for your initial contact with the claimant.

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<sup>121</sup> Note, there are rare circumstances when an employer need not be contacted and interviewed; when opening and closing the case is appropriate after speaking with the claimant and the investigation is complete (e.g., when the claimant unequivocally isn't eligible for USERRA assistance or there's no violation actionable under USERRA).

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**Pro Tip:** Attention remote workers! Communicating by email requires advanced planning and document management. All deadlines outlined in this Manual apply whether you send the letter by the [authorized carrier's primary or alternate service method](#). Use the VCMS tools available to you, including the electronic communications consent template. Use email tools available to you, including delivery and read receipts. Plan your time a week ahead to schedule any trips into the office to mail documents.

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Planning how you'll approach this contact is one of the most important steps. Many investigators make initial contact with the claimant by phone to let them know that VETS received the Form 1010 and set up logistics for a second call that will be a claimant interview to review Form 1010 and other questions. If the investigator is unable to establish contact with the claimant by phone (e.g., can't locate a good phone number or the claimant's voicemail doesn't accept messages), the investigator may make initial contact with the claimant by email.

During the claimant interview, you should go through any missing information, ask questions that help provide context to the received information, and start to develop a chronology of the events and the facts surrounding it. In 2023, Form 1010 began including additional demographics questions, e.g., self-identify a service-connected disability. Collecting this information helps VETS deliver high-quality service to underserved population. You should encourage potential claimants to fill out these fields. Note that these are not required fields; potential claimants may skip the demographics questions at their preference.

Watch out for these two common situations that might occur at this stage of the investigation:

- If the claim [involves particularly complex types of potential violations \(e.g., pension-related\)](#), consult with the RO for additional guidance on how to proceed.
- If, after sufficient investigation (i.e., speaking with the claimant and reviewing eligibility documentation), the evidence establishes that the claimant unequivocally isn't eligible for assistance, or the claimant has failed to allege a violation, open and close the case as [Not Eligible](#) with approval of the RO and notify the claimant of the result.

### *8.1.1 Plan for Contact with Claimant*

The investigative process may give rise to emotional responses. Investigators should be deliberate and thoughtful of the claimant's livelihood, the employment status of other employees hired during the claimant's service, financial stressors on small employers, and the complexity of the law.

If your case starts with an incomplete Form 1010, refer first to [Respond to an Incomplete Form 1010](#). If your case started with a signed, dated, and complete Form 1010, complete these steps before contacting the claimant:

1. Review the VCMS Summary page, which includes information submitted using Form 1010 and any additional documents submitted prior to initial contact with the claimant.
2. Note any fields requiring input or facts requiring evidentiary support from the claimant.
3. Review the Potential Violations page and complete any information you can based on the information received to date, making note of any information required to complete this section.
4. Review the Eligibility page and complete any information you can based on the information received to date, making note of any information required to complete this section.
5. Review the Witnesses page and complete any information you can based on the information received to date, making note of any information required to complete this section.
6. Open a draft Form 1063.
7. Record into the draft Form 1063 a list of potential questions you might ask based on the missing data identified in Steps 2 through 5. Include questions that elicit any missing information or information you might want to confirm.
  - a. We recommend you list the questions in the order you might want to ask them.
  - b. Also list any [required documents](#) you might need to request.
  - c. Try to follow along with answers given to ask additional questions that identify information or people with relevant knowledge or to confirm the accuracy and completeness of the information alleged:
    - i. The alleged violation(s) and the remedies requested by the claimant and those available under USERRA, VEOA, and VP;
    - ii. The applicable section(s) of the statute and regulations; and
    - iii. Whether the claimant is eligible for assistance and request verification.
8. Ask your supervisor if you can have a colleague sit in as a note-taker and as the second person listening when you make your contact with the claimant. It will be easier to make the interview flow smoothly if you have a second person capturing the notes.
9. *Optional:* Some investigators prefer to email or leave a voicemail message with the claimant stating that VETS received their Form 1010 and started an investigation. This won't count as meeting your deadline for initial contact with the claimant unless you can demonstrate that you have attempted to contact them multiple times with results such as a full voicemail box or repeated unreturned voicemail messages.

We included a list of some common questions below to help you prepare. For more details about conducting complete and effective interviews, refer to [Prepare for and Lead Interviews and Onsite Visits](#).

The subsections that follow provide additional information to describe nuances you might encounter when you develop questions; establish the claimant's eligibility; identify the claimant's status; identify the employer type; identify potential remedies available under USERRA, VEOA, and VP; identify the employer type; and identify questions that require additional help. It's never a waste of time to [STOP and Ask for Help](#) before continuing.

### 8.1.1.1 Establish the Claimant's Eligibility

When you speak to the claimant, be sure to ask questions that will let you know whether the claimant meets the eligibility requirements under USERRA, VEOA, or VP. For more detailed information about the specific requirements, refer to the chapters on determining eligibility, where you'll find:

1. [USERRA eligibility elements](#),
2. [VEOA eligibility elements](#), and
3. [VP eligibility elements](#).

You need to ask the claimant the framework eligibility questions to understand whether they qualify for VETS' assistance. Planning before the contact helps you outline the various eligibility criteria and record draft answers the claimant provided on their Form 1010 and any accompanying documents within a Form 1063. Those draft answers show you where you need to confirm eligibility criteria versus asking more detailed questions to make sure the claimant can meet those criteria. For potential USERRA violations, the VCMS Eligibility and Issue Analysis pages also provide the eligibility requirements in greater detail, leaving places for you to enter legal citations, notes, and future action items you need to take to resolve those case elements. The ROI collects information from across VCMS, which can help you track eligibility on a single VCMS page.

For example, a claimant writes on their Form 1010, "I recently came back from a long overseas deployment with the Guard on different sets of orders, and my employer told me that I didn't have a job anymore." Immediately, you can scroll through the [uniformed service](#) and [exempt service requirements](#) laid out in this Manual to verify whether the claimant meets the eligibility criteria for service in the uniformed service and the five-year cumulative non-exempt service limit. It also tells you that you need to ask more questions about [advance notice](#) and [multiple, short deployments](#). This provides you with a game plan. Now you know to confirm that they're a member of the National Guard and Reserve, but you need to ask for additional information from their service orders to track if that service was exempt and they provided sufficient advance notice.

### 8.1.1.2 Identify or Explain the Claimant's Representation Status

During the initial contact, you must tell the claimant they have a right to:

1. File a private USERRA lawsuit, or hire a private attorney to do so, at any time;
2. At the completion of a USERRA investigation, request the case be referred to the DOJ or OSC for consideration of representation; or,
3. At the completion of a VEOA or VP investigation, or after 60 days if the VEOA or VP investigation isn't complete, file a VP/VEOA appeal, or hire a private attorney to do so before the MSPB.

VETS doesn't represent the claimant nor the employer in a USERRA, VEOA, or VP investigation. VETS is an impartial factfinder, whose job it is to investigate claims thoroughly and completely. The subsections below outline how to handle various claimant scenarios and claimant's representation questions.

#### 8.1.1.2.1 Claimant Hired a Private Attorney (including Third-Party Interference)

The claimant is always entitled to be represented by an attorney, even while VETS is investigating. The claimant and their private attorney must agree not to interfere with VETS' investigation, such as by contacting the employer, interviewing witnesses, or denying access to the claimant. Work with your SI to document the conduct and warn the claimant and their attorney in writing to stop. The [SI may involve the RSOL](#), if appropriate, to speak with the claimant's attorney. You must continue the investigation. Document efforts to explain to the claimant, their counsel, and the RSOL how a parallel investigation may hinder VETS' ability to collect facts that may substantiate the claim.

Occasionally, the [Claimant Has Concurrent Claim Under a State Law or CBA](#). For example, a terminated claimant may assert that they were fired because of discrimination based on their race and military obligation in the Reserves. The private attorney may elect to represent the claimant only in the potential race-based discrimination violation. If this occurs, the investigator must contact the private attorney to establish the potential USERRA violation will be the sole responsibility of VETS. Confirm the understanding in writing and upload that written confirmation to the VCMS Documents page.<sup>122</sup>

#### 8.1.1.2.2 Claimant Requests DOJ or OSC Representation

If the claimant wants a referral to DOJ or OSC for consideration of representation, the claimant first needs VETS to complete an investigation. Once the investigation closes, the claimant may request VETS submit that case to DOJ and OSC for potential representation. DOJ represents claimants in cases of private and state employers. OSC represents claimants in cases of federal employers. For more information on this process, see [Refer a Case](#).

#### 8.1.1.2.3 Dual or Multiple Claimants

When multiple claimants file claims against the same employer, VETS will open and process a claim for each claimant who files a claim. VETS doesn't process, investigate, or resolve claims as class actions. Similar cases involving USERRA claims against the same employer will be considered companion cases, but will be investigated and maintained as separate cases, even if investigated by the same investigator. A RAVET can join companion cases alleging USERRA violation(s) when preparing and submitting the [MOR](#) if the RAVET believes this action will expedite case processing without decreasing the quality of the referral.

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<sup>122</sup> [VCMS Agency User Guide](#), Case Documents.

### 8.1.1.3 Identify Employer

For claims alleging VEOA and VP violation(s), the employer will be the agency where the claimant applied for a posting. USERRA applies to virtually all employers, regardless of size, including the federal government.<sup>123</sup> Refer to [Employer](#) for a plain-language understanding of the scope of these definitions, or the [glossary definition of employer](#), which quotes [38 U.S.C. § 4303\(4\)](#) and [20 C.F.R. § 1002.5\(d\)](#).

In brief, “employer” means:

1. Any person, institution, organization, or other entity that pays salary or wages for work performed, or that has control over employment opportunities. This includes:
  - A person or entity to whom the employer has delegated the performance of employment-related responsibilities;
  - The Federal Government (including any federal executive agency, but excludes intelligence community agencies referenced in [5 U.S.C. § 2302\(a\)\(2\)\(c\)\(ii\)](#));
  - A State;
  - Any successor in interest to an entity; and
  - A person or entity who denied initial employment in violation of USERRA’s anti-discrimination and anti-retaliation provisions.<sup>124</sup>
2. If the person is a National Guard technician,<sup>125</sup> then “employer” means the adjutant general of the State in which the technician is employed.
3. An Employee Retirement Income Security Act of 1974 (ERISA) employee pension benefit plan<sup>126</sup> is considered an “employer” with respect to the obligation to provide pension benefits for a claimant who it doesn’t employ.

There are specific differences when approaching employers who sit at the intersection of multiple laws. For example, see the specific rules below for handling cases in which the employer is a [religious organization](#), a [Native American tribe](#), a [successor in interest](#), or a [joint employer](#). For other issues with defining employers, including identifying whether a claimant is an independent contractor, refer to [STOP and Ask for Help](#).

#### 8.1.1.3.1 Employer is a Religious Organization (USERRA)

VETS investigates when an employer is a religious organization. Some employees at these organizations may fall under a ministerial exception, which requires additional analysis and consultation. Determine the claimant’s position (e.g., pastor, minister, teacher, computer specialist) and their duties in the position. For example, the claimant may appear to have religious duties or is a teacher at a religious institution, or the employer may raise an issue of USERRA coverage. In both instances, you fill out the VCMS [Employer Defense](#) subsection of

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<sup>123</sup> DOL [USERRA Pocket Guide](#), Introduction.

<sup>124</sup> [38 U.S.C. § 4311](#).

<sup>125</sup> Employed under [32 U.S.C. § 709](#).

<sup>126</sup> [29 U.S.C. § 1002\(2\)](#).

the ROI Issue Analysis page. Select Other as the defense type, and enter any additional information requested by VCMS within this section.<sup>127</sup> Forward the information you summarize here to your SI, who will [contact the RSOL](#).

#### 8.1.1.3.2 Employer is a Native American Tribe (USERRA)

VETS investigates when an employer is a Native American tribe. Some employees at these organizations may fall under a sovereign immunity exception, which requires additional analysis and consultation. Ask for details of the relationship between the employer and the tribe. For example, the employer is affiliated with a tribe, or the employer is located on tribal land. In both instances, the investigator fills out VCMS [Employer Defense](#) subsection of the ROI Issue Analysis page. Select Other as the defense type, and enter any additional information requested by VCMS within this section.<sup>128</sup> Forward the information you summarize here to your SI, who will [contact the RSOL](#).

#### 8.1.1.3.3 Employer is a Successor in Interest (USERRA)

USERRA also covers employers who may be a successor in interest. The regulations define a multi-factor test, which must be applied on a case-by-case basis to determine whether a person or entity is a successor in interest (i.e., an employer under USERRA). VETS must consider the following factors:

- (a) Whether there has been a substantial continuity of business operations from the former to the current employer;
- (b) Whether the current employer uses the same or similar facilities, machinery, equipment, and methods of production;
- (c) Whether there has been a substantial continuity of employees;
- (d) Whether there's a similarity of jobs and working conditions;
- (e) Whether there's a similarity of supervisors and managers; and
- (f) Whether there's a similarity of products or services ([20 C.F.R. § 1002.35](#); see also [38 U.S.C. § 4303\(d\)](#)).

If the employer raises the issue of successor in interest, contact your DVET and SI, who will contact the NO to determine how to proceed in the investigation.

#### 8.1.1.3.4 Joint Employers (and the Status of Pension Plans as Employers under USERRA)

Under USERRA, an employer includes not only the person or entity that pays a claimant's salary or wages, but also includes a person or entity with control over the claimant's employment opportunities. This may include a person or entity to whom an employer delegated the performance of employment-related responsibilities ([20 C.F.R. § 1002.37](#)). Determining joint

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<sup>127</sup> [VCMS Agency User Guide](#), Issues Analysis.

<sup>128</sup> [VCMS Agency User Guide](#), Issues Analysis.



employment is a complicated, fact-specific process. If the case circumstances appear to require calculating complex or unusual remedies, contact your SI, who will [request additional help from the RSOL](#), as appropriate.

The regulation does provide one helpful example (although other scenarios may also arise): a claimant may be employed by a security company and assigned to a work site where they report to their employer and to the work site's owner. In this example, both the hiring entity and the work site entity may be considered an "employer" and share responsibility for USERRA compliance. If the security company declines to assign the claimant to a job because of their uniformed service obligation (e.g., National Guard duties), then the security company employer could be in violation of USERRA's reemployment requirements and anti-discrimination provisions. Similarly, if the work site owner causes the claimant's removal from the job position because of their uniformed service obligations, then the work site employer could be in violation of USERRA's reemployment requirements and anti-discrimination provisions.

Another area where VETS commonly finds multiple employers occurs is when you may need to examine an employer's pension plan benefits. For specific instructions on how USERRA impacts pension plans, refer to [Outline Remedies and Compute Monetary Remedies \(USERRA\)](#). Some employers provide pension plans managed by another company, and the employer has no control over the plan. However, [20 C.F.R. § 1002.5\(d\)\(3\)](#) makes clear that an employee pension benefit plan is an "employer" with respect to its obligation to provide pension benefits. If a claim potentially involves pension plan benefits under USERRA as it concerns a claimant, an employer can't force that plan to take the action. DOJ can't use legal action to compel the employer to correct the pension plan unless the plan is also a named party in the case. Under these circumstances, speak to your DVET and SI to consider including the pension plan as an additional employer in the same case. Use the VCMS templates to send an opening letter to the pension plan. There's a specific template for this situation called "Sample Employer Opening Letter – Pension Plans."<sup>129</sup>

#### 8.1.1.4 Identify Potential Remedies and USERRA, VEOA, or VP Violations

During the contact, you need the claimant to explain their claim in sufficient detail. Any potential violations that weren't identified initially in the Form 1010 should be added to the list of violations on the VCMS Potential Violations page.<sup>130</sup> Each potential violation should include the remedy requested by the claimant in the Claimant Remedy field for each potential violation. If there are any details missing on Form 1010, the initial contact is your time to ask. VETS tries to resolve these investigations as amicably as possible. That means making sure the claimant and employer follow the law and agree with the resolution. It will be easier to reach resolution if you know what the claimant needs to feel whole. You'll also be able to use this information in your initial contact with the employer and for [future settlement conferences](#). For specific information

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<sup>129</sup> [VCMS Agency User Guide](#), Documents Generated from Templates.

<sup>130</sup> [VCMS Agency User Guide](#), Potential Violations.

about potential remedies, refer to [Compute Monetary Remedies](#) and [Claimant Accepts Something Less Than Full Recovery](#).

#### 8.1.1.5 STOP and Ask for Help

When certain situations arise, mark them in your notes, and immediately contact your DVET, SI, or the CSI, as appropriate. VETS investigations cover complex and nuanced areas of law. VETS must provide the same level of service to all claimants. Not all cases are simple. Some case circumstances require contacting the CSI to ensure VETS offices process and analyze complex scenarios in a consistent manner. If you encounter these situations, don't proceed with your investigation until you take the action recommended below.

1. If reemployment was initiated before December 12, 1994, USERRA's predecessor law, the Veterans' Reemployment Rights Act (VRRRA) applies.
  - a. *Background:*
    - i. Under the VRRRA, information concerning the type of military service performed becomes especially relevant.
    - ii. Also relevant is whether service time was more than four, but less than five years if that time is at the request and for the convenience of the government.
  - b. *Action:* Stop and speak with your DVET and SI before proceeding.
2. Employer asks a question of law.
  - a. *Background:*
    - i. VETS staff can't provide legal opinions. That work is reserved for the attorneys who represent VETS.
    - ii. If an employer asks a question of law, [VETS will work with RSOL](#) to provide an appropriate response.
  - b. *Action:*
    - i. As soon as practicable, but no later than five calendar days from receiving the question of law, you must contact your DVET and SI.
    - ii. The DVET and SI will contact the appropriate RSOL.
    - iii. The RSOL will advise how to proceed.
3. Employer is a trade association:
  - a. *Background:* Often, trade associations may call requesting TA if one of their members is involved in an investigation. When a trade association calls for TA, they'll rarely, if ever, be the employer on a case.
  - b. *Action:* Contact your supervisor; questions of law or policy should be forwarded to the NO to determine how to proceed.
4. Employer is an airline.
  - a. *Background:* Cases involving the airline industry often contain complex issues of advance notice, pension and other reemployment rights and benefits, and comparable leave.
  - b. *Action:* Contact the CSI immediately.

5. Employer is the Bureau of Prisons (BOP), or claimant is a member of the Public Health Service (PHS).
  - a. *Background:* Cases involving the BOP as employer of members of the PHS often contain complex legal issues involving eligibility and employment status.
  - b. *Action:* Contact the CSI immediately.
6. Cases where employer raises a mandatory arbitration agreement as a defense.
  - a. *Background:* Cases where an employer tries to use a mandatory arbitration agreement in a CBA or in the claimant's employment contract as a reason not to cooperate with your investigation.
  - b. *Action:* Contact the CSI immediately.
7. Claim involves questions of comparable leave of absence<sup>131</sup>
  - a. *Background:* Claims alleging USERRA violations may raise questions about how to handle non-seniority benefits such as comparable leaves of absence.
    - i. For example, if an employee accrues paid time off while serving jury duty, a service member may also be eligible to accrue paid time off while on military duty.
    - ii. These are nuanced areas that require additional examination to find true [comparators](#).
  - b. *Action:* Contact the CSI immediately.
8. Claim involves questions of independent contractor status.
  - a. *Background:*
    - i. There are many industries that now allege their workers are independent contractors, rather than employees. For example, drivers at a ride-share company.
    - ii. Cases involving claimants with independent contractor status often contain complex legal issues involving eligibility and employment status.
  - b. *Action:* Contact your SI, who will then [contact RSOL](#).

### 8.1.2 Contact Claimant

You prepared for the contact, scheduled for a colleague to take notes for you (with supervisory approval), and now you are ready to contact the claimant. During the call, remember to be professional, polite, and somewhat formal. For example, you shouldn't use first names when speaking with parties to the investigation. You want to put the claimant at ease, but you are still a representative of the federal government. Your initial contact must include a request for consent from the claimant to communicate about the investigation by email. If yes, record the best email address to use. If no, follow the [primary service definition of authorized carrier](#) for your correspondence.

Please refer to [Structure Effective Meetings and Conferences](#) for instructions about interviewing techniques and tone. Don't be thrown if the conversation doesn't perfectly follow your prepared

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<sup>131</sup> [20 C.F.R. § 1002.150](#).

list of questions. Follow the conversation, and don't be afraid to return to questions missed. If you take notes on your own during the initial contact, we strongly encourage that you take notes within a draft Form 1063 with your prepared questions. This will help you see which questions were answered.

### *8.1.3 Document Contact on a Form 1063*

As soon as possible after the call, make sure to document the conversation on a Form 1063. Do this when the thoughts are fresh in your head, but after you had a moment to review the notes from the contact. Refer to [Document All Communication Attempts, Findings, and Potential Investigatory Issues](#) for instructions about how VCMS will create, and how you should complete, a Form 1063.<sup>132</sup> You should also update your VCMS case record at this time with all the information you gathered.<sup>133</sup> For a claim alleging a USERRA violation, also update the VCMS Potential Violations page, which includes noting the types of potential violations, remedies, and statutory and regulatory provisions that apply.<sup>134</sup> All these items are required for the opening letter, which is your next step.

### *8.1.4 Follow Up in Writing: Opening Letter to Claimant*

You must send an opening letter to the claimant within ten calendar days of the claim being filed. The initial contact with the claimant should be in person, on the phone, or via video conference. Note, that an email exchange may only count as initial contact if you can demonstrate that you have attempted to contact them multiple times with results such as a full voicemail box or repeated unreturned voicemail messages. All attempts to contact the claimant, including any unsuccessful attempts, should be documented on a Form 1063.

Every initial contact will be followed with an opening letter unless the case is [administratively closed](#) or closed as [Not Eligible](#) (meaning the claimant wasn't eligible or the adverse act isn't covered under the statute) immediately after assignment. Your letter must include a request confirming the claimant's consent to communicate about the investigation by email. If yes, upload the claimant's response to VCMS. If no, follow the primary definition of [authorized carrier](#) for your correspondence. You are now ready to confirm in writing what occurred during your initial contact with the claimant and request any relevant documents. An opening letter can also serve as a closing letter if the claim resolved following the initial call with the claimant. For this to work, refer to [Close a Case](#). Make sure the revised opening letter template includes the requirements found in the closing letter template.

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<sup>132</sup> [VCMS Agency User Guide](#), 1063 Page.

<sup>133</sup> [VCMS Agency User Guide](#), The VCMS Case File.

<sup>134</sup> [VCMS Agency User Guide](#), Potential Violations.

#### 8.1.4.1 Tone

VETS is an impartial factfinder, but we also serve as an impartial facilitator for amicable resolutions. Don't use words or statements that might trigger adverse, angry, or hostile reactions. Don't write in a way that a claimant might infer you or VETS already arrived at a conclusion as to the validity of the claim.

VCMS has a template that includes the language necessary to meet VETS' responsibilities under USERRA, VEOA, and VP. There will be places in the letter where you need to edit and include fact-specific information or requests.<sup>135</sup> Don't include citations to court cases in your opening letter; the information you need is already in the template.

Instead, focus your edits on the details of your investigation. Use specific, information-seeking terms. Details, dates, and names help narrow what you want for specific requests. Open-ended questions will open new areas of inquiry that you want to know based on reviewing your notes from the initial contact.

#### 8.1.4.2 Contents

Tailor the introduction of the letter to match whether the initial contact was a phone call, video conference, or in-person meeting. The VCMS template helps you by providing all the elements required in an opening letter to a claimant:

- Inform the claimant VETS opened a case.
- Identify the case number and investigator assigned to the case.
- Notify the claimant of their responsibilities for document submission.
- Request a copy of any arbitration agreements.
- Provide initial notification to the claimant of the right to referral and the time limits imposed on VETS investigations.
- Inform the claimant of procedural requirements if the claimant provides [witnesses](#) who have documentary or testimonial evidence to support the claim.

#### 8.1.4.3 Distribution

We recommend you obtain and upload written consent from the claimant, where possible, to communicate by email during the investigation. If you don't yet have written confirmation of claimant's consent to correspond by email, every written communication must be sent following the [primary service requirements for an authorized carrier](#). For the opening letter, this means to send a hard copy of the original letter to the claimant by authorized carrier. For all primary forms of service, you may still email a copy of the letter to the claimant and mail the original letter. This will allow the claimant to provide a faster response. Upload a copy to the VCMS

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<sup>135</sup> [VCMS Agency User Guide](#), Case Documents.

Documents page and fill out the associated metadata.<sup>136</sup> If using alternate service, you must also upload a confirmation reply from the claimant.

## 8.2 Initial Contact with Employer

You should speak to the claimant first before contacting the employer. You should only contact an employer prior to contacting the claimant when, after multiple attempts, you are unable to contact the claimant and the time to contact the employer (i.e., three or ten calendar days) is expiring. Employers may be unfamiliar with the requirements of USERRA, VEOA, and VP, but willing to comply once you explain the employer's obligations under USERRA, VEOA, and/or VP. The initial contact sets the stage for you to obtain the information you need to investigate the claim, educate employers about their obligations, and see if they would be willing to resolve the claim amicably (also called "voluntary compliance").

The investigator must contact, or attempt to contact, the employer within:

- For claims alleging USERRA violations:
  - Five calendar days if the claimant is unemployed, threatened with unemployment because of a termination due to uniformed service obligations, or wasn't reinstated after returning from uniformed service obligations and is currently unemployed.
  - Ten calendar days for all other circumstances.
- For claims alleging VEOA and VP violations: Seven calendar days after the claim is filed with VETS.

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**Pro Tip:** Attention remote workers! Communicating by email requires advanced planning and document management. All deadlines outlined in this Manual apply whether you send the letter by the [authorized carrier's primary or alternate service method](#). Use the VCMS tools available to you, including the electronic communications consent template. Use email tools available to you, including delivery and read receipts. Plan your time a week ahead to schedule any trips into the office to mail documents.

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### 8.2.1 Plan for Contact with Employer

There are two major paths a call with an employer can take:

1. The employer is a federal agency, and the claimant alleges VEOA or VP. Refer to [Position with a Federal Agency](#) for any special requirements.

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<sup>136</sup> [VCMS Agency User Guide](#), Case Documents.

2. The employer is a private entity, federal agency, or state agency and the claimant alleges USERRA. Refer to [Identify the Employer](#) and [STOP and Ask for Help](#) for any special requirements.

Based on your review of the initial case materials and initial contact with the claimant, you should now plan to understand the allegations from the employer's point of view. Determine whether the employer confirms or disputes the claimant's allegations, ask questions to fill in any gaps in the facts or narrative, and request any documents to support the facts of the case. Follow the checklist below to best set yourself up for success with the initial contact.

1. Review all case materials gathered to date, including the VCMS Case Summary, Chronology of Facts, Documents, Eligibility, Issue Analysis, and Potential Violations, pages.
2. Open a draft Form 1063.
3. Based on your draft Preliminary ROI or other case plan, type into the draft Form 1063 a list of potential questions you might ask. Include questions that elicit any missing information or information you might want to confirm.
  - a. We recommend you list questions in the order you might want to ask them.
  - b. Also list any documents [you might need to request](#).
  - c. Try to follow along to ask questions that identify or confirm:
    - i. The alleged violation and the remedies available,
    - ii. The applicable section(s) of the statute and regulations, and
    - iii. Whether the claimant is eligible for assistance and request verification.
4. Ask your supervisor if you may request a colleague to sit in as a note-taker and the second person listening while you make your contact with the employer. It will be easier to make the interview flow smoothly if you have a second person capturing the notes.
5. *Optional:* Some investigators prefer to email or leave a voicemail message with the employer stating that VETS started an investigation. This won't count as meeting your deadline for initial contact with the employer unless you can demonstrate that you have attempted to contact them multiple times with results such as a full voicemail box, or repeated unreturned voicemail messages.

For more details about complete and effective interviewing, refer to [Prepare for and Lead Interviews and Onsite Visits](#).

### 8.2.2 *Contact Employer*

You prepared for the contact, scheduled for a colleague to take notes for you (with supervisory approval), and now you are ready to contact the employer. During the call, remember to be professional, polite, and somewhat formal. You want the employer to be willing to cooperate, but you are still a representative of the federal government. Your initial contact must include a request for consent from the employer to communicate about the investigation by email. If yes, record the best email address to use. If no, follow the [authorized carrier](#) requirements for your correspondence.

Please refer to [Structure Effective Meetings and Conferences](#) for instructions about interviewing techniques and tone and how to handle when the employer wants to have their own private counsel present. Don't be thrown if the conversation doesn't perfectly follow your prepared list of questions. Follow the conversation, and don't be afraid to return to questions missed. If you take notes on your own during the initial contact, we strongly encourage that you take notes within a draft Form 1063 with your prepared questions. This will help you see which questions were answered.

### *8.2.3 Document Contact with Employer on Form 1063*

As soon as practicable after the call, document the conversation on a Form 1063. Do this when the thoughts are fresh in your head, but after you have had a moment to review the notes from the contact. Refer to [Document All Communication Attempts, Findings, and Potential Investigatory Issues](#) for instructions about how VCMS will create, and how you should complete, a Form 1063. You should also update your VCMS case file at this time with all the information you gathered. For a claim alleging a USERRA violation, also update VCMS Chronology of Facts, Documents, Eligibility, Potential Violations, and Witnesses pages, which includes noting the issues, remedies, and statutory and regulatory provisions that apply.<sup>137</sup> All these items are required for the opening letter, which is your next step.

### *8.2.4 Follow Up in Writing: Opening Letter to Employer*

The initial contact with the employer should be in person, on the phone, or via video conference. An email exchange may only be acceptable when you can demonstrate that you have attempted to contact them multiple times with results such as a full voicemail box, or repeated unreturned voicemail messages. Every initial contact will be followed with an opening letter unless the case is [administratively closed](#) or closed as [Not Eligible](#) (meaning the claimant wasn't eligible, or the adverse act isn't covered under the statute) immediately after assignment.

You are now ready to confirm in writing what occurred during your initial contact with the employer. Your letter must include a request confirming the employer's consent to communicate about the investigation by email. If yes, upload the employer's response to VCMS. If no, follow the [authorized carrier](#) requirements for your correspondence. An opening letter can also serve as a closing letter if the claim resolved following the initial call with the employer. For this to work, refer to [Close a Case](#). Make sure the revised opening letter template includes the requirements found in the closing letter template.

#### *8.2.4.1 Tone*

VETS is an impartial factfinder, but we also serve as an impartial facilitator for amicable resolutions. Don't use words or statements that might trigger adverse, angry, or hostile reactions.

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<sup>137</sup> [VCMS Agency User Guide](#), The VCMS Case File.



Don't write in a way that an employer might infer you or VETS already arrived at a conclusion as to the validity of the claim.

VCMS has a template that includes the language necessary to meet VETS' responsibilities under USERRA, VEOA, and VP. There will be places in the letter where you need to edit and include fact-specific information or requests. Don't include citations to court cases in your opening letter; the information you need is already in the template.<sup>138</sup>

Instead, focus your edits on the details of your investigation. Use specific, information-seeking terms. Details, dates, and names help narrow what you want for specific requests. Open-ended questions will open new areas of inquiry that you want to know based on reviewing your notes from the initial contact.

#### 8.2.4.2 Contents

Tailor the introduction of the letter to match whether the initial contact was a phone call, video conference, or in-person meeting. The VCMS template helps you by providing all the elements required in an opening letter to an employer:

- The specific, relevant statutory and regulatory provisions.
- The name of the claimant and their status as a member or former member of a uniformed service, or as a person who assisted in an investigation.
- The fact that the claimant is seeking assistance under USERRA, VEOA, or VP, and the specifics of the claim and remedies sought.
- The claimant's apparent eligibility for rights based on the information submitted on Form 1010 and obtained during initial contact with the claimant.
- The possibility that lost wages are accruing, if applicable.
- A request for copies of the appropriate CBAs, arbitration agreement, employee handbook, and/or employer policies, and any other relevant documents that you have identified based on your understanding of the case so far. This is your first opportunity to ask for specific relevant documents about the case from the employer; don't let it pass without thought and analysis.
- A request that the employer provide a position statement, including relevant documentation, by a specific date and that the response be sent to the attention of the VETS investigator assigned to the case.

#### 8.2.4.3 Distribution

We recommend you obtain and upload written consent from the employer, where possible, to communicate by email during the investigation. For cases alleging USERRA violation(s), email the letter to the employer's representative and/or point of contact (if different). Email a copy to

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<sup>138</sup> [VCMS Agency User Guide](#), Case Documents.

the claimant. For federal agency employers, email a copy to the [CHCO](#). For cases alleging VEOA and VP violation(s), send the original letter to the federal agency. Send a copy (paper and digital when possible) to the claimant. For all cases, upload a copy of the letter to the VCMS case file and fill out the associated metadata. If using alternate service, you must also upload a confirmation reply from the employer's representative and claimant, respectively.

If you don't yet have written confirmation of employer's consent to correspond by email, every written communication must follow the [authorized carrier](#) requirements. You may still send a digital copy in addition to mailing the original. You may not email the original correspondence without also mailing the original hard copy.

- For cases alleging USERRA violation(s), send the original letter to the employer, along with an email to the point of contact. For federal agency employers, send a copy to the [CHCO](#). Also send a copy (paper and digital when possible) to the claimant.
- For cases alleging VEOA and VP violation(s), send the original letter to the federal agency. Send a copy (paper and digital when possible) to the claimant.

For all cases, upload copies of letters sent and received to the VCMS case file and fill out the associated metadata.

### *8.2.5 Employer's Response to Contact from Investigator*

For all claims, you must contact or attempt to contact the claimant within five calendar days after receiving the employer's response for rebuttal. This contact may be via phone, email, or video conference. An email exchange may only be acceptable when you can demonstrate that you have attempted to contact the claimant multiple times with results such as a full voicemail box or repeated unreturned voicemail messages. Document the contact, and any attempted contacts, in detail using a Form 1063, making sure to capture all relevant discussion points. During that contact, you should paraphrase the employer's position. **Don't send the employer's response directly to the claimant. Don't copy and paste any part of the employer's response into communications sent to the claimant.** You'll summarize any contact that you need to convey to a claimant.

## Chapter 9 | Establish Facts and Gather Evidence

The purpose of a VETS investigation is to determine the facts of the underlying claim, evaluate the validity of the claim under the law, and, if possible, successfully resolve the claim to the claimant's satisfaction. The investigation should also provide sufficient and accurate information to permit an effective presentation at a civil trial if litigation is necessary. This requires carefully assembling and evaluating provable facts as well as accurate and complete reports of contacts, including interviews.

### 9.1 Investigate Ethically


An exceptionally important part of being a VETS investigator is maintaining an objective and impartial attitude toward handling your cases. VETS is an impartial factfinder responsible for a thorough and complete investigation. Any appearance of favoritism or emotional involvement with a case may have serious consequences and reflect poorly on VETS. It could also destroy claimant and employer confidence, hindering the investigator's ability to gather necessary facts from all relevant sources. This would reduce VETS' effectiveness in negotiations and other dealings with the public.

#### **Basic Investigator Guidelines:**

- Maintain absolute integrity and honesty with all parties in the case.
  - Answer questions completely, while keeping the identity of information sources confidential.
  - If asked who provided certain information, politely refuse. Explain that VETS doesn't release information during an open investigation, and afterwards, only in accordance with the [FOIA](#).<sup>139</sup>
- Investigate fairly and objectively. VETS is a neutral party.
  - Avoid saying things such as, "There appears to be a violation," or "There doesn't appear to be a violation" during the investigation. Your role is impartial. Your goal is to gather and analyze the evidence and then compare it to the requirements under the law.
  - Avoid snap judgments, and don't give "updates" to either party concerning the current evaluation of the claim.
  - The sole exception to this rule is that you must provide each party the opportunity to rebut the position of the opposing party. You do this by paraphrasing or summarizing the other party's position, not by providing it verbatim.
  - Providing any other type of "update" can be damaging if the final determination is at odds with the update.

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<sup>139</sup> Refer to [VETS Receives a Subpoena \(For Your Testimony or Case File\)](#) for instructions about what to do when VETS receives a subpoena.

- Wait until you gather all the evidence before making any determinations regarding substantiation and notifying the parties. Even then, leave the door open for new evidence.
- Don't accept anything from either claimants or employers, including gifts and/or favors of any kind.
  - For example, if investigating a restaurant, politely decline an offer of coffee and go elsewhere for lunch.
  - The key here is to avoid any appearance of accepting favors or a conflict of interest.
- Conduct investigations with emotional intelligence.
  - Recognize that investigations may involve emotional responses by either or both parties and you. We're all human.
  - Act professional and use good judgment (e.g., allow an emotional witness reasonable time to compose themselves, rather than counseling them).
  - Don't eliminate your natural emotional affect. This could read to others as you failing to listen or not wanting the information.
  - Be mindful and control your emotions. Your goal is to behave objectively, not devoid of emotion.
  - Maintain your composure, even if others don't.
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- If you personally know, or might know, a party in the case, ask to transfer the case to another investigator or reviewer.
  - This rule holds whether the investigator or any reviewer knows, or might know, a person.
  - The goal is to avoid any appearance of a potential conflict of interest.
  - If assigning the case elsewhere isn't possible, inform the RO.
  - Discuss the matter with both parties to defuse any potential problems.
- Don't casually discuss or otherwise mention details of any open or closed case.
  - It's okay to discuss information with those also charged with VETS' investigative or review responsibilities, who also have access to view the case in VCMS.
  - Maintain confidentiality for both the claimant and the employer.

- If something doesn't feel right or you are unsure, stop and ask your supervisor before continuing.
  - You might want to contact your SI for help.
  - For questions about technical issues (e.g., hardware, software), go to the Enterprise Service Desk (ESD) or the [VCDC](#). You can file a service request for ESD through Service Central.

## 9.2 Properly Communicate with Parties Throughout the Investigation

As the impartial party, you'll often be positioned between the claimant and employer. VETS doesn't represent any single side. You'll be called on to paraphrase and report back each side's positions, which provides both sides the opportunity to rebut new information. You may also summarize documents and events if those provide information requiring rebuttal.

### 9.2.1 *Don't Share Document Copies*

Don't share copies of any documents gathered during the investigation with the parties. For example, if an employer provides you with copies of the employee's personnel file, don't share copies of that file with the claimant. Parties may request portions of the VETS case file at any time using a [FOIA request](#).<sup>140</sup>

### 9.2.2 *Contact with the Employer's Attorney*

Many employers have their own private or in-house attorneys. You'll know an employer has an attorney when the employer's reply comes from an attorney or the employer tells you to contact the attorney. You'll update VCMS to indicate the employer point of contact is an attorney. Enter the attorney's name and contact information.<sup>141</sup> Going forward, all future VETS contacts with supervisory or managerial staff for the employer concerning the case will be made exclusively through the attorney unless you have express permission from the attorney to contact the employer's supervisory or managerial staff directly. [Consult with the SI and RSOL](#) before interviewing former supervisors and managers from an employer represented by counsel because different rules apply across the states. Contacts and correspondence regarding new cases, unrelated to the case under investigation, will be addressed initially to the employer.

## 9.3 Prepare a Chronology to Establish Facts and Identify Evidence Needed

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**Pro Tip:** If you have a strong chronology, you'll be able to use the same chronology as investigative findings of facts when you prepare an MOR.

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<sup>140</sup> Refer to [Department of Labor, Freedom of Information Act \(FOIA\)](#).

<sup>141</sup> [VCMS Agency User Guide](#), Add Additional Employer Representatives.

For cases alleging USERRA violation(s), the VCMS Chronology of Facts page(s) are where you list all the facts found relevant to each potential violation separately. This includes listing every fact that's part of the issue analysis and linking each fact with its source document(s) or evidence, identifying the source by description and date. Use only statements of fact, not opinion. Identify and mark any disputed facts as well as indicate whether facts within the list have been substantiated or not. The chronology will help you identify gaps in the case or inconsistencies (e.g., a disputed fact).

For cases alleging VEOA or VP violation(s), you'll prepare this as a separate document you attach to your [CIP \(CIP form\)](#) and upload into VCMS. You must recount the claimant's story in chronological order (the order in which the events occurred), not the order in which the investigation found the facts. You'll revise and update the chronology as new facts are discovered.

#### 9.4 Write Effective Requests for Gathering Evidence

The evidence you rely on to make your determination should be specific and supported by documents wherever possible. This may require following up with other people or obtaining documents to get more details and corroboration. Be sure to obtain specific evidence from everyone. Be sure to confirm dates and obtain documents to support all evidence.

- *Claimant:* Don't rely only on the Form 1010. Use your initial contact with the claimant to develop a detailed narrative and to identify potential [witnesses](#), [comparators](#), and relevant documents. Use your opening letter to request specific information.
- *Employer:* Use your initial contact and tailor your opening letter to request documents relevant to the potential violation(s); on receipt of the employer's position statement, ask follow-up questions to the information contained in the employer's response and request additional documents, as necessary.
- *Witnesses:* Follow up on general references in witness statements. Use the "who, what, where, when, why, and how" questions to identify relevant documents, and find out where those documents are located and from whom to request them.

##### 9.4.1 *Quality of Evidence Collected*

Wherever possible, VETS investigators should review original documents rather than copies. Best evidence is the original document itself. The law requires producing the original document if possible. A duplicate is admissible if the originals were lost or destroyed, not obtainable, in the possession of the opposing party, or not closely related to a controlling issue. In circumstances where it would be unfair to admit the duplicate instead of the original, an argument can be raised against admitting duplicates into evidence if there's a genuine question as to the authenticity of the original.

### 9.4.1.1 Relevant Evidence

Generally, sufficient evidence will also be material, relevant, and reliable. VETS must investigate and document cases as though they might go to federal court, which requires relevant evidence. This includes any statement, document, or object tending to prove or disprove a fact in question. The person providing the evidence must be qualified and the evidence must be adequate. For example, a person who has never observed or evaluated the claimant's work may be considered incompetent to testify on the quality of the claimant's performance.

Relevancy and materiality are often used interchangeably. Relevance is the more important concept here. If evidence is not relevant, whether it's material or of little consequence. To determine relevancy, ask, "What does this evidence tend to prove?" If the answer is that it tends to prove or disprove an element of a potential violation or issue, then the evidence is relevant.

### 9.4.1.2 Reliable Evidence

Reliable evidence is dependable and trustworthy. Don't ignore evidence of questionable reliability. This evidence might lead to reliable evidence. Several factors determine whether the statement is reliable. One, whether the statement is based on a person's own experience and firsthand knowledge or based on rumor, hearsay, or innuendo. Two, whether the statement is a statement of fact or merely a conclusion. Three, whether the person has any interest in the outcome of the claimant's USERRA claim. Four, whether the person has a [bias](#) that might impact their statement. Five, the person's reputation for truthfulness or dishonesty may affect the reliability of the statement.

## 9.4.2 Required Case Documents

Documents and interviews are the two most important sources of evidence you'll collect in every investigation. As an investigator or a reviewer at any level, make sure you collect, upload, and fill in the metadata for all documents collected during the investigation. Refer to the table below for a list of documents you must collect in all cases. Note, a few might not apply (e.g., a collective bargaining agreement), but you must still ask about their existence and then collect them. You must collect the following documents, if they apply, in all cases:

- Collective bargaining agreement
- Employment contract
- All other alternative dispute resolution (ADR) agreements
- All relevant uniformed service discharge forms (e.g., DD-214, DD-215, NGB-22)
- Claimant's personnel file:
  - Performance evaluations,
  - Awards and bonuses,
  - Disciplinary records, and
  - Grievances
- [Comparator](#) personnel files:

- Performance evaluations
- Awards and bonuses
- Disciplinary records, and
- Grievances
- Employer handbook
- Employer payroll policies
- Employer payroll records for claimant
- Certified military orders, or FEMA deployment tracking system (DTS) alerts and/or notices for FEMA reservists, provided to claimant for the relevant period
- Notice to employer regarding military service or service as a FEMA reservist
- Employer's updated organizational chart; and
- All mitigation-related documents:
  - Documentation of short- and long-term disability benefits
  - Documentation of outside applications
  - Documentation of outside income, and
  - Documentation related to unemployment insurance benefits.

### 9.4.3 Recommended Case Documents

In addition to documents you must collect in each case, additional documents may be necessary based upon the potential violations in a particular case. After considering the potential violations present in your case, consider documents you should collect to evaluate those violations. The list below provides a quick reference guide. You may look for the potential violation that applies to your case and see a list of documents you should collect to validate the claim.

#### **Cross-Reference: Match the Potential Violation to Documents You Should Collect**

- **Discrimination and Retaliation** | *Failure to Hire* (USERRA):
  - Job posting
  - Job description
  - Claimant's job application
  - [Comparator](#) job applications
  - Employer's notes from claimant interview
  - Employer's notes from comparator interviews
  - Application scoring rubric for claimant
  - Application scoring rubric for comparators
  - All written explanations from employer to claimant or comparators; and
  - All hiring-related letters, emails, and text messages.
- **Discrimination and Retaliation** | *Failure to Promote* (USERRA):
  - Claimant's payroll records
  - Comparator payroll records
  - Claimant's timesheets and leave requests
  - Comparator timesheets and leave requests



- Promotion position posting and description
- Claimant's promotion application
- Comparator promotion applications
- Employer's notes from claimant's interview
- Employer's notes from comparator interviews
- Application scoring rubric for claimant
- Application scoring rubric for comparators
- All written explanations from employer to claimant and comparators
- All promotion-related letters, emails, and text messages.
- **Discrimination and Retaliation** | *Discharge or Termination (USERRA)*:
  - Claimant's payroll records
  - Comparator payroll records
  - Claimant's timesheet and leave requests
  - Comparator timesheets and leave requests
  - Job posting
  - Job description
  - Claimant's termination letter
  - [Comparator](#) termination letters
  - Claimant's unemployment insurance benefits documents
  - Claimant's outside job applications
  - Claimant's proof of income
  - All termination-related letters, emails, and text messages.
- **Discrimination and Retaliation** | *Denial of Benefits (including hostile work environment under USERRA)*:
  - Claimant's payroll records
  - Comparator payroll records
  - Claimant's timesheets and leave requests
  - Comparator timesheets and leave requests
  - Claimant's transfer application
  - Comparator transfer applications
  - Claimant's telework agreement
  - Comparator telework agreements; and
  - All benefits-related letters, emails, and text messages.
- **Reemployment** | *Failure to Reemploy (USERRA)*:
  - Job posting
  - Job description
  - Employer restructuring documents
  - Employer's updated organizational chart
  - Layoff and termination notices; and
  - All reemployment-related letters, emails, and text messages.
- **Reemployment** | *Failure to Reemploy Properly (USERRA)*:
  - Job posting
  - Job description; and

- All employment-related letters, emails, and text messages.
- **Reemployment** | *Failure to Reemploy into Proper Position (USERRA)*:
  - Job posting
  - Job description
  - Escalator job posting
  - Escalator job description
  - Documentation of efforts to qualify; and
  - All reemployment-related letters, emails, and text messages.
- **Reemployment** | *Failure to Reemploy into Proper Position for a Claimant with a Disability (USERRA)*:
  - Job posting
  - Job description
  - Escalator job posting
  - Escalator job description
  - Documentation of efforts to qualify
  - Disability-related treatment notes
  - Disability-related medical opinions
  - VA Disability Determinations
  - Reasonable accommodation requests
  - Employer responses to reasonable accommodation requests; and
  - All disability-related letters, emails, and text messages.
- **Reemployment** | *Failure to Properly Credit Pension Plan (USERRA)*:
  - Pension plan benefit documents
  - Employer contributions
  - Plan statements
  - All pension plan boarding documents:
    - Meeting minutes
    - Member statements, and
    - Member lists; and
  - All pension-related letters, emails, and text messages.
- **Rights and Benefits While Absent on Uniformed Service** | *Furlough Status and Vacation Time (USERRA)*:
  - Claimant's payroll records
  - [Comparator](#) payroll records
  - Claimant's timesheets and leave requests
  - Comparator timesheets and leave requests; and
  - All letters, emails, and text messages between employer and claimant while absent.
- **Rights and Benefits While Absent on Uniformed Service** | *Denial of Non-Seniority Rights or Benefits (USERRA)*:
  - Claimant's benefits documentation
  - Comparator benefits documentation; and

- All letters, emails, and text messages between employer and claimant while absent.
- **Rights and Benefits While Absent on Uniformed Service | Health Plan Coverage Issues (USERRA):**
  - Health plan benefits documents
  - Claimant’s policy and coverage documents
  - Plan contributions
  - Relevant medical documents
  - Claims submitted to insurer
  - Insurer correspondence; and
  - All letters, emails, and text messages between employer and claimant while absent.

#### 9.4.4 Request Information by Subpoena

The VETS investigator can usually obtain necessary records and information simply by requesting them or interviewing people with relevant knowledge. As a duly authorized representative of the Secretary of Labor, VETS investigators have statutory authority for reasonable access to examine and the right to copy and receive any documents of any person or employer that the Secretary considers relevant to the investigation.<sup>142</sup> The subpoena is your final option when requesting documents or to interview someone relevant to the case. We try to resolve investigative requests without resorting to a subpoena, but some employers won’t provide any information absent a subpoena. If you think you need to subpoena a financial institute, consult with the RAVET through your SI.

If you have sent multiple requests for information without success, generate a Subpoena Advisory Letter in VCMS with a date certain to produce the documents or provide testimony (refer to [VCMS Agency User Guide](#), Documents Generated from Templates for specific steps). If you don’t receive a response to that request by the date certain provided, your circumstances may require a subpoena to obtain the information.

##### 9.4.4.1 Subpoena Types

A subpoena *duces tecum* is a command to a person or organization to appear at a specific time and place and to produce the designated records. We use it to compel someone to produce documents. A subpoena *ad testificandum* is an order directing a named individual or corporation to appear at a particular time and place to give oral testimony. We use this to compel someone to come to a VETS interview. It can also be used to compel someone to testify at a court proceeding.

RAVETs are accountable for every subpoena issued and must maintain a Subpoena Log indicating the sequential number of the subpoena, the type of subpoena, the case number, the

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<sup>142</sup> [5 U.S.C. § 3330a\(b\)\(3\)](#); [38 U.S.C. § 4326\(b\)](#).

issue date, and any appropriate remarks. A completed Subpoena Request, which is a separate cover document that serves as a routing slip, must be on file for each subpoena issued. Destroy prepared but unused subpoenas and mark them “unused and destroyed” in the Subpoena Log.

#### 9.4.4.2 Draft a Subpoena: Subpoena Request Form

Once you have permission to require information via subpoena based on the list above, your final step pre-subpoena is to create a subpoena packet for the RAVET’s signature after RSOL approval. Generate the appropriate VCMS templates using the instructions in the [VCMS Agency User Guide](#), Documents Generated from Template. Submit both documents to your RAVET for signature and service.

For the RAVET to sign the packet, you must properly complete each item. List your name as the assigned investigator followed by “an officer.” For example, “Jamie Smith, an officer.” The draft should give the subpoenaed party a reasonable time (a minimum of 14 calendar days)<sup>143</sup> to assemble the records for production or appear to provide oral testimony. In certain situations, more time may be allowed based on the case facts. If you think this applies, speak to your SI.

Only RAVETs and certain designated officials in the NO have authorization to sign a VETS subpoena. The ASVET must authorize persons serving as “acting” RAVET to sign a given subpoena. Both the original subpoena and the duplicate copy must contain original signatures.

#### 9.4.4.3 Serve a Subpoena

Any authorized VETS employee can serve subpoenas. As an investigator, you may be called upon to serve subpoenas on individuals, corporations, state or municipal agencies, and (in extremely rare circumstances) federal agencies. Each has slightly different rules, as explained in the subsections below.

##### 9.4.4.3.1 Individuals

If the presence of a particular [witness](#) is essential, you must serve the subpoena on that person according to [Rule 45\(b\)\(1\) of the Federal Rules of Civil Procedure](#). However, where service on such a witness is impossible or impractical, some courts have ruled it’s permissible to make service by leaving the subpoena with a person of suitable age and discretion at the last and usual place of abode, coupled with mailing a copy of the subpoena via certified mail. If this form of service appears necessary, you must first [consult with RSOL](#) to assure such service meets the local jurisdiction’s subpoena service requirements. The courts have held, generally, that individuals aged 16 and over are of a suitable age to receive service. Identifying information about the person being served should be obtained and recorded.

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<sup>143</sup> Federal Rule of Civil Procedure 45 permits 14 calendar days to challenge a subpoena, so case law provides that the production date for the subpoena must be at least 14 calendar days. [Fed. R. Civ. P 45](#), p 63.

#### 9.4.4.3.2 Corporations

Service on a corporation is made by serving a corporate officer, a managing or general agent, or, if those others aren't available, the person in charge of the corporate offices. A subpoena may also be served on any agent authorized by law to receive service (i.e., registered agent or Secretary of State). Such service should be at the corporation's usual place of business or wherever the corporation does business. If seeking testimony or documents from a corporation, the subpoena should be addressed to the corporation since it's the corporation from which testimony and records are "demanded." Identifying information about the person being served should be obtained and recorded. When service is made on a corporation to produce documents, the individual served should be the person who has the authority to release the document as opposed to the person who possesses the document.

#### 9.4.4.3.3 State or Municipal Agency

If applicable, service on a state or municipal agency should be made by serving the agency officer designated to accept service. For information on who may be authorized to receive service, contact the [State Attorney General's Office](#) or counsel for the municipal agency. Otherwise, when a subpoena is used to request the presence of a particular person in an agency as a witness, service should be made by serving the person named in the subpoena. When service is made on an agency for documents, the individual served should be the person who has control of the records sought (e.g., authority to release the document). The subpoena should be addressed to the agency since it's the agency from which records are "demanded." Generally, control of agency records will lie with division heads, area directors, and the like. Service should be at the agency's usual place of operation or wherever the agency is currently operating. Identifying information about the person served, such as name and title, should be obtained and recorded.

#### 9.4.4.3.4 Federal Agency

Notify the SI immediately if a federal agency fails to produce requested relevant persons to be interviewed and/or records to be produced. The SI will consult with the RSOL for the appropriate next steps.

#### 9.4.4.4 Enforce a Subpoena

USERRA, VEOA, and VP authorize federal court action to enforce subpoenas for non-compliance.<sup>144</sup> The U.S. Attorney's Office must show that the request for information is reasonable (limited in scope and not a fishing expedition), relevant, and specific. You won't be able to enforce a subpoena that doesn't meet these three elements.

The RAVET, and/or their designee, working with RSOL and on behalf of the Secretary of Labor, will request the Attorney General secure an order from the United States District Court having

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<sup>144</sup> [5 U.S.C. § 3330a\(b\)\(3\)](#); [38 U.S.C. § 4326\(c\)](#).

jurisdiction in the matter. A continued refusal to obey after the issuance of a court order may be punished as contempt of court.

#### *9.4.5 VETS Receives a Subpoena (For Your Testimony or Case File)*

No VETS employee may testify at a trial in which DOL isn't a party to the case unless the NO or RSOL release the employee to testify. VETS investigators occasionally receive subpoenas for testimony or documents in third-party cases (i.e., cases in which the United States isn't a party). The Department regulations put certain restrictions on DOL personnel testifying or providing documents in third-party cases.<sup>145</sup> If you receive a subpoena, contact the SI immediately. The SI will consult with the RSOL and NO. The SI should forward the subpoena by the most expeditious means available to the RSOL.

### 9.5 Structure Effective Meetings and Conferences

The pace of a VETS investigation is quick. You only have 60 or 90 days to investigate potential VEOA or VP and USERRA violations, respectively. For this reason, you need to maximize opportunities for information gathering while you obtain documents and interview potential [witnesses](#), [comparators](#), and other relevant people. This section explains how best to plan for and structure the contact, make the contact, document the contact and what you learned, and follow up in writing to receive any information you requested.

#### *9.5.1 Identify All People with Relevant Knowledge (Witnesses, including Comparators)*

Conducting interviews is an investigator's most important function. Information provided by witnesses and case subjects is a major factor in successfully completing any investigation. Carefully planned and well-conducted interviews are essential to establish all relevant facts about issues under investigation. These are integral parts of reporting and investigating. Interviews should almost always be conducted; a case not requiring interviews is rare.

As you identify potential witnesses, consider the mode of interview you'll conduct (i.e., in-person, video, or phone). In-person interviews are the preferred interview mode. If in-person interviews can't occur, VETS uses video. These are relevant and necessary when you and a witness can't be together in the same place. Video interviews can feel more like an in-person conversation than a phone call. Each person can see the other. The witness may become more comfortable being asked many questions in a row. Finally, if you can't schedule an in-person or video interview, you may use a phone interview as your last resort.

As you interview, remember to keep in mind the big picture. Analyze the potential violations, types of violations, issues, defenses, elements, disputes, similarly situated people, gaps to be

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<sup>145</sup> See [29 C.F.R. §§ 2.20—2.24](#).

filled, disputed facts, and what would tip the scale the other way. Plan the questions based on your analysis but be flexible and explore all potential violations.

Remember to take a step back and brainstorm who else might be worth interviewing. Note the names of people mentioned by the claimant, employer, or other witnesses as potential additional witnesses. Consider speaking with them. Always try to get documentary support for any verbal statements (e.g., text messages, emails from claimant, letters, employee handbooks, and emails from witnesses).

Discover whether counsel represents the employer. If so, make all VETS contacts with supervisory or managerial staff for the employer concerning the case exclusively through the attorney unless you have express permission from the attorney to contact the supervisory or managerial staff directly. [Consult with the SI and RSOL](#) before interviewing former supervisors and managers of employers represented by counsel because different rules apply across the states.

#### 9.5.1.1 Witnesses

A [witness](#) may provide information that resolves or clarifies a disputed fact or legal issue. They can also be a rich source of documents. For example, a colleague may overhear the supervisor take an adverse action against a claimant. That colleague might also be able to provide emails, text messages, or other company policy documents that lend credibility to their verbal statements. You should reduce the interview with a potential witness to a [Witness Statement](#). Written witness statements are extremely valuable. They commit the witness to their story, provide a degree of certainty to the facts, and, in litigation, may be used by the trial attorney to impeach the witness if they deviate from their original statements. You can't have a written witness statement unless you take the time to identify and then interview witnesses for your investigation. If you can't get a signed, written statement, the next best document is a Form 1063 to accompany your unsigned draft Witness Statement Form, which reduces to writing the interaction and your efforts to obtain a signed witness statement.

#### 9.5.1.2 Comparator Witnesses (or Comparators)

[Comparators](#) are similarly situated employees without protected status or activity, who allegedly received different or better treatment than the claimant.

### 9.5.2 Prepare for and Lead Interviews and Onsite Visits

VETS interviews face-to-face, over video, or over the phone. Interviews are a baseline in any investigation. Be prepared to ask difficult or sensitive questions when necessary. Be professional when asking sensitive questions, but don't avoid asking for essential information.

The best way to proceed with confidence, directness, and efficiency is to prepare in advance for interviews and onsite visits. This subsection breaks down how to plan for and conduct interviews. It will explain how to:

- Choose a method and the techniques to personalize the interview and get the most out of it
- Conduct an effective interview
- Assess the interviewee's credibility and manner
- Document the interview in your case file
- Update [VCMS tools](#) or [CIP](#), and
- Follow up with the interviewee in writing.

For information about how to prepare for, conduct, and follow up on case settlement conferences, refer to [Facilitate Amicable Resolution](#).

### 9.5.2.1 Plan for Contact

A skilled investigator plans. They create an environment where someone wants to talk. Before ever arriving for an interview, you should have:

1. A list of questions that will help you confirm what you need to know, fill any gaps in your knowledge, or provide information about other sources you need.
2. A method for approaching the interview tailored for this person and their relationship to your case.
3. Two techniques for how to question the person that fit the method you chose and allow you to be flexible during the interview if the interviewee becomes reluctant or uncooperative.
4. A plan for how to take notes during the interview. We highly recommend you ask a colleague to join you and take notes.

When you plan to interview someone, you need a roadmap. That roadmap should consider the following factors: [level of cooperation you might receive](#), how to assess the credibility of what you're told, and how to select a method and the techniques to put the interviewee in the best frame of mind to provide you with information.

#### 9.5.2.1.1 Types of Interviewees

Degrees of cooperation range from people who rush forward to give information to the hostile, uncooperative person who won't even agree to meet with you, let alone provide information. Your professional, calm, and nonjudgmental demeanor signal to all involved that it's safe to trust you. You must withhold strong emotional responses. If you react to emotional outbursts from interviewees by threatening or pushing your position, it will only push the interviewees away.

### 9.5.2.2 Make Contact

Once you have your plan and set the date, you are now ready to conduct the interview. Remember to breathe, take your time, and conduct the interview. Tell the person who you are, under what authority you are there, and what you need from them. Explain how you'll proceed



through the interview. Remind them how confidentiality works in VETS investigations. Remind them that they can ask for clarification at any point. Begin the interview and refer to the tips and pitfalls to avoid.

#### 9.5.2.2.1 Notetaking During Interviews

Start by obtaining the subject's complete name, address, email address, and phone numbers, both at home and work. Also, note where the interview takes place, the date and time of the interview, who is present, and the atmosphere of the interview (e.g., outside, cold, and windy; in a crowded cafeteria; in a quiet office with closed doors). Don't ask permission to take notes. After the interviewee appears comfortable and prepared to begin, advise them that you'll take notes to remember everything accurately. Notetaking can make people uncomfortable. Handle this carefully, so the person still feels comfortable enough to talk openly. Don't share or allow interviewees to see your notes.

#### **General Checklist:**

- Have questions written out in advance and be prepared to ask follow-up questions.
- Be sure to write down everything remotely pertinent to the case.
- Write legibly. You may use abbreviations but keep a key and make sure you know what they mean.
  - For example, use "ee" for employee and "er" for employer.
  - If a name is given during the interview, spell it out and use initials after.
- Spell all proper names and write them in all capital letters.
- Leave room under each question to add additional notes if pertinent information is obtained later in the interview.
- Check off questions as they're asked to ensure you covered everything.
- Underline important points.
- Put question marks near any item that requires later clarification.
- Make drawings if appropriate.
- Number your pages.
- Be sure to note technical points, definitions, numbers, and dates in detail.
- Always put quotation marks around direct quotes. Leave no doubt about what is quoted and what is paraphrased.

Immediately after an interview, look over your notes and make sure you understand them. Sometimes, something that seemed so clear at the time, may not be so clear 30 minutes later. If you have questions, clear them up immediately. The longer you wait, the more difficult it could become.

#### 9.5.2.2.2 Witness Statement Form

You should use a Witness Statement Form every time you interview a [witness](#) (e.g., [comparator](#)). Get the signed statement without delay. Don't say that you'll review your notes and get back to

the interviewee with a statement. It's best to have the witness in the same room while you prepare the statement. If you are interviewing onsite, by video, or by telephone, ask the person to hold while you draft their statement. If the person is unable to hold while you prepare the statement, draft the statement on the Witness Statement Form, send it to the witness, ask them to correct any errors and add any information over the top of the document, then sign and return the statement to you. If you can't get the witness to return a signed Witness Statement, try to summarize the contact on a Form 1063 and ask the witness to confirm in writing that they agree the content on the 1063 matches what was discussed in the interview.

If emailing a witness statement to the witness, send a PDF version. Any changes the witness wishes to make should be done in ink and initialed by the witness. If this isn't feasible, we recommend you encourage them to use a digital markup to add comments over the PDF document. If a witness makes corrections to the statement, include it along with the unedited (original statement) in the case file and note any changes between the versions on a Form 1063.

### **Witness Statements Must Include:**

1. Name, address (home, work, and email), and phone (work, home, and cell).
2. Employment (employer, supervisor, title, length of time on the job).
3. Job duties and responsibilities.
4. Relationship to the claimant.
5. Time and date the statement began and ended.
6. Where did you witness the event (or obtain the information)?
7. When did this happen (exact or approximate date and time)?
8. What was witnessed (ensure accurate names of individuals involved, verify spelling)?
9. Sworn oath ([28 U.S.C. § 1746](#)).
  - a. If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."
  - b. If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."
10. Number on every page.

After the statement is typed or handwritten, have the [witness](#) read it. Ask if the witness wants to add anything or make corrections. Additional statements can be added before the statement is signed.

### **Checklist for Accurate and Complete Witness Statement:**

- Conducted an [effective interview](#). Notably:
  - Advised the witness of the interview's purpose.

- Told the witness that you'll keep the statement confidential to the maximum extent provided by law, and that the USERRA provides protection against retaliation.
- Advised the witness that you were going to write down information exactly as they told you.
- Drafted the statement in the witness's words. (You used their language and the first-person, e.g., "I" and "me.")
- Used only one written statement, with changes or additions made to the original.
- Read the statement out loud to the witness to make sure it was easy to read and understand.
- Witness corrected and put their initials next to any errors.
- Statement contains a sworn oath ([28 U.S.C. § 1746](#)):
  - If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."
  - If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

#### 9.5.2.2.3 Conclude the Interview

Before closing the interview, take a moment to make sure you covered everything you wanted. Review interview notes and any prepared questions to ensure all key areas are covered and necessary information obtained. Summarize key facts and testimony to ensure accuracy and a thorough understanding of the information provided. Leave the door open to ask follow-up questions later.

After you conclude the interview, but before you move on to the next steps, stop. Take a moment to evaluate your interviewing style and method to determine its success. Skilled interviewers get there because they conduct interviews, evaluate their part in the outcomes of those interviews, and then change what didn't work for them when they conduct their next interview. Contact your SI to discuss any items on your self-assessment that you would like to revisit or improve.

#### **Self-Assessment:**

1. Did you get answers to all your interview questions?
2. What information do you still need to achieve your objectives?
3. What are the best sources for obtaining missing information?
4. How could you have made your interview roadmap more helpful?
5. How effective were your communication skills (verbal and nonverbal)?
6. How could you improve your communication skills?

### 9.5.2.3 Document Contact on Form 1063

After you finish the interview, gather your notes, any notes taken by a colleague, documents provided at the interview, and any signed witness statements. Review the information collected. If you followed the guidance in the [Plan for Contact](#) section, you already have a draft Form 1063 in VCMS. Your next steps are to finalize the draft Form 1063 you created.<sup>146</sup> Incorporate information from your notes and outline the contact. Include the person's name; interview date, time, and location; relevant information on the atmosphere; information gathered; and future requests made. The two most common formats for Form 1063 are a question-and-answer or a narrative format. We recommend the question-and-answer format as the best format unless you specifically interviewed in a narrative, free flowing style. In the Q&A format, you list your introductory information in an opening paragraph. Paragraphs that follow will be labeled with a "Q" for question and an "A" for answer. We recommend you label the first instances as "Question (Q)" and "Answer (A)." Include a note at the bottom of your Form 1063 that lists any follow-up information you did in writing. Upload that follow-up writing to VCMS and fill in the appropriate metadata fields.

### 9.5.2.4 Update VCMS Tools (Related to ROI) or CIP

At this point, you are ready to update either the [CIP](#) for cases alleging VEOA and VP violation(s) or the Witness page in VCMS for cases alleging USERRA violation(s). For the CIP, you'll review your notes, Form 1063, and Witness Statement to update each relevant section. For the Witness page in VCMS, enter each [witness](#) and all associated information requested in the associated fields. For the CIP and Witness page, this step includes not only adding the information you learned, but also updating your action plans with next steps. You must also update the case information in VCMS. Upload any relevant documents and enter the relevant metadata fields. Link all uploaded witness statements to the corresponding witness listed on the Witnesses page.<sup>147</sup>

### 9.5.2.5 Follow Up in Writing

Every time you interview someone, you should follow up in writing to confirm that you met, what was discussed, and any outstanding requests. Many investigators do this via email. Whether you communicate via email or formal letter, you must upload the correspondence to VCMS and fill in the appropriate metadata. You must also upload and fill in the metadata for any responses the interviewee sends.

## 9.6 Investigator Safety

The safety of VETS staff during the investigative process is of utmost importance. The investigative process can be a very emotional time for all parties involved. Claimants may be

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<sup>146</sup> [VCMS Agency User Guide](#), Edit and Delete Documents.

<sup>147</sup> [VCMS Agency User Guide](#), The VCMS Case File.

experiencing unemployment and/or medical issues related to their military service. Witnesses may be concerned about the possibility of retaliation as a result of participating in the investigation. On occasion, a claimant may threaten to harm a member of VETS staff or may threaten to harm themselves.

The most important thing is to ensure that you remain professional and assess the threat. Try to determine if the claimant is an immediate threat to themselves or others. Ensure that you document everything, and quickly notify your supervisory chain, and the National Office [Compliance team](#). Ensure that you are documenting the nature of the interaction or conversation (i.e., describe the who, what, when, where, why, and how) using a VETS Form 1063.

If a claimant threatens self-harm, please notify your supervisory chain, as well as the National Office Compliance team for further instruction. In these instances, you may need to refer the individual to the Veterans Crisis line by dialing 988, and then pressing 1. It may also be necessary to contact local law enforcement to perform a welfare check on the individual.

If a claimant threatens to harm you or another member of the VETS staff, please notify your supervisory chain and regional office immediately, and in some cases, you may need to engage with the Regional Solicitor's office. Please also notify the National Office Compliance team for assistance as well. Depending on the nature of the threat, you may need to contact the Federal Protective Service, and/or local law enforcement. Again, document everything on a 1063 and VETS may assign a single point of contact for the claimant, such as the investigator, DVET, or Senior Investigator.

Finally, never provide a party to the case with personal information! When in doubt, contact your supervisory chain, and National Office immediately.

## Chapter 10 | Analyze a Potential Violation

When analyzing a potential violation, it's important to keep in mind the “big picture:” A complete and timely investigation, thoroughly and objectively analyzed, with a correct determination sufficiently supported by the evidence. To demonstrate the big picture, prepare the case file and your analysis so that anyone:

- Can clearly understand the case
- Will agree with your reasoning based on the facts you gathered, and
- Will have no lingering relevant questions or concerns.

Note that “anyone” can include anyone in a VETS RO, the VETS NO, Solicitor’s offices, as well as attorneys from DOJ and OSC. This chapter provides a general six-question test to use as a guide when analyzing any potential violation. These global steps are repeated with slight variety in the details based on the potential violation analyzed: [competitive examining](#), [RIF](#), [SAA](#), [discrimination](#), [retaliation](#), [reemployment](#), and [analyzing available remedies](#). The final subsection for each violation type outlined below will go over the reviewers’ responsibilities to check the investigator’s analysis, support, and conclusion. For reviewers reading this section, pay particular attention to headers titled “Reviewer’s Responsibility in Analysis” in each of the linked sections below.

For every [issue](#), you’ll have to document your analysis. You must use the IRAC method when you write down your analysis. IRAC stands for issue, rule, analysis, and conclusion. It’s a time-tested analytical tool used by legal and business professionals. It provides a standard step-by-step approach for breaking down and resolving complex problems, using available facts and applicable laws and regulations to arrive at a conclusion. For purposes of the [CIP](#) in cases alleging VEOA or VP violation(s) and the Issue Analysis VCMS page in cases alleging USERRA violation(s), you can use four questions to demonstrate the IRAC format. Note that you’ll also use this same format and four questions [when summarizing TA provided](#) or [drafting a request to RSOL](#).

### IRAC Template Analysis:

1. *What is the issue(s)?*
  - a. This chapter outlines the core issues that might arise under VP, VEOA, and USERRA.
  - b. Remember that each issue might have multiple potential violations within it.
  - c. VCMS lists the following potential violations<sup>148</sup> for your use: military obligations discrimination, reinstatement, initial hiring discrimination, discrimination as retaliation for any action, status, pay rate, seniority, other non-seniority benefits, pension, layoff, promotion, vacation, health benefits, special protected period discharge, reasonable accommodations and/or retraining for disabled claimants,

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<sup>148</sup> Note that on Form 1010, these are listed as “issues.” Refer to [issue](#) for this Manual’s definition of the term.

reasonable accommodations and/or retraining for non-qualified, non-disabled claimants, and other.

2. *What are the rules?*
  - a. Cite to relevant [USERRA](#), [VEOA](#), and [VP](#) statutes and regulations.
3. *What is the analysis?*
  - a. Outline what the rules require.
  - b. Fill in using statements of fact whether the information you gathered meets these requirements.
  - c. Make sure to include the sources for any facts (interviews or documents) and their relevant dates.
4. *What is the conclusion?*
  - a. Outline the result of your analysis.
  - b. The result shouldn't include inferences or assumptions.

### 10.1 Analyze a Potential Violation: Six-Question Test

For every investigation, you can ask yourself six questions to make sure you covered every corner of your investigation. These questions help you determine if you identified all the potential violations, collected sufficient evidence to support or undermine those potential violations, pointed out any disputed facts, and assessed the credibility of those providing information to you. Refer to these questions when moving from information collection to analysis. You'll likely revisit these questions multiple times during your investigation.

#### **Six-Question Test:**

1. What are the potential violations under USERRA, VP, or VEOA?
  - Potential violations identified by the claimant in the VETS Form 1010 (as "issues").
  - Other types of potential violations suggested by the facts.
2. What evidence supports each potential violation?
  - Outline documents.
  - Outline [witnesses](#), including [comparators](#).
3. What evidence undermines or refutes the potential violation?
  - Evidence that supports an employer's rebuttal in discrimination or retaliation cases.
  - Evidence that supports any other [employer defense](#) (e.g., changed circumstances, undue hardship).
4. What are the factual gaps or holes in the case's narrative?
  - What facts are missing or disputed?
  - Would those facts, if known, change your analysis?
5. Are there any credibility issues that would make the case's narrative less likely or believable?
  - Why do you find the person less believable?
  - Rely on facts, not opinions or gut feelings.

6. What is the determination for each potential violation?
  - Is the potential violation substantiated by the evidence?
  - For potential reemployment and benefits violations, use the [reasonable certainty standard](#).
  - For potential discrimination and retaliation violations, use the [preponderance of evidence](#) standard.

### 10.1.1 What Are the Potential Violations Under USERRA, VEOA, or VP?

Analyze all potential violations, even if the claimant didn't identify it on their VETS Form 1010. Always list potential violations, identify the statutory and regulatory citations, and find the applicable legal requirements and standards. For potential USERRA violations, outline this information on the VCMS Potential Violations page. For potential VEOA and VP violations, outline this information in [CIP](#) Section III. We provided a best-practice sample below.

*Tina, a full-time truck driver working 40 hours per week, went away for uniformed service for 2 years, and is reemployed on return as a warehouse loader. After reemployment, Tina has shifts removed, lowering their hours to 30 per week, and then they're terminated. On their VETS Form 1010, Tina complains about the termination. Are there any other potential USERRA violations?*<sup>149</sup>

- *Example:* The claimant files a Form 1010 claiming military obligations discrimination resulting in termination under USERRA. Form 1010 also indicates the claimant has a service-incurred disability.
- *Potential violation(s):* Discrimination; reemployment position; and reasonable efforts to accommodate disability.
- *Statutory and Regulatory Cites:* [38 U.S.C. §§ 4311, 4313](#); [20 C.F.R. §§ 1002.18, 1002.191, 1002.192, 1002.225, and 1002.226](#).
- *Legal Requirements and Standards:* *Prima facie* case; *Sheehan* factors; escalator position; and reasonable efforts to qualify a returning disabled service member.

### 10.1.2 What Evidence Supports Each Potential Violation?

Before analyzing evidence, look back at your VCMS [Chronology of Facts and Issue Analysis pages](#). They'll list the critical facts necessary to match against the elements required to substantiate a potential violation. For potential USERRA violations, your chronology and other relevant information (e.g., [comparator information](#)), goes in the VCMS Case Summary, Chronology of Facts, Eligibility, and Potential Violations pages. You apply the facts to the legal requirements and standards using VCMS Issue Analysis page(s). Use VCMS Documents and Witnesses pages to identify potential documentary evidence and [witnesses](#). For potential VEOA

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<sup>149</sup> NVTI 9605 USERRA Investigators Participant Guide, p 29 of PDF.



or VP violations, use the CIP to track this work. Use [CIP](#) Section IV for the chronology. Use CIP Section V to outline any disputed facts, action plans for resolving those disputes, and relevant evidence.

### *10.1.3 What Evidence Undermines or Refutes Each Potential Violation?*

Include all relevant facts, including those facts that undermine or refute the potential violation. For each fact, identify whether it's disputed and determined to be relevant (or not) to the investigation. Each fact should also include the date when the fact occurred and connected evidence that shows whether each fact is substantiated (or not). For potential USERRA violations, use the Issue Analysis page(s) to apply the facts to the legal requirements and standards. Consider, and include in your analysis, any evidence that tends to undermine or refute the facts applicable to each standard. Apply the facts to the law relating to an employer's rebuttal in discrimination or retaliation claims and for any other [employer defenses](#), such as changed circumstances or undue hardship.

For potential VEOA and VP violations, use the CIP to track this work. Use [CIP](#) Section IV to review your chronology and find relevant evidence. Use CIP Section V to outline disputed legal issue(s) and action plan(s) for resolving the dispute.

### *10.1.4 Where Are the Factual Gaps or Holes in the Narrative of the Case?*

Facts aren't always clear-cut. You must identify which facts are disputed and which are undisputed in the VCMS Chronology of Facts page. For potential USERRA violations, use the Issue Analysis page(s) to apply the facts to the legal requirements and standards. Note any disputed evidence or missing facts. Develop an action plan to resolve any disputes and locate and obtain any missing facts. Use the VCMS Documents and Witnesses pages to identify any documents and witnesses that may resolve the disputed and missing facts.

For potential VEOA and VP violations, use the CIP to track this work. Use [CIP](#) Section IV to review your chronology and find relevant evidence. Use CIP Section V to outline disputed facts, action plans, and relevant evidence. Distinguish here if disputed facts undermine or support the potential violation.

### *10.1.5 Are There Any Credibility Issues That Would Make the Case Narrative Less Likely or Believable?*

You must determine if, and why, you find a person's narrative less believable. The point of this determination is to explain to those outside of you, the investigator, using fact statements, why a narrative is less believable. Consider what facts you rely on to make a finding about credibility:

- Inconsistent statements
- Opposing facts corroborated by other evidence, and
- Identify the facts, not your opinion or gut feeling.

For example, during your onsite investigation at the workplace, the claimant's coworker tells you that the claimant was fired because they dated their supervisor's sibling. What do you do with this fact? Is there anything else to ask? You should interview others at the company to see if anyone else thinks this impacted the claimant. Now, how does this admission and any other information you might find in subsequent interviews impact your analysis? An employer's rebuttal might indicate whether they would have terminated the claimant anyway, regardless of protected status. This could point out inconsistent reasons. Depending on the additional evidence you gather, the witness's original statement could point out a credibility issue that could impact the witness, claimant, or employer.

### 10.1.6 What Is the Determination for Each Potential Violation?

Now it's time to determine if the evidence substantiates the potential violation. Continuously reevaluate the potential violation as you collect new evidence and apply it to the legal requirements and standards until the investigation is complete. (The investigation is complete when there are no missing facts to obtain and no factual gaps or holes in the case's narrative). For potential USERRA violations, use the VCMS Case Summary, Chronology of Facts, Eligibility, Potential Violations, and Witnesses pages.<sup>150</sup> For potential VEOA and VP violations, use [CIP](#) Sections III-VI.

For potential reemployment violations, use the [preponderance of evidence standard](#) to establish the five prerequisites to reemployment, and the [reasonable certainty standard](#) to determine the proper reemployment position and seniority-based rights and benefits. A preponderance of the evidence standard says that it's more likely to be true than not to be true. A "reasonable certainty" is a high probability that the employee would have received the benefit if they had been continuously employed, not an absolute certainty ([20 C.F.R. § 1002.213](#)).

For potential discrimination and retaliation violations, use the [preponderance of evidence standard](#). After the claimant establishes a *prima facie* case (i.e., meets the [basic eligibility elements](#)), the burden of proof shifts to the employer to show it would have taken the adverse action even without the protected status or activity.

## 10.2 Analyze Competitive Examining Potential Violations (VP)

Remember that preference in competitive examining is applied consistent with the provisions for CATRAT or the numerical ranking process. Refer to the [OPM Vet Guide](#) for instructions not provided within this Manual.

### Checklist for Evaluating Potential Competitive Examining Violations:

1. Standard: Has the claimant [met the legal standard for VP](#)?

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<sup>150</sup> [VCMS Agency User Guide](#), The VCMS Case File.

- a. Confirm the eligibility criteria.
- b. Confirm the agency followed the appropriate process for the claimant's preference status.
- c. See analysis listed below.
2. Confirm any agency or candidate defenses offered.
  - a. Note any affirmative defenses (e.g., claimant raises VP rights).
  - b. Outline any evidence supporting or contradicting the defense asserted.
3. Outline relevant remedies.
  - a. Before you get to the analysis, ask the claimant what remedies they want.
  - b. Compare those to the remedies available based on the potential violation (i.e., the agency reconstructs the hiring process in a way that complies with VEOA and/or VP).<sup>151</sup>
4. Outline the possibility for and details of an agreement in a confirmatory letter.
  - a. Include when VETS contacted the claimant and what the claimant thought VETS should attempt to request in settlement.
  - b. Report the opening settlement offer.

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**Pro Tip:** Resolution of a VEOA or VP violation requires reconstruction of the hiring process, as determined by case law. Resolution doesn't require appointment into the position, which is more than what the claimant is entitled to. It also doesn't require priority placement in the next hiring action, which is less than the claimant is entitled to.

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### 10.2.1 Standard: Has the Claimant Met the Legal Standard for VP?

For open competitive examining, answer the claimant eligibility requirements for VP. Confirm the claimant:

1. Claimant [properly filed a federal job application](#), meaning they:
  - a. [Applied for a position with a federal agency](#),
  - b. [Asserted their preference eligibility in writing](#),
  - c. [Timely filed a complete job application within federal guidelines](#), and
  - d. [Are qualified for the position, as determined by the hiring authority](#).
2. Claimant [wasn't interviewed and/or selected for the position](#).
3. Claimant [is preference eligible](#).
4. Claimant [had their VP improperly applied during the hiring process](#).
5. Claimant [timely filed their claim with VETS](#).

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<sup>151</sup> [5 U.S.C. § 3330c](#).

### 10.2.2 Document Your Analysis

Documenting your analysis is key. If you can't explain your thought process and how you arrived at your conclusion in writing, then it won't contain sufficient information to close the case. The analysis brings together everything that you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a given potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

### 10.2.3 Reviewer's Responsibilities in Analysis

The reviewer's responsibility in analysis is as important as the investigator's role. The reviewer will verify and validate each aspect of the investigator's analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. The reviewer shouldn't approve any issue analysis that's not accurate and complete. We encourage you to comment if you find something missing or something that could be improved. Your experience as a reviewer will help the investigator learn as they encounter potential violations and issues they haven't yet had the opportunity to work. Complete the Quality Assurance Review (QAR) checklist to demonstrate your review is complete. Upload this document to the VCMS case file and fill in any associated metadata fields.<sup>152</sup>

## 10.3 Analyze Reduction in Force (RIF) Potential Violations (VP)

Initially, determine if the preference eligible affected by the RIF has union representation. If so, you should contact and develop a working relationship with the union officials. Advise officials, professional organizations, and other employee groups and employer representatives of the VETS complaint process and investigative responsibilities. Any questions or concerns regarding these issues should be resolved during initial contacts with these groups.

### Checklist for Evaluating Potential RIF Violations:

1. Standard: Has the claimant [met the legal standard for VP](#)?
  - a. Include whether the agency properly set the competitive area, competitive levels, and properly adjusted the SCD to include performance appraisals.
  - b. See analysis listed below.
2. Confirm any agency or candidate defenses offered.
  - a. Note any affirmative defenses (e.g., claimant raises VP rights).
  - b. Outline any evidence supporting or contradicting the defense asserted.
3. Outline relevant remedies.

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<sup>152</sup> [VCMS Agency User Guide](#), The VCMS Case File, Reports of Investigation.

- a. Before you get to the analysis, ask the claimant what remedies they want.
- b. Compare those to the remedies available based on the potential violation (i.e., order for the agency to comply with VP and attorney fees and expenses).<sup>153</sup>
4. Outline the possibility for and details of a settlement agreement.
  - a. Include when VETS contacted the claimant and what the claimant thought VETS should attempt to request in settlement.
  - b. Report the opening settlement offer.

### *10.3.1 Standard: Has the Claimant Met the Legal Standard for VP?*

For a RIF, remember to apply [the open competitive examining standard](#) by answering the claimant eligibility requirements. Confirm the claimant:

1. [Asserted preference eligibility in writing](#) on their federal personnel records,
2. [Occupies a position with a federal agency subject to RIF](#),
3. [Timely filed their claim with VETS](#),
4. [Is qualified for the position](#), as determined by the hiring authority,
5. [Is preference eligible](#),
6. [Experienced an adverse hiring action](#), and
7. [Had their VP improperly applied during the RIF process](#).

### *10.3.2 Document Your Analysis*

Documenting your analysis is key. If you can't explain your thought process and how you arrived at your conclusion in writing, then it won't contain sufficient information to close the case. The analysis brings together everything you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a given potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

### *10.3.3 Reviewer's Responsibilities in Analysis*

The reviewer's responsibility in analysis is as important as the investigator's role. The reviewer will verify and validate each aspect of the investigator's analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. The reviewer shouldn't approve any issue analysis that's not accurate and complete. We encourage you to comment if you find something missing or something that could be improved. Your experience as a reviewer will help the investigator learn as they encounter cases and potential violations they haven't yet had the opportunity to work. Complete the QAR

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<sup>153</sup> [5 U.S.C. § 3330c](#).

checklist to demonstrate your review is complete. Upload this document to the VCMS case file and fill in any associated metadata fields.<sup>154</sup>

## 10.4 Analyze SAA Potential Violations (VEOA and VP)

When you analyze SAA appointments, you must start by looking to the relevant SAA type. This section explains how to analyze [VRA](#) and [VEOA](#) appointments.

### Checklist for Evaluating SAA Appointments:

1. Standard: Has the claimant met the legal standard for VEOA or VP, as applicable?
  - a. [VRAs fall under VP](#) but use 5 C.F.R. Part 302 procedures for exempt service examining.
  - b. [VEOA appointments](#) fall under VEOA.
  - c. See analysis listed below.
2. Confirm any agency or candidate defenses offered.
  - a. Note any affirmative defenses (e.g., claimant raises VEOA or VP rights).
  - b. Outline any evidence supporting or contradicting the defense asserted.
3. Outline relevant remedies.
  - a. Before you get to the analysis, ask the claimant what remedies they want.
  - b. Compare those to the remedies available based on the potential violation (i.e., agency will reconstruct the hiring action in compliance with VEOA and/or VP).<sup>155</sup>
4. Outline the possibility for and details of an agreement in a confirmatory letter.
  - a. Include when VETS contacted the claimant and what the claimant thought VETS should attempt to request in settlement.
  - b. Report the opening settlement offer.

#### 10.4.1 Standard: Has the Claimant Met the Legal Standard? (VEOA and VP)

For SAAs, this Manual outlines how to analyze VRA Authority appointments and VEOA appointments. Each follows different analytical criteria, as outlined below. Remember to check which preference a claimant asserted on their candidate application or resume. You don't want to analyze the criteria under a law that won't apply.

##### 10.4.1.1 VRA Authority (VP)

For a VRA Authority type of violation, remember to apply the open competitive examining standard by answering the claimant eligibility requirements. Confirm the claimant:

1. Claimant [properly filed a federal job application](#), meaning they:

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<sup>154</sup> [VCMS Agency User Guide](#), The VCMS Case File, Reports of Investigation.

<sup>155</sup> [5 C.F.R. § 1208.25](#).

- a. [Applied for a position with a federal agency,](#)
  - b. [Asserted their preference eligibility in writing,](#)
  - c. [Timely filed a complete job application within federal guidelines,](#) and
  - d. [Are qualified for the position, as determined by the hiring authority.](#)
2. Claimant [wasn't interviewed and/or selected for the position.](#)
  3. Claimant [is preference eligible.](#)
  4. Claimant [had their VP improperly applied during the hiring process.](#)
  5. Claimant [timely filed their claim with VETS.](#)

#### 10.4.1.2 VEOA Authority

For a VEOA Authority type of violation, remember to apply VEOA eligibility criteria. Confirm the claimant:

1. [Applied to a Merit Promotion \(MP\) announcement open to candidates from outside the agency,](#)
2. [Timely filed their application,](#)
3. [Is VEOA eligible,](#) and
4. [Was denied access and opportunity to apply for the position.](#)

#### 10.4.2 Document Your Analysis

Documenting your analysis is key. If you can't explain your thought process and how you arrived at your conclusion in writing, then it won't contain sufficient information to close the case. The analysis brings together everything you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a given potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

#### 10.4.3 Reviewer's Responsibilities in Analysis

The reviewer's responsibility in analysis is as important as the investigator's role. The reviewer will verify and validate each aspect of the investigator's analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. The reviewer shouldn't approve any issue analysis that's not accurate and complete. We encourage you to comment if you find something missing or something that could be improved. Your experience as a reviewer will help the investigator learn as they encounter potential violations and issues they haven't yet had the opportunity to work. Complete the QAR

checklist to demonstrate your review is complete. Upload this document to the VCMS case file and fill in any associated metadata fields.<sup>156</sup>

## 10.5 Analyze Potential Discrimination Violations (USERRA)

When evaluating potential discrimination violations, you should follow the VCMS ROI Claims Analysis process set forth in the VCMS Issue Analysis page(s). For every step below, you must lay out your analysis, which should include facts from the VCMS Chronology of Facts, Documents, Eligibility, and Potential Violations page(s) along with source documents and their creation dates. Remember, the ROI process will occur in stages; with each stage you'll layer in additional information. At every stage, you must outline the action plan to fill in the gaps for any missing information or contested facts.

### Discrimination Analysis:

1. Standard: Has the claimant met the [legal standard for discrimination](#)?
  - a. *Prima facie* case (protected status, motivating factor, adverse act), then the burden shifts to the employer to show legitimate, non-discriminatory reasons for the adverse action.
  - b. Does the employer claim to have legitimate, nondiscriminatory reasons for the adverse act (burden shifting)?
  - c. See analysis listed below.
2. Confirm any [employer defense](#) offered.
  - a. Note any affirmative defenses (e.g., claimant failed to mitigate damages).
  - b. Outline any evidence supporting or contradicting the defense asserted.
3. Outline [relevant remedies](#).
  - a. Before you get to the analysis, ask the claimant what remedies they want.
  - b. Compare those to the remedies available based on the potential violation.
  - c. Include details about the comparable work obtained. If the compensation is lower, include details regarding the job search and job opportunities.
  - d. If the claimant was terminated and remains unemployed, include whether the claimant tried to find comparable work and details about the search and job opportunities.
  - e. Record the remedies authorized under USERRA for on the Potential Violations page in the case file.
4. Outline the possibility for and details of a [settlement agreement](#).
  - a. Include when VETS contacted the claimant and what the claimant thought VETS should attempt to settle for, if different from the lost wages calculation.
  - b. Report the opening settlement offer. If different from the lost wages calculation, indicate the reason for the opening settlement offer.

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<sup>156</sup> [VCMS Agency User Guide](#), The VCMS Case File; Reports of Investigation.



- c. Include each communication and what was expressed by both VETS and the employer.
  - d. Indicate who at the company engaged in settlement discussions and whether they involved legal counsel.
5. Include and outline other relevant information for consideration.
  - a. Include anything not mentioned in other parts of the VCMS ROI process.
  - b. Note if the RSOL was consulted.
6. Connect any documentary evidence collected to each fact and subsection within the VCMS Chronology of Facts, Eligibility, Issue Analysis, and Witnesses pages.
  - a. If the claimant's employment position was modified or eliminated, collect any employer restructuring documents and an updated organization chart.
  - b. If the position was modified or eliminated and other, non-military employees are no longer employed, then collect layoff and termination notices for the claimant and [comparators](#).
  - c. If the claimant asserts a disability, then you should collect:
    - i. Disability-related medical opinions, if applicable, from a treating or examining source that outlines the claimant's work-related functional limitations.
    - ii. VA disability determinations, which should contain the percentage service-connected disability rating and medical conditions.

This section also provides information on the Reviewer's responsibilities in analyzing potential violations.

### *10.5.1 Standard: Has the Claimant Met the Legal Standard for Discrimination? (USERRA)*

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**Pro Tip:** Rarely will you get evidence of *Sheehan* factors from documents alone. These come from interviewing people.

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To meet the legal standard for discrimination, you must be able to demonstrate:

1. Did the claimant have [protected status](#)?
2. Did the claimant suffer an [adverse employment action](#)?
3. Was the claimant's adverse employment action [motivated, at least in part, by their protected activity](#)?

On the third step, you must analyze the *Sheehan* factors one at a time. Examine and analyze each factor in detail. Refer to [Discrimination Eligibility](#) for further instructions.

### *10.5.2 Document Your Analysis*

Documenting your analysis is key. If you can't explain your thought process and how you arrived at your conclusion in writing, then it won't contain sufficient information to close the

case. The analysis brings together everything you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a given potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

### 10.5.3 Reviewer's Responsibilities in Analysis

The reviewer's responsibility in analysis is as important as the investigator's role. The reviewer will verify and validate each aspect of the investigator's analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. If an investigator outlines a *Sheehan* (motivating factor) analysis, there should be interviews in the case file for the designated reviewer to approve the analysis. For all USERRA investigations, it should be a rare instance where interviews aren't conducted.

For potential USERRA violations, VCMS includes three opportunities to formally analyze and review an investigation. Refer to the following review sections in this manual for the reviewer's responsibility at each of the reviews: [Preliminary](#), [Prenotification](#), and [Preclosing](#). Within VCMS, at each ROI-review milestone, the designated reviewer must approve or disapprove of each subsection within the ROI by selecting "Yes" or "No" (indicating they don't approve of the subsection in whole or in part). The designated ROI reviewer must include comments for the investigator as to why their ROI didn't meet the expected criteria. To approve and accept the Preclosing ROI, the investigator must have completed all sections of the case file. The reviewer must approve all subsections within the ROI.<sup>157</sup>

## 10.6 Analyze Potential Retaliation Violations (USERRA)

When evaluating potential retaliation violations, follow the VCMS Retaliation subsection within the Issue Analysis page(s). For every step below, you must lay out your analysis, which should include facts from VCMS Chronology of Facts, Eligibility, and Potential Violations pages, as well as source documents with their creation dates. Remember the ROI process will occur in stages, with each stage providing you additional information to layer in. At every stage, you must outline the action plan to fill in the gaps for any missing information or contested facts.

### Retaliation Analysis:

1. Standard: Has the claimant met the [legal standard for retaliation](#)?
  - a. *Prima facie* case (protected activity, adverse act, motivating factor), then the burden shifts to the employer to show legitimate, non-discriminatory reasons for the adverse action.

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<sup>157</sup> [VCMS Agency User Guide](#), The VCMS Case File, Reports of Investigation.

- b. Does the employer claim to have legitimate, nondiscriminatory reasons for the adverse act (burden shifting)?
    - c. See analysis listed below.
  2. Confirm any [employer defense](#) offered.
    - a. Note any affirmative defenses (e.g., claimant failed to mitigate damages).
    - b. Outline any evidence supporting or contradicting the defense asserted.
  3. Outline relevant [remedies](#).
    - a. Before you get to the analysis, ask the claimant what remedies they want.
    - b. Compare those to the remedies available based on the potential violation.
    - c. Include details about the comparable work obtained. If the compensation is lower, include details regarding the job search and job opportunities.
    - d. If the claimant was terminated and remains unemployed, include whether the claimant tried to find comparable work and details about the search and job opportunities.
    - e. Record the remedies authorized under USERRA on the VCMS Potential Violations page(s).
  4. Outline the possibility for and details of a [settlement agreement](#).
    - a. Include when VETS contacted the claimant and what the claimant thought VETS should attempt to settle for, if different from the lost wages calculation.
    - b. Report the opening settlement offer. If different from the lost wages calculation, indicate the reason for the opening settlement offer.
    - c. Include each communication and what was expressed by both VETS and the employer.
    - d. Indicate who at the company engaged in settlement discussions and whether they involved legal counsel.
  5. Include and outline other relevant information for consideration.
    - a. Include anything not mentioned in other parts of the VCMS ROI process.
    - b. Note if the RSOL was consulted.
  6. Connect any documentary evidence collected to each fact and subsection within the VCMS Chronology of Facts, Eligibility, Issue Analysis, and Witnesses pages.
    - a. If the claimant's employment position was modified or eliminated, collect any employer restructuring documents and an updated organization chart.
    - b. If the position was modified or eliminated and other, non-military employees are no longer employed, then collect layoff and termination notices for the claimant and [comparators](#).

This section also provides information on the Reviewer's responsibilities in claims analysis.

#### *10.6.1 Standard: Has the Claimant Met the Legal Standard for Retaliation? (USERRA)*

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**Pro Tip:** Rarely will you get evidence of *Sheehan* factors from documents alone. These come from interviewing people.

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To meet the legal standard for retaliation, you must be able to demonstrate:

1. Did the claimant have [protected activity](#)?
2. Did the claimant suffer an [adverse employment action](#)?
3. Was the claimant’s adverse employment action [motivated, at least in part](#), by their [protected activity](#)?

On the third step, you must analyze the *Sheehan* factors one at a time. Examine and analyze each factor in detail. Refer to [Retaliation Eligibility](#) for further instructions.

### *10.6.2 Document Your Analysis*

Documenting your analysis is key. If you can’t explain your thought process and how you arrived at your conclusion in writing, then it won’t contain sufficient information to close the case. The analysis brings together everything you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

### *10.6.3 Reviewer’s Responsibilities in Analysis*

The reviewer’s responsibility in analysis is as important as the investigator’s role. The reviewer will verify and validate each aspect of the investigator’s analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. If an investigator outlines a *Sheehan* (motivating factor) analysis, there should be interviews in the case file for the designated reviewer to approve the analysis. For all USERRA investigations, it should be a rare instance where interviews aren’t conducted.

For potential USERRA violations, VCMS includes three opportunities to formally analyze and review an investigation. Refer to the following review sections in this manual for the reviewer’s responsibility at each of the reviews: [Preliminary](#), [Prenotification](#), and [Preclosing](#). Within VCMS, at each ROI-review milestone, the designated reviewer must approve or disapprove of each subsection within the ROI by selecting “Yes” or “No” (indicating they don’t approve of the subsection in whole or in part). The designated ROI reviewer must include comments for the investigator as to why their ROI didn’t meet the expected criteria. To approve and accept the Preclosing ROI, the investigator must have completed all sections of the case file. The reviewer must approve all subsections within the ROI.<sup>158</sup>

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<sup>158</sup> [VCMS Agency User Guide](#), The VCMS Case File; Reports of Investigations.

## 10.7 Analyze Potential Reemployment Violations (USERRA)

When evaluating potential reemployment violations, you should follow the Reemployment subsection of the VCMS Issue Analysis page. For every step below, you must lay out your analysis, which should include facts from VCMS Chronology of Facts, Eligibility, and Potential Violations pages, as well as source documents with their creation dates. Remember the ROI process will occur in stages, with each stage providing you additional information to layer in. At every stage, you must outline the action plan to fill in the gaps for any missing information or contested facts.

### Reemployment Analysis:

1. Standard: Has the claimant [met the legal standard for reemployment](#)?
  - a. [Five prerequisites to reemployment](#).
  - b. See analysis listed below.
2. Confirm any [employer defense](#) offered. Note any affirmative defenses:
  - a. Position was for brief, non-recurrent employment.
  - b. Employer circumstances changed, making reemployment impossible or unreasonable.
  - c. Undue hardship in qualifying the claimant or accommodating their disability, so the employee can become qualified.
  - d. Claimant failed to mitigate damages.
3. Outline [relevant remedies](#).
  - a. Before you get to the analysis, ask the claimant what remedies they want.
  - b. Compare those to the remedies available based on the potential violation.
  - c. Include details about the comparable work obtained. If the compensation is lower, include details regarding the job search and job opportunities.
  - d. If the claimant was terminated and remains unemployed, include whether the claimant tried to find comparable work and details about the search and job opportunities.
  - e. Record the remedies authorized under USERRA on the Potential Violations page in the case file.
4. Outline the possibility for and details of a [settlement agreement](#).
  - a. Include when VETS contacted the claimant and what the claimant thought VETS should attempt to settle for, if different from the lost wages calculation.
  - b. Report the opening settlement offer. If different from the lost wages calculation, indicate the reason for the opening settlement offer.
  - c. Include each communication and what was expressed by both VETS and the employer.
  - d. Indicate who at the company engaged in settlement discussions and whether they involved legal counsel.
5. Include and outline other relevant information for consideration.
  - a. Include anything not mentioned in other parts of the VCMS ROI process.
  - b. Note if the RSOL was consulted.

6. Connect any documentary evidence collected to each fact and subsection within the VCMS Chronology of Facts, Eligibility, Issue Analysis, and Witnesses pages.
  - a. If the claimant's employment position was modified or eliminated, collect any employer restructuring documents and an updated organization chart.
  - b. If the position was modified or eliminated and other, non-military employees are no longer employed, then collect layoff and termination notices for claimant and [comparators](#).
  - c. If the claimant asserts a disability, then you should collect:
    - i. Disability-related medical opinions, if applicable, from a treating or examining source that outlines the claimant's work-related functional limitations.
    - ii. VA disability determinations, which should contain the percentage service-connected disability rating and medical conditions.

This section also provides information on the Reviewer's responsibilities in analyzing potential violations.

#### *10.7.1 Standard: Has the Claimant Met the Legal Standard for Reemployment? (USERRA)*

The [reemployment standard](#) has three questions. You must analyze them in order:

1. Eligibility: Is the person [eligible for reemployment](#)?
  - a. Employer can't add eligibility requirements.
  - b. It's extremely difficult to waive this element.
2. Position: Is the person [reemployed in the proper \(usually escalator\) position](#)?
  - a. Use the [reasonable certainty standard](#).
  - b. Determine the default position depending on the length of service.
  - c. Determine whether the employer put forth reasonable efforts to qualify the person for the default position.
  - d. If the person remains unqualified after reasonable efforts, determine the next drop-down position depending on the length of service.
3. Benefits: Did the person [receive the benefits owed](#)?
  - a. Burden is on the employer to qualify the individual.
  - b. Look to seniority, status, and pay ([38 U.S.C. § 4316](#)).
  - c. Look for non-seniority benefits, especially those granted to others while the claimant was absent.
  - d. Look for health plan and pension benefits ([38 U.S.C. §§ 4317-4318](#)).

When analyzing potential reemployment violations, the claimant must be qualified for the reemployment position. If they aren't, then the employer must make reasonable efforts to help the claimant become qualified to perform the duties and tasks of this position. The employer isn't required to reemploy the claimant on their return from service if the claimant can't, after reasonable efforts by the employer, qualify for the appropriate reemployment position. The employer should make a reasonable effort to find a position for which the claimant is qualified to

perform. You need to keep this entire logical chain in mind when analyzing a potential reemployment violation. When you analyze a potential violation, you are matching evidence collected with the criteria to determine if you have sufficient evidence to substantiate the potential violation. Refer to [Reemployment Eligibility](#) for additional clarification.

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**Pro Tip:** You can't evaluate reemployment into a promotional position without: (a) gathering documents and comparator information and (b) interviewing people with relevant knowledge. For example, talk to HR about the job description. Talk to the hiring officials who made the promotional decisions. Remember to also look at what resources were given to comparator employees to qualify for these promotional positions.

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### *10.7.2 Document Your Analysis*

Documenting your analysis is key. If you can't explain your thought process and how you arrived at your conclusion in writing, then it won't contain sufficient information to close the case. The analysis brings together everything you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

### *10.7.3 Reviewer's Responsibilities in Analysis*

The reviewer's responsibility in analysis is as important as the investigator's role. The reviewer will verify and validate each aspect of the investigator's analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. Remember that it should be a rare instance where interviews aren't conducted.

For potential USERRA violations, VCMS includes three opportunities to formally analyze and review an investigation. Refer to the following review sections in this manual for the reviewer's responsibility at each of the reviews: [Preliminary](#), [Prenotification](#), and [Preclosing](#). Within VCMS, at each ROI-review milestone, the designated reviewer must approve or disapprove of each subsection within the ROI by selecting "Yes" or "No" (indicating they don't approve of the subsection in whole or in part). The designated ROI reviewer must include comments for the investigator as to why their ROI didn't meet the expected criteria. To approve and accept the

Preclosing ROI, the investigator must have completed all sections of the case file. The reviewer must approve all subsections within the ROI.<sup>159</sup>

### 10.8 Outline Remedies and Compute Monetary Remedies (USERRA, VEOA, and VP)

Remedies are what the claimant is owed based on their rights and benefits under USERRA, VEOA, and VP. Not all remedies will be monetary. For example, a form of remedy or relief would be transferring the claimant back to the business location where they worked before leaving for uniformed service. That may or may not have a monetary consequence, which you need to outline. The appropriate remedy depends on the type of violation.

For USERRA, there are tools that make it easier to outline how to compute the monetary remedies involved. Note that VCMS provides you with the ability to select the following potential violations as part of the Potential Violations page, including fields to capture the reference to the applicable statute, regulation, the claimant’s requested remedy, the remedy for each issue the investigator determines would be applicable under the statute, and a list of evidence in the case file for each potential violation. VCMS lists violations that might apply to remedies: status, pay rate, seniority, or other. Attaching these potential violations will help you track whether you analyzed how each would apply to the case. See the USERRA violations sections preceding this section to understand how best to write up this analysis.

#### **Potential Appropriate USERRA Remedies for Discrimination, Retaliation, and Reemployment:**

- *Reemployment*: even if that means displacing another worker.
- *Lost Wages*: difference between what an employee was actually paid and what they should have been paid if not for the wrongful action (including [certain interest](#)).
- *Pension Adjustments*.
- *Restored Vacation Days or Other Lost Benefits*.
- *Seniority*: retroactively reinstated.
- *Promotion*: with a retroactive effective date, if appropriate.
- *Liquidated Damages*: the amount of lost wages and benefits will be doubled. The employer must have willfully violated USERRA.
  - For example, employer says, “I don’t care what you say about USERRA, I don’t listen to the Feds. I’m not reemploying you.”
  - Important distinction: While this is a potential remedy, this isn’t a remedy that an investigator can obtain for a claimant. USERRA allows a court to provide this remedy if that court determines the employer’s failure to comply was willful ([38 U.S.C. § 4323\(d\)](#)).

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<sup>159</sup> [VCMS Agency User Guide](#), The VCMS Case File; Reports of Investigation.



Remedies not available under USERRA include punitive damages, compensatory damages (e.g., damages for emotional distress or pain and suffering), and apology letters. A person's job is a foundational part of their personal financial security. Claimants can get highly emotional when there are negative shifts in their positions, pay, and benefits. They might want a letter from the employer apologizing for the adverse action. This isn't a remedy available under USERRA, VEOA, or VP.

For VEOA and VP, the remedy available is for the agency to reconstruct the hiring action. Resolution doesn't require appointment into the position, which is more than what the claimant is entitled to. It also doesn't require priority placement in the next hiring action, which is less than the claimant is entitled to. If the case circumstances appear to require calculating complex or unusual remedies, contact your SI, who will [request additional help from the RSOL](#), as appropriate.

### *10.8.1 Claimant's Responsibility to Mitigate Damages (USERRA)*

The claimant must mitigate damages. This means the claimant must seek and, if feasible, accept suitable alternative employment when the employer unlawfully terminates, refuses to hire, or refuses to reinstate the claimant. This doesn't mean the claimant must accept or retain a position inferior in terms of seniority, status, or pay to the position for which the claimant is entitled with the respondent employer. If the claimant does accept such a position, this doesn't waive their right to the better position (see [Calculate Lost Wages](#)).

Failure to mitigate damages is an affirmative defense for which the employer has the burden of proof. For example, the employer argues the lost wages award should be reduced to reflect earnings the claimant should have earned but didn't. The employer must demonstrate that other suitable employment was, in fact, available to the claimant and the claimant knew that other position existed. The claimant doesn't have to apply for or accept a position that's not comparable to or in the same line of work as the position unlawfully denied.

### *10.8.2 Calculate Remedies Based on Specific Circumstances (USERRA)*

There are a variety of situations that might impact how you calculate the lost wages award. The subsections below cover how to calculate lost wages in three common situations:

1. When the employer unlawfully denied the claimant reemployment.
2. When the employer unlawfully denied the claimant initial hiring.
3. When mitigation wages are periodic, rather than absolute.

#### *10.8.2.1 When Employer Denied Claimant Reemployment (USERRA)*

A claimant unlawfully denied reemployment is entitled to lost wages until they're properly reemployed or offered proper reemployment, whether or not they choose to return to work for the employer. Calculate lost wages from the date of the reemployment application until they're properly reinstated or they reject a proper reinstatement offer that's fully in accord with their

rights. Remember you must calculate what was due to the claimant under USERRA. A claimant may decide to settle for less than this, which is their option. USERRA is read and interpreted in the light most favorable to the claimant. VETS must conduct a full and complete investigation, which means calculating all relevant lost wages.

#### 10.8.2.2 When Employer Unlawfully Denied Claimant Initial Hiring (USERRA)

A claimant unlawfully denied initial hiring, or unlawfully fired, is entitled to back pay. Calculate lost wages from the date of that unlawful action until the employer properly placed or reinstated the claimant or the claimant rejected an employer offer fully in accord with their rights.

#### 10.8.2.3 When Mitigation Wages Are Periodic (Rather Than Absolute under USERRA)

Normally, you compute mitigation of damages on a pay-period-by-pay-period basis. A claimant isn't entitled to lost wages for a period where they earn more from an alternate employer or from an alternate position than they would have earned from the proper position with the respondent employer. The excess from that pay period isn't carried forward to pay later pay periods or carried back to earlier ones.

The claimant may take an alternate position to mitigate damages. They may choose to work overtime in the alternate position. In the pay-period-by-pay-period comparison, only consider comparable hours. We interpret USERRA and VP generously; that means with an eye toward who the law should protect (i.e., veteran, service member, and other protected claimants). The benefit of the claimant's extra effort (working overtime) should be for the benefit of the claimant, not to the benefit of the employer determined to have violated the law.

In some cases, the claimant may mitigate the lost wages award by arranging to perform additional uniformed service. Take care to determine whether the claimant would have received that pay in addition to, or instead of, pay they would have received from the respondent employer. For example, pay the claimant receives for performing inactive duty training on weekends shouldn't be deducted from the lost wages award if the claimant wouldn't ordinarily have worked for the civilian employer on weekends. Alternately, if the claimant wouldn't have performed the additional uniformed service but for the fact that they were improperly reemployed, then you subtract this military pay from the lost wages award. The claimant is performing the service to mitigate their wages.

If the claimant performed additional uniformed service to mitigate part or all the lost wages award, that period of uniformed service shouldn't be included in computing [the claimant's five-year cumulative limit](#) with that employer. In such a situation, the employer's violation has necessitated the additional uniformed service, and the employer has benefitted from that additional service because the amount the claimant earned for performing such service will reduce the lost wages award that the employer will be required to pay. Accordingly, the employer isn't permitted to assert that the additional service has caused the claimant to exceed the five-year limit, under [20 C.F.R. § 1002.103\(b\)](#) and the equitable doctrine of estoppel. This is

a legal rule that prevents someone from stating a position inconsistent with one previously stated, especially when an earlier representation has been relied upon by others. This doctrine provides that a party isn't permitted to benefit from its own wrongdoing.

### *10.8.3 Calculate Remedies (USERRA)*

When calculating remedies, make sure you collected all the necessary information on lost wages, interest, and the value of any relevant benefits. The subsections below explain how to calculate the value of these remedies to determine the relief available to a claimant.

#### **10.8.3.1 Calculate Lost Wages (USERRA)**

To calculate the lost wages award, you may need to consider more than basic pay. Include any special pay and overtime in the lost wages award that it's reasonable certainty the claimant would have received had the employer complied with the law. Review the claimant's own work history and pay received by other employees of the respondent employer to determine the lost wages award. Include the economic value of all benefits (including vacation days and health benefits) the claimant was [reasonably certain](#) to have received if the employer had complied with the law. Consider only the claimant's earnings from employment or profit-making activity in determining what part of the lost wages award has been mitigated. Don't consider payments the claimant received from a collateral source. For example, unemployment compensation received from the state.

It's important to compute the lost wages award on a pay-period-by-pay-period basis, because the amount the claimant would have earned from the respondent employer isn't necessarily a static number. This is especially true if lost wages must be computed for an extended period. If the claimant had been properly reinstated following uniformed service, or if they hadn't been unlawfully fired or denied initial hiring, then they would have received cost of living increases or pay raises based on seniority. Such increases, if reasonably certain, should be considered in computing the lost wages award.

#### **10.8.3.2 Understanding Interest (USERRA)**

A lost wages award without interest has two deficits in making the claimant whole. First, inflation will have lessened the value of the money the claimant receives. Second, the claimant lost the opportunity to invest and earn interest on that money. This is called the "time value of money." You must use the [coupon equivalent rate of 13-week Treasury bills](#) to calculate interest on lost wages. That rate is readily available in newspapers and financial publications. It's often used as the base rate for savings accounts and variable rate mortgages.

#### **10.8.3.3 Calculate Value of Benefits (USERRA)**

The claimant may purchase an individual health insurance policy to cover the possible need for medical care during the interim period. In that situation, the lost wages award should include the difference between what the claimant paid for the individual policy and what they would have

paid for health insurance as an active employee. Some claimants may be unable to obtain individual health insurance policies. In those situations, the lost wages award should include any out-of-pocket medical expenses the claimant incurred that were reasonably certain to have been covered by the employer's health insurance plan. Pension benefits can be confusing to calculate. We recommend you bookmark and become familiar with the questions and answers provided in [USERRA Fact Sheet #1: FAQ – Employers' Pension Obligations to Reemployed Service Members under USERRA](#).

#### *10.8.4 Document Your Analysis*

Documenting your analysis is key. If you can't explain your thought process and how you arrived at your conclusion in writing, then it won't contain sufficient information to close the case. The analysis brings together everything you learned and how you plan to explain why a potential violation is substantiated or not substantiated. Layer statements of fact, statutory and regulatory citations, and documents (including their sources and dates) to weave an analysis that provides a complete picture of all information you have about a potential violation. If you are doing a preliminary analysis, include any disputed facts, gaps in the analysis, and action steps necessary to resolve these disputes and gaps.

#### *10.8.5 Reviewer's Responsibilities in Analysis*

The reviewer's responsibility in analysis is as important as the investigator's role. The reviewer will verify and validate each aspect of the investigator's analysis. The reviewer must look over the entire investigative file, including the relevant evidence, to understand and evaluate the analysis for accuracy and completeness. The reviewer should point out any inconsistencies or missing information. The reviewer's responsibility in analysis also applies to the calculation of available remedies under USERRA. Ensure the investigator collected all necessary information on lost wages, interest, and the value of any relevant benefits.

For potential USERRA violations, VCMS includes three opportunities to formally analyze and review an investigation. Refer to the following review sections in this manual for the reviewer's responsibility at each of the reviews: [Preliminary](#), [Prenotification](#), and [Preclosing](#). Within VCMS, at each ROI-review milestone, the designated reviewer must approve or disapprove of each subsection within the ROI by selecting "Yes" or "No" (indicating they don't approve of the subsection in whole or in part). The designated ROI reviewer must include comments for the investigator as to why their ROI didn't meet the expected criteria. To approve and accept the Preclosing ROI, the investigator must have completed all sections of the case file. The reviewer must approve all subsections within the ROI.<sup>160</sup>

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<sup>160</sup> [VCMS Agency User Guide](#), The VCMS Case File; Reports of Investigation.

## Chapter 11 | Help the Parties Cooperatively Reach Agreement

One of the two main purposes of a VETS investigator includes helping the parties cooperatively reach agreement during an investigation. You summarize information discovered, convey each party's position to the other party, and perform many other actions where you are the neutral party in the center of the case. One of the most powerful resolution tools available to you is the case resolution conference.

You'll sometimes lead case resolution conferences with the parties to the investigation, and their representatives. The purpose is for the parties to mutually agree how to resolve substantiated violation, or a potential violation still under investigation. Note that case resolution conferences may be held at any stage during a case proceeding when the investigator believes it may help the parties reach an agreement to resolve the matter in dispute. The two most common times when you'll conduct a case resolution conference are:

1. When the investigation is complete and you can substantiate the violation, but letters and phone calls are unable to resolve the case.
2. When the employer requests the conference before you complete the investigation.

For the second situation, you must clearly explain to both parties that the investigation isn't yet complete, that any findings discussed are preliminary at best, and that, if the case isn't resolved at the case resolution conference, the investigation will continue until the investigation has been completed.

### 11.1 Prepare for and Lead Case Resolution Conferences

Interviews, discussions, and conferences with the parties are strong sources of information in the investigation. A case resolution conference can be beneficial. In some cases, it might lead to resolution of the claim and closing the case. This section covers how to prepare for and lead the case resolution conference, which pulls on skills developed in previous chapters.

#### **Additional Resources:**

- Refer to [Onsite Investigations](#) for more information about onsite visits.
- Refer to [Prepare for and Lead Interviews and Onsite Visits](#) for more information about interviews.

#### *11.1.1 Prepare for a Case Resolution Conference*

Prepare in advance for the conference. Outline a script for opening the conference and case-specific information and relevant facts, as appropriate. Plan for the conference's logistics. If interviewing over the phone, coordinate and reserve the use of a conference call-in number and passcode with your RO for ample time necessary to conduct the conference. Plan for how you'll conduct discussions. For phone conferences, consider how you'll conduct discussions with one party without the other party hearing the discussion. Consider the use of a second phone while

placing the conference on hold. Plan for the number of rounds of discussion. Provide yourself ample time to reach a resolution, if possible, but know when to say when.

#### 11.1.1.1 Advice to Claimant Before the Conference

Before opening the conference, meet privately with the claimant to discuss the strengths and weaknesses of the case and explore areas where compromise may be possible. If the claimant chooses to attend, advise the claimant not to bring up matters that aren't directly related to the case. This conference isn't a proper forum for unrelated issues.

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**Pro Tip:** Claimant is entitled to be represented by counsel throughout the course of the investigation, including at the case resolution conference. Consultation with the claimant during the case resolution conference that doesn't disrupt the conference shouldn't be construed as interference.

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Advise the claimant that they shouldn't feel pressured to accept or sign any settlement offered during the conference. If the remedies offered are less than the full remedies required by law, advise the claimant they have the right to decline the offer. The claimant should be told there are no guarantees that further government action will better benefit the claimant. If the case is referred, the DOJ or OSC can still decline to accept the case for representation and/or litigation. Even if it's accepted, litigation may eventually only result in a similar or lesser resolution, or even in an unfavorable court ruling. The claimant should be told that if they elect to accept such an offer, they may be waiving additional rights under the law, such as the right to seek private counsel at their own expense to file a lawsuit in a court of competent jurisdiction or an appeal before the MSPB.

#### 11.1.1.2 Confirm the Conference

After you arrange the conference, notify both parties using the Case Confirmation Letter template in VCMS. Create a draft document in VCMS. Make sure your letter confirms the date, time, and location (or conference call-in number, link, and passcode). Explain that the purpose of the conference is to attempt to reach a final resolution of the claimant's claim. Send the confirmation letters by [authorized carrier](#). Upload a copy of the confirmation letter in VCMS and fill out the appropriate metadata fields.<sup>161</sup>

### 11.1.2 Conduct a Case Resolution Conference

The day is here, and you are ready to conduct your conference. The subsections below outline how to open the conference by setting expectations, control the conference with your impartiality

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<sup>161</sup> [VCMS Agency User Guide](#), Case Documents.

and organization, close the conference to best set up the investigation for next steps, and handle negotiations whether you receive a positive or negative response from the parties.

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**Pro Tip:** In the absence of a written acknowledgment of settlement, the case may still be closed as [Claim Resolved](#) with a closing letter that sets forth the terms of the settlement, but the claimant must also be informed that, if they aren't fully satisfied with the resolution, they may request that VETS refer their case to DOJ or OSC, as appropriate, or seek private counsel.

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#### 11.1.2.1 Conference Notes

Take comprehensive notes during the conference. These notes will form the basis for a summary report of the conference, which becomes part of the case file. We highly recommend having a VETS colleague serve as a scribe, so you can focus on leading the conference. For notetaking tips, refer to [Notetaking During Interviews](#).

#### 11.1.2.1 Close the Conference

Once the parties have had an opportunity to fully discuss their respective positions, usually after a few rounds of discussions, you should inform the parties that the conference is at an end if the claim isn't resolved. Remind the parties of their rights and obligations. Explain what they can expect as a follow-up to the conference to set their expectations for the next actions in the investigation that you might take.

##### 11.1.2.1.1 Conference Resulting in Resolution

When the conference results in an agreed resolution by both parties, either in whole or in part, take the following steps:

- Verbally sum up the results of the conference for all parties, as part of preparing to close the conference.
  - Ask them to confirm that you correctly stated the results.
  - Review the details of the resolution with all present, so there's no misunderstanding as to who agrees to do what and when, reduce this to writing, and provide copies to both parties.
- When lost wages are part of the resolution, ensure that all figures used are accurate and agreed upon, including an end date for the calculations, and interest.
- If resolution is reached, prepare the settlement agreement template in VCMS immediately and circulate it for signatures.
  - If in person, you may be able to prepare the shell of the agreement in advance, add the agreed-upon terms, and have the parties sign before leaving the conference.
- When the resolution involves payment to the claimant of any monies (e.g., lost wages) and it's not possible immediately to obtain full payment of all the amounts agreed upon,

make necessary arrangements to have a check for the balance, made payable to the claimant, forwarded to your office by an agreed date for transmittal to the claimant, or sent to the claimant via direct deposit with claimant confirmation.

See the associated guidelines for procedures dealing with [monetary settlements](#) and appropriate [case closing procedures](#).

#### 11.1.2.1.2 Employer Refuses to Grant or Settle Claim

If the claim can't be resolved, explain that the claimant has a right to request referral to DOJ or OSC, as appropriate. If the investigation isn't yet complete, explain that it will continue. In addition, inform the employer that a lost wage type of violation may be accruing (in appropriate cases), and that liquidated damages for willful violations (i.e., an amount equal to the amount of lost wages and benefits) may also be awarded by a court in an action brought under USERRA.

#### 11.1.2.1.3 Request for Additional Time

The claimant or employer may request additional time to consider their respective decisions. This time shouldn't exceed ten calendar days.

#### 11.1.2.2 Follow-Up Actions After the Conference

As you may remember from our Plan, Contact, and Report-out loop in earlier chapters, after you plan for and conduct the conference, you must document the conference. This step is very important. If there's a settlement agreed to, others reading the case file later will rely on the way the conference was documented, the executed settlement agreement, and the closing letters (in the event of a finalized settlement). This section outlines the critical information to include in the conference report, Form 1063, and updating the [CIP](#) in VEOA and/or VP cases and/or the ROI in USERRA cases.

##### 11.1.2.2.1 Conference Report

As soon as possible, prepare a summary of the conference based on the notes. The summary should be on a Case Conference Report template found in VCMS and should include the case number, name of parties, date, time, location, and a list of participants by name, title, address, and phone number. The report should contain the items below, as appropriate:

1. All contested problems and sub-problems identified.
2. Positions of the parties and their supporting reasons for each contested issue.
3. Offers of settlement, proposals, and counterproposals as to each issue.
4. Outstanding problems.
5. If issues were resolved, a detailed outline of the agreement.
6. Document list including sources.



List all documents obtained and their sources on a Case Conference Report. The report and all other related documents secured during the conference will become case documents in the VCMS case file.

#### 11.1.2.2.2 Form 1063

Document the communication on a Form 1063 and reference any proposed or executed settlement agreements. Refer to [Document All Communication Attempts, Findings, and Potential Investigatory Issues](#) for instructions about Form 1063's requirements.

#### 11.1.2.2.3 Update VCMS Tools (Related to ROI) or CIP

If settlement is pending, update your [CIP](#) in VEOA or VP cases and VCMS Chronology of Facts, Issue Analysis, Potential Violations, Settlements, and Witnesses pages in USERRA cases accordingly. At this point, you'll update most sections of the relevant document or tool based on what you learned or what occurred during the conference. Pay particular attention to updating VCMS Chronology of Facts, Issue Analysis, and Settlements pages that deal with settlement, disputed facts, and contested issues. Outline the action steps between the conference and closing the case. These steps will include finalizing the settlement, obtaining signatures, logging payments received, drafting closing letters, updating your VCMS case file, and uploading relevant documents and their accompanying metadata fields.<sup>162</sup>

### 11.2 Before Generating a Settlement Agreement and Letter

Prior to generating a settlement agreement and letter, you must remember that you have a neutral role between the parties. The claimant is the only one who can decide to settle the claim. This section explains how to handle a negotiation where the claimant will accept less than their full entitlement to recovery. It will also explain how to remind the employer of the claimant's rights in any negotiation or settlement.

#### *11.2.1 Claimant Accepts Something Less Than Full Recovery (USERRA)*

The claimant may agree to accept less than full entitlement to resolve their claim. For example, the claimant may agree to no lost wages to receive reinstatement. A claimant might decide to forego reinstatement in exchange for a monetary settlement. Remember that it's the claimant who must make such decisions. You must fully inform them of the consequences of such decisions. If the claimant decides to forego any entitlements, you should have the parties execute a written settlement agreement.

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<sup>162</sup> [VCMS Agency User Guide](#), The VCMS Case File.

### *11.2.2 Explain Claimant's Rights to Employer (USERRA)*

You should explain to the employer, or their counsel, that the claimant has a right to request referral to DOJ or OSC. If the investigation isn't yet complete, explain that it will continue. Explain that a lost wage type of violation may be accruing and that liquidated damages may also be awarded in a court action under USERRA.<sup>163</sup>

### 11.3 Generate, Finalize, or Log a Settlement Agreement

In this section, we will cover how to generate, finalize, and log a settlement agreement, as well as how to log any payments received. Investigators play a crucial role in settlement. You are the neutral party that helps the parties negotiate to arrive at a settlement. You often will be the one who writes up the terms agreed upon by the parties. You'll be the one collecting the signatures and maintaining a copy of the settlement for the record. In many cases, you'll also follow up to ensure both parties meet their obligations under the agreement, so you can close your investigative case file. Your planning and attention to detail here can make or break a proper settlement process.

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**Pro Tip:** If you have a consent to communicate electronically, email three PDF settlement agreements to the Claimant. Ask the claimant to sign and return all three copies with original signatures. Mail each of the originals to the signing authorities at the employer. They should mail two back with original signatures to you; they should mail the final with original signatures to the Claimant.

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#### *11.3.1 Generate a Settlement Agreement, Release, and Log*

Both the agreement and release are part of a single Settlement Agreement and Release template. In VCMS, you can create a pre-populated Settlement Agreement draft. You are responsible for entering the agreed-upon terms in your case. You may need to revise your draft as negotiations progress.

For specific instructions on how to generate this template and navigate the Settlement Dashboard view, refer to [VCMS Agency User Guide](#), Settlements. Under "A. Agreement Terms" of the pre-populated Settlement Agreement draft, you must enter clearly, specifically, and with all required details, exactly what the parties agreed to. The terms of the agreement are the fact-specific items the parties agreed upon. During your case resolution conference, you asked the parties to confirm each thing they agreed to as part of the settlement. These are the details that you must now include in the settlement agreement. You can only close the case once the settlement agreement has been fully executed.

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<sup>163</sup> NVTI 9605 USERRA Investigators Participant Guide, p 150 of PDF.

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**Pro Tip:** Sometimes the settlement agreement may include a promise to do a future action, but VETS doesn't want to keep the case open longer than necessary. Once you receive a settlement agreement signed by both parties, you should close the case as "[Claim Resolved](#)." The claimant can request that the case be reopened if the employer doesn't comply with the terms of the settlement. If the parties agree to a future action in your case, consult with your SI about whether to hold the case open or close it pending satisfaction of that future action.

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### Drafting Checklist:

- Use the VCMS Settlement Agreement and Release template (note the Settlement Agreement and Release isn't on DOL or VETS letterhead or caption):
  - If you think you need to use any document except this template, are unsure how to draft any of the specific terms, or if the employer proposes additional terms and conditions that address issues beyond USERRA, speak to your SI before proceeding.
  - The SI will speak with the NO and RSOL.
  - If the SI tells you that it's permissible to proceed with a document other than the template, ensure that the agreement isn't on DOL or VETS letterhead or caption.
- Identify all the claimant's potential violations that were the subject of VETS' investigation.
- Identify all the terms of settlement, including that the claimant agrees to have the VETS case closed and agrees not to institute or pursue any civil action under USERRA (if a settlement in a USERRA case), VEOA and/or VP (if a settlement in a VEOA or VP case) against the employer because of the potential violations.

After preparing your agreement, print and send copies to the parties for signature. Note that you may also send an advanced copy via email with attachments, but you'll still need to print and mail copies to the parties.

#### *11.3.2 Finalize a Settlement Agreement*

A finalized settlement agreement means an agreement signed and dated by both parties. Once you have a final settlement, upload the document to VCMS and fill in any relevant metadata. Once you receive a settlement agreement signed by both parties, you should log the settlement and close the case as "[Claim Resolved](#)."

#### *11.3.3 Log a Settlement Agreement*

Once you have a final agreement, you must log it into VCMS to make it part of your case file. The parties may reduce their own settlement agreement to writing, or the parties, for whatever reason, may refuse to reduce their agreement to writing. You should request a copy of any settlement agreement in all cases where that situation may arise. If the settlement is confidential,

the parties won't share a copy of the agreement with VETS. For all settlement agreements, you must not enter any details of the agreement on the VCMS Settlements page. VCMS allows you to "add a settlement agreement," which is a process that combines uploading a copy of the document, as well as entering settlement-specific data fields. Refer to [VCMS Agency User Guide](#), Logging a Signed Settlement Agreement, for step-by-step instructions.

#### 11.4 Prepare for and Then Log a Settlement Payment

When the case's resolution involves someone paying the claimant monies (e.g., lost wages), first try to obtain full payment. For example, an employer may send monies via direct deposit with the claimant verifying once they receive funds. If that's not possible, make the necessary arrangements to have a check for the balance, made payable to the claimant, forwarded to your office.<sup>164</sup> Avoid having any payments sent to your residence or home office. You'll log the payment and forward it on to the claimant. With the agreement of the parties, the check may be sent directly to the claimant. You must obtain verification of direct payment to the claimant. Request a copy of the check from the parties. Upload a copy of the check into VCMS. For step-by-step instructions, refer to [VCMS Agency User Guide](#), Settlements – Log a Settlement Payment.

If you forward the payment to the claimant, you must send it by [authorized carrier](#). Send the claimant a closing letter along with the employer's check. After verifying the satisfaction of all the other elements of the settlement agreement, notify the claimant accordingly and inform the claimant that VETS is closing the case. Enclose a copy of the signed settlement agreement and release.

Send the employer a closing letter advising that the check has been sent to the claimant by authorized carrier. Advise the employer that VETS is closing the case. Enclose a copy of the signed settlement agreement and release.

In some cases, there will be a settlement and no written settlement agreement exists. For example, the parties resolve the issue between them and inform VETS. As the investigator, you must do everything you can to request copies of any settlement agreements prepared and/or executed. If you don't receive a response, you should use your closing letter as a way of documenting the agreed-upon terms. The closing letter should set out the relief, as explained to VETS, and a statement that if the claimant isn't fully satisfied with the resolution, they may request VETS refer their case to DOJ or OSC, or they may seek private counsel.

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<sup>164</sup> VETS represents the federal government and must provide flexibility in approaches, so that all claimants may have equitable access to VETS' help. Not all claimants and/or employers will be able to send electronic payments.

## 11.5 Reviewer's Responsibilities in Settlement

Reviewers check cases for quality, form, and content at many stages in the investigation. Several [pre-case-closing review criteria](#) cover how reviewers must validate the investigator's work concerning case resolution conferences and settlement. The relevant items are set forth below.

### Reviewer Checklist:

- Did the investigator release the correct written determination notification to the employer? If the investigator couldn't substantiate the potential violation(s), did they send the claimant a not-substantiated claim determination notification?
  - The investigator will promptly and accurately notify the claimant and employer, as appropriate, of VETS' determination.
  - If a case resolution conference was requested before the investigation was completed and a determination was made, go to the next step.
- Did the investigator prepare to conduct a thorough and objective case resolution conference?
  - The investigator planned for the conference logistics in advance.
    - If the conference was held telephonically, the investigator coordinated with the RO to reserve a conference call-in number and passcode for ample time necessary to conduct the conference.
    - The investigator prepared and implemented a plan for how to speak to one party without the other party hearing the discussion.
    - The investigator wrote down case notes or other information to demonstrate they planned for the number of rounds of discussion.
  - The investigator sent the parties a confirmation letter outlining the proper date, time, and location information with ample time for the parties to schedule their attendance.
  - The investigator wrote down case notes or other information to demonstrate they used a script for the opening conference that included case-specific information and relevant facts, as appropriate.
- Did the investigator conduct thorough and objective case resolution conference(s), if beneficial?
  - The investigator will conduct a thorough and objective case resolution conference, if such a conference would be beneficial to the investigation.
  - The investigator will prepare a case resolution conference report.
  - The investigator will document the conference in VCMS:
    - Entering case notes where appropriate,
    - Uploading the copies of executed documents made from VCMS templates (where possible), and
    - Entering relevant metadata for any uploaded documents.
- Did the investigator prepare a settlement agreement in the correct format?

- If the parties agreed to a settlement, then the investigator will thoroughly and accurately prepare a written settlement agreement.
- The investigator must include a copy of the written settlement agreement in VCMS with the appropriate metadata selected.

Refer to [Review the Case](#) for the rest of the reviewer's pre-closing case review responsibilities.

## Chapter 12 | Respond to Delays, Questions of Law, and External Inquiries About an Investigation

VETS investigations must be done under tight deadlines. Life sometimes interferes, which means there are delays in document production, contacting a necessary individual, or even when simply mailing documents to a party. First, this chapter explains how to [request an extension](#) to continue investigating beyond the 60- or 90-calendar-day requirements under VEOA and VP, and USERRA, respectively. Second, we cover when and [how to approach RSOL for a legal opinion](#). Third, how to [respond to and resolve complaints about the investigator and/or investigation](#) process. Finally, how to [respond to external inquiries](#) under FOIA or the Privacy Act, and from the legislative and executive branches, the media, and others.

### 12.1 Request Extension for Investigation

The investigator and supervisory personnel must accurately determine the additional time necessary to complete the investigation. VETS can continue investigating beyond 90 calendar days with the claimant's approval.<sup>165</sup> For cases alleging VEOA and/or VP violation(s), VETS has 60 calendar days to investigate. While a claimant can't appeal to the MSPB before 60 calendar days after filing their claim with VETS, the investigator can investigate beyond the 60 calendar days with the claimant's agreement.

If you need additional extensions, repeat the relevant actions in this section to document the request and answer from the claimant. If a claimant requests a referral after Day 90, but before you close the case, close the case first before processing the referral.

#### 12.1.1 When to Request an Extension

For cases alleging USERRA violation(s), begin discussing the need for an extension based on how the case information and investigative efforts look on Day 50. For cases alleging VEOA and VP violation(s), begin discussing the need for an extension on Day 45. If you think you need an extension, contact your DVET, or SI, as early into your investigation as you can. You'll need to provide them with the information missing, the steps you have taken to complete the investigation on time, and an explanation for why you need to request an extension. If the DVET, or the SI, agrees with the rationale to request an extension, you'll then ask the claimant.

The extension you request should be for a date certain and no sooner than the fifteenth day of the month following the month in which you make the request. Remember to count weekends and holidays as part of the days included in your request.

- If you make the request on October 23, the earliest date on which the extension would expire is November 15. Propose a date on or after November 15.

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<sup>165</sup> [38 U.S.C. § 4327\(a\)](#); [5 U.S.C. § 3330a\(d\)\(1\)](#).

- If you make the request on February 1, the earliest date on which the extension would expire is March 15. Propose a date on or after March 15.

We encourage you to email or phone the claimant to request the extension. Explain why you need it and how it might benefit the investigation. Document your phone conversations on Form 1063, confirm the claimant's response in writing, and upload email messages and correspondence in your case documents, as outlined in the subsections below.

### *12.1.2 Claimant Agrees to an Extension*

Send a written confirmation via email or [authorized carrier](#) documenting the agreed-upon extension to a date certain and a request for the claimant to contact the investigator immediately if the date given is in error. Update VCMS with the agreed-upon date and upload the supporting documentation.

For cases alleging USERRA violation(s), if the case is now closed, but the claimant contacts you to grant an extension that was requested before the case was closed, ask the claimant if they would like to reopen their case. If so, get the request to reopen and claimant's agreement to the extension to a date certain in writing; reopen the case effective the date of the written request to reopen, and follow the instructions in the paragraph above. These guidelines apply to approvals received after following the instructions in [Unable to Contact Claimant to Request an Extension](#).

For cases alleging VEOA and/or VP violation(s), you must make sure to satisfy the jurisdictional and timeliness requirements by confirming with the claimant's approval to extend the investigation in writing. A VEOA or VP case may only be extended beyond the 60-day period if the claimant agrees to the extension and:

- VETS determines that there's still the prospect of resolution of the complaint,
- The claimant desires that VETS continue the investigation, and
- VETS agrees additional information is needed to resolve the matter.

### *12.1.3 Claimant Refuses or Fails to Grant an Extension*

For cases alleging USERRA violation(s), continue to work the case until calendar Day 89. If the case remains open on calendar Day 90 (or the business day before if calendar Day 90 falls on a holiday or weekend), the investigator must close the case using the [appropriate closing code](#) and send the claimant a closing letter. That letter must include the results of the investigation to date and advise the claimant of their right to referral. This closing letter must be sent no later than calendar Day 90. If the investigation was complete, use the appropriate closing code. This might include using [Substantiated, Not Resolved](#), where you found evidence to substantiate the allegation, but the parties couldn't agree to resolve issues. If the investigation wasn't complete,



decide based on the evidence available to date and close the case using Substantiated, Not Resolved.<sup>166</sup>

For cases alleging VEOA or VP violation(s), continue to work the case until calendar Day 59. If the case remains open on calendar Day 60 (or the business day before if calendar Day 60 falls on a holiday or weekend), the investigator must close the case using the [appropriate closing code](#) and send the claimant a closing letter. That letter must include the results of the investigation to date and advise the claimant of their right to referral. This closing letter must be sent no later than calendar Day 60. If the investigation was complete, use the appropriate closing code. This might include using [Substantiated, Not Resolved](#), where you found evidence to substantiate the allegation, but the parties couldn't agree to resolve the issues. If the investigation wasn't complete, decide based on the evidence available to date and close the case as Substantiated, Not Resolved.

#### *12.1.4 Unable to Contact Claimant to Request an Extension*

There are times when claimants don't answer VETS' requests. It's your responsibility to use every method available to you to contact the claimant. Don't call once. Call multiple times. Send an email. Write a letter. Use each of the points of contact provided to you. Claimants are busy, but VETS' deadlines are tight. You must be proactive, so we don't waste the investigative window. See the subsections below for what to do when your case hits certain ages.

##### *12.1.4.1 By Calendar Day 45 (VEOA or VP)*

Continue to work the case and exhaust all efforts to contact the claimant by mail, email, and phone using all last known contact information. Send written communications by [authorized carrier](#). Inform the claimant of the urgency of the matter, the end-date of the requested extension, and that the investigation and resolution attempts will cease if the extension isn't granted by calendar Day 60. Document all actions on a Form 1063, which you must upload to VCMS along with entering any metadata fields.

##### *12.1.4.2 By Calendar Day 60 (VEOA or VP)*

If the investigation isn't complete, make a determination based on the evidence available to date and close the case as [Substantiated, Not Resolved](#), [Not Substantiated](#), or [Not Eligible](#). If a "lack of interest" letter was sent ten calendar days before, use the closing code [Administrative](#), and close the case due to the claimant's failure to respond to VETS. The closure is for [lack of interest](#). No later than calendar Day 60, you must send the claimant the standard closing letter for an administrative closure.

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<sup>166</sup> A claimant may always request referral if the investigation is complete. If a claimant provides new and material evidence but won't grant an extension to reopen the case and complete the investigation, you must upload the new materials to the VCMS case file. VCMS won't allow a case to be reopened without an approved extension from the claimant.

#### 12.1.4.3 By Calendar Day 75 (USERRA)

Continue to work the case and exhaust all efforts to contact the claimant by mail, email, and phone using all last known contact information. Send written communications by [authorized carrier](#). Inform the claimant of the urgency of the matter, the end-date of the requested extension, and that the investigation and resolution attempts will cease if the extension isn't granted by calendar Day 90. Document all actions on a Form 1063, which you must upload to VCMS along with entering any metadata fields.

#### 12.1.4.4 By Calendar Day 90 (USERRA)

If the investigation isn't complete, make a determination based on the evidence available to date and close the case as [Substantiated, Not Resolved, Not Substantiated](#), or [Not Eligible](#). If a "lack of interest" letter was sent ten calendar days before, use the closing code [Administrative](#), and close the case due to the claimant's failure to respond to VETS. The closure is for [lack of interest](#). No later than calendar Day 90, you must send the claimant the standard closing letter for an administrative closure.

### 12.2 Request Help from RSOL

SIs often work with attorneys from RSOL to obtain requested information through informal means short of an opinion or to ask for clarification or legal advice during an investigation.

### 12.3 Protests, Complaints, and Allegations of Misconduct

Sometimes claimants disagree with the actions or decisions of an investigator. There are many reasons a disagreement may arise, which is why VETS emphasizes a focus on investigating impartially, professionally, and in a timely manner. When disagreements arise, they may fall into one of a few categories depending on the severity, complexity, or nature of the protest or complaint. Those categories include:

- Allegations of misconduct,
- Breaches involving personally identifiable information (PII),
- Protests, or
- Informal complaints.

#### 12.3.1 *Allegations of Misconduct*

Allegations of misconduct must be reported to the [DOL Office of Inspector General \(OIG\)](#) in line with requirements described in the [Department of Labor Manual Series \(DLMS\) 8-200](#). OIG may receive and investigate complaints or information from any source, including DOL employees, the public, or an employee of a DOL contractor or grantee, concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health

and safety. While employees should consult [DLMS 8-200](#) for further details regarding reporting requirements, examples of misconduct include, but are not limited to:

- Misuse of federal funds or property
- Mismanagement
- Abuse of authority
- Conduct that creates a danger to the health and safety of the public or to any DOL employees
- Significant improper conduct or activities involving DOL officers and employees, not otherwise listed herein
- Significant improper conduct involving grantees, contractors, and other entities or individuals who conduct business with the DOL or receive federal funds from DOL, directly or indirectly
- Allegations involving alleged fraud or false statements made in application for non-pecuniary benefits, e.g., foreign labor certification under DOL's employment-based immigrant and nonimmigrant visa programs
- Allegations of forced labor crimes (e.g., labor trafficking) or labor racketeering (i.e., crimes involving traditional and non-traditional organized crime influence over unions, employee benefit plans, and labor-management relations)
- Submission of false claims or fraudulent statements by employees, contractors, grantees, or others doing business with DOL
- Falsification or forgery of official documents
- Unlawful or unapproved concealment, removal, or alteration of official documents,
- Unlawful or unapproved destruction of official documents or other property
- Unlawful or unauthorized access of DOL information or systems
- Misappropriation, embezzlement, or misuse of Government funds
- Misuse of Government vehicles, computers, or other equipment, or misuse of government issued credit or travel cards
- Bribery or attempted bribery of DOL employees, or the solicitation of bribes by DOL employees
- Violations of federal procurement rules and regulations, or DOL procurement policies,
- Violations of federal criminal conflict of interest laws by a DOL employee regardless of the level of that employee
- Violations of The Standards of Ethical Conduct for Employees of the Executive Branch or other ethics rules and regulations committed by DOL employees at the GS-15 level and above, and
- Significant violations of the Standards of Ethical Conduct for employees of the Executive Branch or other ethics rules and regulations (i.e., violations which substantially impact DOL's reputation, mission, operations, or resources) committed by DOL employees at the GS-14 level and below.

Any employee who receives a complaint as described above, or as otherwise described in [DLMS 8-200](#) should direct the complainant to file their complaint with OIG via the automated webform on the [OIG website, by fax to \(202\) 693-7020, by phone](#) to (800) 347-3756, or by mail to 200 Constitution Avenue, N.W., Washington, DC, 20210.

### *12.3.2 Breaches Involving PII*

Allegations involving the improper or unauthorized disclosure of personally identifiable information (PII) must be reported to the DOL Information Systems Security Manager (ISSM), Information Security Officer (ISO), and Computer Security Incident Response Capability team (DOLCSIRC) within one hour upon discovery for confirmed incidents, and within the same business day for suspected incidents. Persons should report these directly through the DOLCSIRC mailbox at [dolcsirc@dol.gov](mailto:dolcsirc@dol.gov). Incident response requirements are described in detail in the [DOL Cybersecurity Policy Portfolio \(CPP\) Volume 8](#), in [OMB Circular M-07-16](#), and in [NIST SP 800-61](#). [OMB Circular M-07-16](#) defines the term PII as information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. Examples of this may include disclosure of a claimant's name and address to another claimant when not removed from a template, unauthorized disclosure of a VETS 1010 or DD-214 that includes a person's name and Social Security Number (SSN), improperly sharing obtained records from an employer that include the names or other PII of employees, etc.

### *12.3.3 Protests*

Protests are a report submitted by a claimant, employer, or other person involved in a USERRA, or VEOA/VP investigation in which a person believes VETS has failed in its duties to the public, in a way that does not rise to the level of an allegation of misconduct or breach of PII, but which may jeopardize the confidence of a person, or the public in the outcome of an investigation, or integrity of the agency regarding its investigations. Protests may be filed for allegations involving:

- Exertion of undue influence during an investigation
- Failure to follow required procedures as defined in this manual
- Reaching determinations or making decisions without a complete review of all evidence and facts
- Failure to communicate, or a lack of communication following requests from a person to communicate.

Incidents that are reported but fail to rise to the level of the issues described above should be processed as a complaint, and should be addressed by an investigator, or region directly as described in the Informal Complaint procedures described below.

### 12.3.3.1 Protest Submission

Protests can be filed directly by a person alleging a problem or forwarded for review by a VETS' employee who received the protest. Protests can be submitted to VETS by email to [USERRA-VP-Protest@dol.gov](mailto:USERRA-VP-Protest@dol.gov), by fax to (404) 562-2313, or by mail to Veterans' Employment and Training Service (VETS), Attention: USERRA/VP Protest, 200 Constitution Ave NW, Washington DC 20210.

A protest must include:

- The protesters name,
- The protesters contact information,
- A description of activity or lack of activity leading to the protest, and
- Any documentary evidence of the activity or lack of activity alleged.

### 12.3.3.2 Protest Intake, and Assignment

Upon receipt of a protest filed through one of the methods described above, VETS will confirm receipt of the filed protest by email, if received by email, or by phone or mail if received through another method, unless electronic communication has been approved by the person through another means. The Director of VETS' Compliance and Investigations Division (CID), or their designee, will review the received protest to determine if it is eligible for review. If it is determined that the protest is an allegation of misconduct or breach of PII, the reviewer will take the actions as described above, after which, they will close out the protest by informing the protester in writing of the actions taken to properly route their protest. If a protest does not contain adequate information or documentation to determine its eligibility for review the additional information or documents must be requested from the protester prior to assignment.

Once the Director of CID, or their designee, determines a protest is eligible for review, they assign the review to a designated protest reviewer. Assigned protest reviewers must be a member of the national review team who is a management or supervisory employee. Assignment of a protest reviewer initiates a 45-day deadline to complete review of the protest. The protester will be notified of the deadline and assignment of their review in writing within four days of assignment.

### 12.3.3.3 Protests Alleging Undue Influence

Protests alleging undue influence may result from any action taken by a VETS' employee to persuade or influence a person involved in a USERRA or VEOA/VP investigation to take an action, or not take an action, that may diminish the rights of a person, prevent VETS from completing a full investigation, or could result in VETS obtaining evidence that is not complete or accurate. Some examples of actions that are considered undue influence include, but are not limited to:

- Discouraging claimants from requesting referral of a closed case

- Encouraging or instructing a claimant to suspend investigation of a claim
- Providing descriptions of, or citing court decisions or MSPB rulings that aren't approved by the Solicitor's office to influence an action or inaction
- Removal of any language from any template describing a right to which a person is entitled
- Threatening an adverse act by an employer or punitive activity by a government entity to influence evidence or testimony (e.g., telling a claimant that a court or jury would not rule in their favor, or telling a witness they may be fired by their employer, etc.)
- Threatening improper disclosure of a person's identity or threatening any activity that violates procedures required by VETS or DOL to solicit an action or inaction
- Threatening the use of a closure code or outcome during an investigation to solicit an action or inaction (e.g. threatening to close a case as not eligible without documented prima facie evidence, or threatening to close a case as substantiated if an employer does not provide requested information, etc.), or
- Withholding information or providing inaccurate information to influence a decision (e.g., telling a management official for an employer they are not entitled to representation by an attorney, telling a witness their identity can never be revealed, telling a claimant they cannot have other investigations being conducted at the same time as VETS' investigation, etc.).

The first step in reviewing a protest involving undue influence is for the reviewer to contact the protester and have them describe the incident in detail. This description should include:

- The case number of the investigation related to the protest
- What activity was taken by a VETS' employee that exerted undue influence
- Who took the activity
- When was the activity taken
- What was the result of the undue influence on the protester or the investigation, and
- What remedy to the situation is the protester seeking.

The reviewer should also use that time to request any documentation or information from the protester that corroborates their account of what happened. The protest reviewer must review the full case file and compare the allegations from the protester to the case file.

Upon completion of the review, the assigned protest reviewer must provide a protest report to the head of the national review team. the report should include:

- A summary of the activity reported in the protest including a timeline of activity that led to the protest,
- A summary of relevant evidence reviewed from the protester, and from the case file,
- A description of whether the protest was substantiated based on the review, and
- If the protest is substantiated, a description of corrective actions recommended by the reviewer.

If the protest report identifies that the protest was substantiated, they will submit the report, including corrective action recommendations to SOL for legal review. If SOL concurs, the head of the national review team will send a copy of the protest report to the RAVET of the region the case originated from with copies to the first SES in that RAVET's supervisory chain, the Director of ONP, and Director of CID. Upon completion of all corrective actions, the RAVET of the region the case originated from will send confirmation of the actions taken to the first SES in their supervisory chain with a copy of the confirmation sent to [USERRA-VP-Protest@dol.gov](mailto:USERRA-VP-Protest@dol.gov).

Upon confirmation that the protest was successfully resolved, or if the reviewer determined the protest was not substantiated, the Director of CID or their designee will notify the protester in writing of the outcome. A copy of the protest report, evidence obtained during the review, and any communications will be deposited and stored by the VCDC for retention purposes in SharePoint.

#### 12.3.3.4 Protests Alleging a Failure to Follow Procedures

Protests alleging a failure of VETS to follow procedures may result from any action taken or not taken by a VETS' employee that deviates from written policies or processes for USERRA or VEOA/VP investigations. Some common examples of failure to follow procedures include, but are not limited to:

- Denying a request to reopen an investigation that was closed administratively,
- Denying or refusing to process a referral request from a claimant for a closed case that is entitled to referral,
- Extending the deadline of an investigation or referral without the consent of the claimant,
- Failing to complete activities within required timelines,
- Inappropriate disclosure of documents between parties (not containing PII),
- Requiring documentation or information that is not relevant to the investigation.

The first step in reviewing a protest involving failure to follow procedure is for the reviewer to contact the protester and have them describe the incident in detail. This description should include:

- The case number of the investigation related to the protest
- What procedure was taken, or not take, that would have otherwise been required
- Who failed to follow procedure
- When was the procedure not followed
- What was the result of failure to follow procedure on the protester or the investigation, and
- What remedy to the situation is the protester seeking.

The reviewer should also use that time to request any documentation or information from the protester that corroborates their account of what happened. The protest reviewer must review the full case file and compare the allegations from the protester to the case file.

Upon completion of the review, the assigned protest reviewer must provide a protest report to the head of the national review team. the report should include:

- A summary of the activity reported in the protest including a timeline of activity that led to the protest
- A summary of relevant evidence reviewed from the protester, and from the case file
- A description of whether the protest was substantiated based on the review, and
- If the protest is substantiated, a description of corrective actions recommended by the reviewer.

If the protest report identifies that the protest was substantiated, they will submit the report, including corrective action recommendations to SOL for legal review. If SOL concurs, the head of the national review team will send a copy of the protest report to the RAVET of the region the case originated from with copies to the first SES in that RAVETs supervisory chain, the Director of ONP, and Director of CID. Upon completion of all corrective actions, the RAVET of the region the case originated from will send confirmation of the actions taken to the first SES in their supervisory chain with a copy of the confirmation sent to [USERRA-VP-Protest@dol.gov](mailto:USERRA-VP-Protest@dol.gov).

Upon confirmation that the protest was successfully resolved, or if the reviewer determined the protest was not substantiated, the Director of CID or their designee will notify the protester in writing of the outcome. A copy of the protest report, evidence obtained during the review, and any communications will be deposited and stored by the VCDC for retention purposes in SharePoint.

#### 12.3.3.5 Protests Alleging a Lack of Completeness

Protests alleging a lack of completeness in an investigation may result from actions not taken or materials not reviewed or not obtained by VETS' during a USERRA or VEOA/VP investigation. Some common examples of a lack of completeness protest include, but are not limited to:

- Failure to acquire required documents defined in the Investigations Manual, prior to determining if a claim is substantiated
- Failure to investigate all issues present in a claim
- Failure to properly document a case file with all relevant information
- Failure to pursue evidence using a subpoena (non-federal employers) if initial attempts to obtain evidence are unsuccessful
- Refusal to review or consider submitted evidence
- Refusal to pursue or complete witness interviews of witnesses who may have evidence relevant to an investigation.



The first step in reviewing a protest involving a lack of completeness is for the reviewer to contact the protester and have them describe the incident in detail. This description should include:

- The case number of the investigation related to the protest
- A description of what is missing or was overlooked during the investigation
- The name of the VETS employee who was responsible for the lack of completeness
- When the identified employee should have been aware of the missing or overlooked requirement
- What is the result of the lack of completeness on the outcome or progress of the investigation, and
- What remedy to the situation is the protester seeking.

The reviewer should also use that time to request any documentation or information from the protester that corroborates their account of what happened. The protest reviewer must review the full case file and compare the allegations from the protester to the case file.

Upon completion of the review, the assigned protest reviewer must provide a protest report to the head of the national review team. the report should include:

- A summary of the activity reported in the protest including a timeline of activity that led to the protest
- A summary of relevant evidence reviewed from the protester, and from the case file
- A description of whether the protest was substantiated based on the review, and
- If the protest is substantiated, a description of corrective actions recommended by the reviewer.

If the protest report identifies that the protest was substantiated, they will submit the report, including corrective action recommendations, to SOL for legal review. If SOL concurs, the head of the national review team will send a copy of the protest report to the RAVET of the region the case originated from with copies to the first SES in that RAVETs supervisory chain, the Director of ONP, and Director of CID. Upon completion of all corrective actions, the RAVET of the region the case originated from will send confirmation of the actions taken to the first SES in their supervisory chain with a copy of the confirmation sent to [USERRA-VP-Protest@dol.gov](mailto:USERRA-VP-Protest@dol.gov).

Upon confirmation that the protest was successfully resolved, or if the reviewer determined the protest was not substantiated, the Director of CID or their designee will notify the protester in writing of the outcome. A copy of the protest report, evidence obtained during the review, and any communications will be deposited and stored by the VCDC for retention purposes in SharePoint.

### 12.3.3.6 Protests Alleging a Lack of Communication

Protests alleging a lack of communication may result from any instance in which a VETS' employee has failed to meet the communication expectations of a claimant or employer during a USERRA or VEOA/VP investigation. Some common examples of a lack of communication protest include, but are not limited to:

- Failing to attempt initial contact by phone with the claimant or employer
- Failing to establish the communication preferences of the claimant and employer at the outset of the case, to identify how often and through what means they expect updates regarding investigator progress
- Failing to follow-up with an individual by a self-imposed, or required deadline communicated to an individual, or
- Responding by email to requests to speak by phone or other direct means (e.g., in-person, video conference, etc.).

The first step in reviewing a protest involving a lack of communication is for the reviewer to contact the protester and have them describe the incident in detail. This description should include:

- The case number of the investigation related to the protest
- What type of communication was lacking
- Who should have been communicating
- When or how often did VETS fail to communicate
- What was the result of the communication on the protester or the investigation, and
- What remedy to the situation is the protester seeking.

The reviewer should also use that time to request any documentation or information from the protester that corroborates their account of what happened. The protest reviewer must review the full case file and compare the allegations from the protester to the case file.

Upon completion of the review, the assigned protest reviewer must provide a protest report to the head of the national review team. the report should include:

- A summary of the activity reported in the protest including a timeline of activities that led to the protest
- A summary of relevant evidence reviewed from the protester, and from the case file
- A description of whether the protest was substantiated based on the review, and
- If the protest is substantiated, a description of corrective actions recommended by the reviewer.

If the protest report identifies that the protest was substantiated, they will submit the report, including corrective action recommendations, to SOL for legal review. If SOL concurs, the head of the national review team will send a copy of the protest report to the RAVET of the region the

case originated from with copies to the first SES in that RAVET's supervisory chain, the Director of ONP, and Director of CID. Upon completion of all corrective actions, the RAVET of the region the case originated from will send confirmation of the actions taken to the first SES in their supervisory chain with a copy of the confirmation sent to [USERRA-VP-Protest@dol.gov](mailto:USERRA-VP-Protest@dol.gov).

Upon confirmation that the protest was successfully resolved, or if the reviewer determined the protest was not substantiated, the Director of CID or their designee will notify the protester in writing of the outcome. A copy of the protest report, evidence obtained during the review, and any communications will be deposited and stored by the VCDC for retention purposes in SharePoint.

#### *12.3.4 Informal Complaints*

Informal complaints involve minor disagreements between an investigator and a claimant that may involve a lack of communication, a misunderstanding, or other disagreement that arises from breakdowns in the communications process. We encourage claimants to first raise these concerns with their assigned investigator, and for investigators to attempt to resolve issues between the person making the complaint and themselves or at the lowest possible level. Investigators should communicate with professionalism and transparency during any communication with a member of the public. If it is not possible to resolve the issue with the person directly, or if an issue involves a complaint that should be submitted as an allegation of misconduct, breach of PII, or protest, have the claimant follow the procedures outlined above.

Copies of correspondence and other documents obtained in sorting out such disagreements should be kept in the original case file. This includes uploading any additional documents, completing Form 1063 for attempted communications with those involved in the protest proceeding, and entering any metadata VCMS requests.

### **12.4 About an Investigation**

VETS staff won't discuss investigations with individuals or organizations that aren't a party to the case. This restriction doesn't apply to SOL, OSC, DOJ, and VETS staff, as required. When discussing the investigation with parties to the case, the investigator will avoid making statements that could cause the party to identify [witnesses](#) who are otherwise protected from disclosure.

#### *12.4.1 Legislative Branch (Congress or Senate)*

Notify the NO immediately of any congressional inquiries and provide copies of any proposed responses to the NO. A region should never respond to a legislative branch request directly. Responses to Members of Congress should provide, in general terms, the status of an investigation. Don't provide specific details of an ongoing investigation. Include the following language to describe the role VETS plays with respect to USERRA: "This agency is responsible for seeking compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), codified at 38 U.S.C. §§ 4301-4335. The purpose of USERRA is to

encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment, to minimize the disruption to the lives of persons performing uniformed services, and to prohibit discrimination against persons because of their service in the uniformed services.” State and regional VETS staff might prepare responses to congressional inquiries, but those draft responses must be sent to the NO for review and clearance before the ASVET, the acting Agency head, or in some instances, the RAVET, signs the response.

#### *12.4.2 Executive Branch*

Inquiries from the executive branch typically take the form of an inquiry from the White House and will come to VETS through an Executive Secretariat Inquiry. Notify the NO immediately of any White House inquiries and provide copies of any proposed responses to the NO. A region should never respond to a White House request directly. Responses should provide, in general terms, the status of an investigation. Don’t provide specific details of an ongoing investigation. Include the following language to describe the role VETS plays with respect to USERRA: “This agency is responsible for seeking compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), codified at 38 U.S.C. §§ 4301-4335. The purpose of USERRA is to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment, to minimize the disruption to the lives of persons performing uniformed services, and to prohibit discrimination against persons because of their service in the uniformed services.” State and regional VETS staff might prepare responses to inquiries, but those draft responses must be sent to the NO for review and clearance before the ASVET, the acting Agency head, or in some instances, the RAVET, signs the response.

#### *12.4.3 FOIA or Privacy Act Request*

The investigator or recipient of a FOIA or Privacy Act request must not disclose any document(s) nor comment about the file content(s) to the person making the request. Refer any written requests for release of information received under FOIA or the Privacy Act to the RO. The RAVET is the region’s Disclosure Officer and the only person authorized to release information pursuant to such requests. As an investigator or designated reviewer, you may be asked to submit your case file for an internal, agency FOIA review. Your responsibility is to ensure the case file is complete for the VETS staff doing the FOIA analysis. They can’t determine what to redact until they see the complete file. For specific instructions on how to prepare a case file for FOIA review, please see the subsections that follow. If you need to send a request for information to another federal agency for your investigation, refer to [Use of Privacy Act Releases for Federal Agencies](#).

##### *12.4.3.1 Prepare a VCMS Case File for FOIA Review*

For electronic files, VCMS makes it easy to export the entire case file. The quality of the export depends on your work as the investigator. Before you attempt to export the electronic case file,

ensure that all documents, notes, and other items have been uploaded into VCMS and their associated metadata fields are entered. The DOL FOIA request review requires a full case file before it can evaluate what to redact and what to disclose. In VCMS, select Related Actions, and scroll to the bottom of the page. Select “Generate a Case File/FOIA Export (\*.zip).” This will open a new page that lists any relevant case documents, E-1010 documents, referral request documents, and claimant uploaded documents within the file. Review these documents to verify that your case file is complete and up to date. When you are ready, select Done in the bottom-right corner of your screen. This will transmit your .zip file to the Downloads folder of your computer.

#### 12.4.3.2 Prepare a Paper Case File for FOIA Review

Older files might still be kept in paper. VETS staff must follow the [VETS Record Schedule N1-174-88-001](#),<sup>167</sup> and [Director’s Memorandum \(DM\) 05-06, USERRA and VP Case File Retention and Disposal Procedures](#). While investigators and reviewers should check to ensure a paper case file was properly organized before the case closing, you might encounter an older case file that needs to be pulled and given to your region’s FOIA Reviewer. Before you can submit this case, you must ensure the case file is organized properly. If it’s not, please use the following steps to put the case file in proper order:

- Case file documents go on the right side of the case file, in reverse chronological order.
  - The Form 1010 must be the first document filed on the right side, even if it wasn’t the first document received in the case.
  - Eligibility documentation should be filed on top of the Form 1010.
- The following documents go on the left side of the case file:
  - QAR and ROI forms
  - Memoranda to file, investigative notes, or other informal or draft materials not meant to be released as part of the official case file
  - Any VETS internal memoranda related to the investigative matters, including internal email messages to and from VETS personnel only, but aren’t to be released as part of the official case file; and
  - All communication between VETS and SOL, DOJ, and OSC, including the MOR.

#### 12.4.3.3 What VETS Generally Releases Based on a FOIA Request

For open or pending cases, including referred cases, VETS takes the position that the entire case file can be withheld from disclosure, including the ROI and the VCMS tools that provide its contents, pursuant to Exemption 7(A), in that disclosure “could reasonably be expected to interfere with law enforcement proceedings.” VETS also takes the position that it can also be withheld from disclosure pursuant to Exemption 5, for “inter-agency and intra-agency memoranda or letters which wouldn’t be available to a party other than an agency in litigation

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<sup>167</sup> The link requires LaborNet access.

with an agency, and which involve deliberative, pre-decisional communications” (see generally [FOIA, 5 U.S.C. § 552\(b\)\(5\), \(7\)](#)).

For closed cases, VETS takes the position that the ROI and the VCMS tools that provide its contents can be withheld from disclosure in their entirety under Exemptions 4, 5, 6, or 7. Specifically, VETS takes the position that the Excel ROI and VCMS ROI processes can be withheld from disclosure under Exemption 7, as “information compiled for law enforcement purposes that: (E) would disclose techniques and procedures for law enforcement investigations or prosecutions.” See generally, [FOIA, 5 U.S.C. § 552\(b\)\(5\), \(7\)](#). Claimants, or other authorized parties, can still receive USERRA case information they would otherwise be entitled to receive under FOIA. VETS generally releases information back to the party that originally provided the information to VETS (e.g., Form 1010 to a claimant, employer’s position statement to an employer).

Under FOIA’s administrative appeal provision, requestors have the right to appeal, administratively, any adverse determination an agency makes on a FOIA request. In DOL, such appeals are handled by SOL. For appeals of FOIA requests responded to by VETS, ROs will cooperate with SOL by providing the complete FOIA response at issue, as well as unredacted versions of any documents partially or completely withheld from disclosure.

#### *12.4.4 Media and Other External Inquiries*

If contacted by the media, don’t discuss any case, even those filed before the MSPB or in State or Federal court. Explain that it’s VETS’ policy not to disclose any information about the existence of a case except through FOIA. Notify the RO if you are contacted by the media, who may then contact the NO and the DOL OPA at the regional or national level. If necessary, refer the media to your regional OPA. Keep in mind VETS doesn’t have any authority to prevent the claimant or employer from media contact.

## Chapter 13 | Prepare and Send Closing Letters

A closing letter must be sent to the claimant. A closing letter must also be sent to the employer unless the employer was never notified about the case. A closing letter notifies the parties that the investigation is completed. This letter must be dated the same day that the case is closed in VCMS and sent by [authorized carrier](#). A copy of the letter must be uploaded into VCMS, and you must enter the associated metadata fields. For cases alleging USERRA violation(s), the closing letters must be drafted and connected to the Preclosing ROI for review and approval prior to sending your closing letters. The Preclosing ROI is tied to the case closing and review processes. Note that in a USERRA investigation that's [Substantiated, Not Resolved](#), the employer must also receive a Notification of Determination prior to the closing letter.

There are rare circumstances where the employer didn't receive an opening letter; in those cases, there might not be a need to send a closing letter to the employer. For example, you wouldn't send an opening letter if the investigation revealed the claimant wasn't eligible before you were supposed to contact or send an opening letter to the employer. You might also not send an opening letter to the employer if a case is [administratively closed](#) immediately after the initial contact with VETS before you were to contact or send an opening letter to the employer. The content of the closing letter can depend on the circumstances of the case. Refer to [Closing Codes](#) for additional requirements to include in your closing letter.

### 13.1 Prepare and Send Closing Letter to Claimant

Use the templates available to you in VCMS to send circumstance-specific closing letters to the claimant. In VCMS, select Case Documents within the row of tabs on the case file view screen. In the top-right corner, select Manage Documents. From here, under VCMS Documents – Uploaded, select Generate from Template. This will open an expandable portion of the page you are viewing. Scroll down the screen until you reach Generate Document from Template.

**Generate Document From Template**

Select a template to continue

Filter Category Type ▼

Template Search

[Reset](#)

**Template Documents**

	Name	Content Type	Last Modified On	Created On
<input type="checkbox"/>	Subpoena-Duces Tecum-NA-Non Fed-USERRA.docx	External	3/19/2021 8:19 AM EDT	3/19/2021 8:19 AM EDT
<input type="checkbox"/>	Subpoena-Advisory Letter-NA-Non Fed-USERRA.docx	External	3/19/2021 8:19 AM EDT	3/19/2021 8:19 AM EDT

“Select a template to continue” allows you to filter the templates by type (as pictured above). Select Closing Letter. Review the file names until you find the template that best matches the closing circumstances for this case. You may also search for a template if you already know the name or circumstance you need. Generate the template and update any missing information. It's not necessary to include a lengthy discussion of the facts in this letter.

### 13.1.1 VEOA and VP Closing Letter to Claimant

For potential VEOA and VP violations, the closing letter should always include a notice to the claimant of their MSPB appeal rights, except in very limited circumstances when [closing the claim administratively](#) as a [duplicate claim](#), for [lack of interest](#), as claimant requested not to pursue, or as [prematurely filed](#), including: (1) prior to the completion of the certification list; or (2) after the certification list was created, but before a selection from the list is made.

- When closing a case [as a duplicate](#) to a previously filed case, make sure to identify the previously filed case by case number and status, and notify them of their MSPB appeal rights, if any, attached to that previously filed case.
- When [closing a case administratively](#) for [lack of interest](#) or as claimant requested not to pursue, notify the claimant that, if they would like VETS to continue to investigate their claim, they must make that request to VETS within 60 days of the original filing of their claim, no later than a date certain that you have calculated.
- When [closing a case administratively as prematurely filed](#), notify the claimant that if, after a selection has been made, they believe that their VP rights were violated in the selection process, they may file a new complaint with VETS within 60 days of the adverse action.

While many VCMS templates already include the notice of MSPB appeal rights, be certain the notice is included before finalizing and sending your letter. Ensure that you include a copy of the MSPB Appeal Form as an attachment to the closing letter in addition to the link for that form contained in the body of the closing letter.

#### Sample Notice Language:

“If you aren’t fully satisfied with the resolution obtained by VETS, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose.

“In your case, your appeal must be sent to:

“[Insert MSPB RO Address]

“A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may [file your MSPB appeal electronically](https://e-appeal.mspb.gov), at <https://e-appeal.mspb.gov>. If you have questions concerning the appeal process, you may contact MSPB at 1-800-209-8960. The MSPB also has an internet site, “[Questions and Answers about Appeals](https://e-appeal.mspb.gov/faq.aspx),” at <https://e-appeal.mspb.gov/faq.aspx>.”

Note that you must include a copy of the form, not only the link to the form, along with your communication.



### *13.1.2 USERRA Closing Letter to Claimant*

For cases alleging USERRA violation(s), a Preclosing ROI review must be conducted with the designated reviewer prior to sending the closing letter to the claimant. For specific instructions on how to prepare and review the Preclosing ROI, refer to [Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the ROI](#). As part of preparing your Preclosing ROI, you'll create a draft closing letter, which must be attached to the ROI for review.

## 13.2 Prepare and Send Closing Communications to Employer

Refer to [Prepare and Send Closing Letters to Claimant](#) for step-by-step instructions on how to create a closing letter from a VCMS template. For potential USERRA violations, as described in the subsection immediately below, you'll follow these same steps to create the Notification of Determination to Employer before preparing and sending a closing letter to the employer. The next subsection provides additional information about what to include in the closing communications between an investigator and an employer for closing letters involving potential USERRA, VEOA, or VP violations.

### *13.2.1 Prepare and Send Notification of Determination to Employer (USERRA)*

If your case involves a USERRA violation and the closing code [Substantiated, Not Resolved](#), you must send a Notification of Determination to Employer in advance of the closing letter. VETS typically provides ten calendar days from the Notice of Determination to Employer letter to when an investigator sends the closing letter. This period could be longer if the parties engage in case resolution efforts. This VCMS letter template should provide the employer with a sufficient basis to consider VETS substantiation of the claim and any potential resolution of the case that VETS may be able to facilitate. This helps employers see the need for resolution when VETS substantiates a violation.

Before finalizing your notification of determination letter, make sure you did the following:

1. Briefly explain how the investigation substantiated any of the potential violation(s) based on the established facts.
2. Include the necessary action(s) that would enable the employer to comply with the law or resolve the potential violation(s).
3. Inform the employer that if the resolution isn't acceptable to the claimant, they may exercise referral rights, as appropriate, or the right to seek private counsel, to pursue the claim before a court of competent jurisdiction or the MSPB, as appropriate.

### *13.2.2 Prepare and Send Closing Letter to Employer*

For all closing letters, it's unnecessary to provide a lengthy discussion of the facts. Before finalizing your VCMS template, make sure the letter does the following:

1. Explain briefly how the investigation substantiated or failed to substantiate the potential violation(s) based on the established facts.
2. Include the necessary action(s) that enable the employer to comply with the law or resolve the potential violation(s).
3. Inform the employer that if the resolution isn't acceptable to the claimant, they may exercise referral rights, as appropriate, or the right to seek private counsel, to pursue the claim before a court of competent jurisdiction or the MSPB, as appropriate.

For potential VEOA and VP violations, the employer is always a federal agency. An investigator might inform the agency point of contact about the investigative outcome by phone. This doesn't count as a closing notification to the employer. You must create and send a closing letter.

For cases alleging USERRA violation(s), a Preclosing ROI review must be conducted with the investigator's supervisor or SI prior to sending the closing letter to the employer. For specific instructions on how to prepare and review the Preclosing ROI, refer to [Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the ROI](#). If the case appears to be headed toward Substantiated, Not Resolved as a final closing code, you must follow the steps outlined in [Substantiated, Not Resolved](#).

## Chapter 14 | Review a Case

Case reviews are critical. Reviews catch errors and case deficiencies before they impact claimants. This chapter outlines the roles of designated case reviewers and the tasks they must complete to certify their reviews. The case review process encourages self-assessment and continuous improvement and provides timely information necessary to effectively manage cases and identify staff training needs. For potential USERRA violations, the ROI process helps identify any system issues or case processing errors with formal review intervals when submitting the Preliminary ROI, Prenotification ROI, and Preclosing ROI. The ROI process replaces the CIP and QAR processes for USERRA cases (see [Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the ROI](#)). The ROI process within VCMS tracks the quality of an investigation and its case file for potential USERRA violations. For potential VEOA and VP violations, the designated reviewer must continue evaluating the case using the [CIP](#) and [QAR](#) process.

For all cases, the designated reviewer is responsible for identifying potential violations and issues, as well as helping the investigator address them early in the case processing. Handle identified issues as quickly as possible using the VCMS review process. When appropriate, a written corrective action plan agreed to between the investigator and their immediate supervisor may be implemented. Use the VCMS ROI comment boxes during your review to document, in narrative form, the deficiencies identified during the review, the impact level of the deficiency, and the corrective action plan for each. This will make notes indicating a need for corrective action to the investigator. We recommend that you sit side-by-side with the investigator to review the requested corrections after returning the ROI to the investigator. Setting aside this time for a side-by-side discussion saves time as the investigator tackles any requested corrective actions.

### 14.1 Responsibilities of Designated ROI and/or CIP Reviewer

Case reviews not only catch errors but might help an investigator see an avenue of inquiry they previously overlooked. Reviews also ensure claimants have the best structured case to move forward with substantiated violations, if the employer doesn't agree to resolve the violation. In addition, case reviews identify training gaps and highlight resources, materials, and equipment needs of investigators. In short, as the designated reviewer, you are most often in the best position to ensure that a case is complete, accurate, and organized. As a designated ROI reviewer, you'll most often evaluate four core documents:

1. [Preliminary ROI](#) (USERRA),
2. [Prenotification ROI](#) (USERRA),
3. [Preclosing ROI](#) (USERRA), and
4. [CIP](#) (VEOA and VP).

The first three forms are built within VCMS to track your reviews.<sup>168</sup> You'll complete the review elements digitally in line with the sections and subsections within each ROI. The [fourth checklist](#) must be done manually, which makes it even more important to set aside time to do this review.

For USERRA cases, VCMS includes a Case Quality Measures tab to track the case file for completeness and accuracy across 12 categorical measures:

1. Timeliness
2. VCMS Summary tab
3. Forms 1063
4. USERRA eligibility
5. Potential USERRA violations
6. Chronology of Facts tab
7. Witnesses tab
8. Issue Analysis tab for USERRA reemployment
9. Issue Analysis tab for USERRA discrimination
10. Issue Analysis tab for USERRA retaliation
11. Settlements tab, and
12. Case Documents tab.

Case Quality Measures track over 100 elements found in the case file and provide a score visualizing what is left to complete or might be missing from the case file. Case Quality Measures also identify any potential reasons VCMS would prevent closing the case (e.g., perhaps you have pending draft Forms 1063 or have zero Witness Statements). The Case Quality Measures tab is valuable to both investigators and reviewers. [Case Quality Measures](#) track investigative details, visualize the case review elements, and create a communication tool to overcome obstacles. The Case Quality Measures tab should streamline review activities and enable deeper and more efficient reviews at every stage of the ROI (see image below).

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<sup>168</sup> [VCMS Agency User Guide](#).

Summary	Case History	1063	Investigator Notes	Eligibility	Potential Violations	Chronology Of Facts	Witnesses	Issue Analysis	ROI	Case Documents	Settlements
<b>Quality Measures</b> Related Actions											
<b>Quality Score</b>											
Points Achieved	Points Possible	Quality Score									
32	66	48.48 %									
<b>Closure Type</b>											
Planned Closure Code											
Administrative											
<b>Deficiencies</b>											
Timeliness											
Case assignment time exceed one business day.											
Time until initial contact with the claimant exceeds three business days											
Time until initial contact with the employer exceeds three business days.											
Review of the Preclosing ROI occurred more than three business days after submission.											
The case file was not updated at least once every 10 days.											
											5 items
1063s											
Initial contact with the claimant is missing.											

### 14.1.1 Complete Preliminary ROI Review and Comments (USERRA)

Refer to [Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the ROI](#) for the tasks and responsibilities of the investigator in preparing the Preliminary ROI for review. This review occurs after receipt of the employer’s position statement and before the investigator contacts, or attempts to contact, the claimant to inform them of the employer’s position. The investigator has only five calendar days from the receipt of the employer’s position to when they must convey that position to the claimant. As the reviewer, you should help the investigator meet this goal by conducting your review immediately upon notification that the Preliminary ROI is available for your review in VCMS.

This review has two parts. First, the designated reviewer must review the Preliminary ROI alongside the investigator, making suggestions and asking questions, as necessary. This side-by-side review should occur within the five calendar days between when the investigator receives the employer’s response and when they must convey that response to the claimant. The Preliminary ROI checklist should have already been completed by the investigator as a self-assessment. Second, the reviewer completes the review in VCMS (see [VCMS Agency User Guide](#)). You may do these two parts of review simultaneously. Memorialize any feedback provided verbally to the investigator during the side-by-side review in VCMS using the comment feature. The checklist below will help you do an accurate and complete review. VCMS won’t let you finalize your review without completing each section and providing written feedback for any disapproved sections. We encourage you to check items off the list as you complete them, saving your progress along the way. As you update the [VCMS pages that feed into the ROI](#), your attention focuses on that aspect of the review, which, over time, ensures a full and meaningful review of the entire investigation.

### Preliminary ROI Review Criteria:

- Did the investigator obtain [new and material evidence](#) to warrant reopening the claimant's case?
  - Look to VCMS Case Documents page(s) to see how the investigator documented the new and material evidence.
  - Read through VCMS Case Documents page(s) provided to determine if they meet the definition of [new and material evidence](#).
  - If it doesn't meet the criteria, the case shouldn't have been reopened.
    - Explain to the investigator, during your side-by-side review, what constitutes new and material evidence. If new and material evidence isn't available, direct that the case be re-closed under the original closing code, noting the lack of new and material evidence necessary to warrant reopening.
    - Write feedback in the VCMS comment feature during your review.
- Did the investigator [contact, or attempt to contact, the claimant within five calendar days](#) of the case opening or reopening?
  - Look to the VCMS Case Summary page header to check the date the case was opened.
  - Compare this to the date of the initial contact or attempted contact with the claimant on Form 1063.
- Did the investigator verify the [claimant's eligibility for USERRA coverage](#) and document it in the case file?
  - Look to VCMS Case Documents and Eligibility pages to see what documentation the investigator collected and how they conducted the eligibility analysis.
- Did the investigator [contact, or attempt to contact, the employer within the appropriate number of calendar days](#) after the case was opened or reopened?
  - Look to VCMS Case Summary and Form 1063 pages to see:
    - If the claimant was unemployed, was initial contact with the employer made or attempted within five calendar days of the case opening or reopening?
    - If the claimant was employed, was initial contact with the employer made or attempted within ten calendar days of the case opening or reopening?
  - Verify the investigator documented all phone communications on Form 1063s.
- Did the investigator send an [opening letter to the employer within ten calendar days](#) after the case was opened or reopened?
  - Look to VCMS Case Documents and Summary pages to see whether the opening letter to the employer was sent within ten calendar days of case opening or reopening.
  - Verify the investigator uploaded the opening letter to the employer in the Case Documents page.

- In the opening letter to the employer, did the investigator cite to the correct legal provisions for the potential violation(s) (i.e., 38 U.S.C., 20 C.F.R., or 5 U.S.C., as appropriate)?
  - Look to [VCMS Case Documents and Potential Violations pages](#).
  - Match the potential violation(s) identified by the claimant to the citations provided in the opening letter to the employer.
- If the employer is a federal agency, did the investigator send a copy of the employer opening letter to the [CHCO](#)?
  - Look to VCMS Case Summary and Documents pages.
  - Verify that the employer is a federal executive agency and that a letter to the appropriate [CHCO](#) is uploaded to VCMS Documents page. Check the current [CHCO Registry in the Compliance Folder on SharePoint](#).
- Did the investigator correctly identify all the problems above and the violation codes in VCMS?
  - Look to [VCMS Case Summary and Potential Violations pages](#).
  - The investigator must identify each “issue” on Form 1010, implied by the circumstances described on Form 1010, raised by the claimant during the initial contact, or otherwise suggested by the facts.
- Did the investigator complete all sections of the [VCMS Issue Analysis page](#)?
  - Look to the [VCMS Issue Analysis page\(s\)](#).
  - The investigator must apply the information already provided on Form 1010 and in the initial contact with the claimant and include an action plan about how to verify that information, if necessary.
  - The investigator must outline any information and documents relevant and not yet obtained to complete the analysis and include an action plan to identify and obtain that information and documents.
  - The investigator must identify in the action plan relevant persons they might need to interview.
- Did the investigator [correctly identify and gather all documentary evidence needed](#) on the VCMS Documents page(s)?
  - Look to the [VCMS Case Documents page\(s\)](#), as well as all evidence and documents connected to facts in the [Issue Analysis page\(s\)](#) to identify any relevant documents not yet obtained.
  - The investigator must identify any other relevant documents using the [VCMS Documents and Issue Analysis pages](#).
  - The investigator must identify the status of any relevant document as Obtained, Needed and Not Requested, Requested and Not Received, or Not Applicable.
- Did the investigator [correctly identify all persons to be interviewed](#) on the Witnesses page of the case file?
  - Look to the [VCMS Case Summary and Witnesses pages](#) to identify any [witnesses](#) not yet interviewed.

- The investigator must identify all persons with first-hand knowledge to be interviewed using the Witnesses page, adding any additional witnesses who are relevant, but not specifically listed.
- For each witness category, the investigator must select whether the witness was interviewed, an interview is needed and not requested, an interview is requested and not yet conducted, or not applicable. The investigator should mark additional notes in the section available for them as to why an interview has yet to be conducted or may not be necessary.
- Did the investigator [correctly identify all available remedies](#) and inform the claimant accordingly?
  - Look to the [VCMS Case Summary and Potential Violations pages](#), as well as Form 1063.
  - The investigator must identify all available remedies for each potential USERRA violation set forth on [Form 1010](#), implied by the circumstances described on [Form 1010](#), raised by the claimant during the initial contact, or otherwise suggested by the facts.
- Did the investigator obtain the employer’s position statement(s) and responses to follow-up requests, as required?
  - Look to VCMS Case Documents and Form 1063 pages.
  - The investigator should obtain the employer’s position statement. Request documents and any requested follow-up materials in a timely manner. If the employer isn’t fully responsive, the investigator should consult with the SI to discuss using the subpoena process.
  - If the employer’s initial response failed to address the investigator’s request for information, or if follow-up or clarifying information is required, the investigator must promptly request further, clarifying information from the employer. Review the employer’s response and search the case file for any additional information to supplement the response, if applicable.

#### 14.1.2 *Complete Prenotification ROI Review and Comments (USERRA)*

The Prenotification ROI and its VCMS preparation and approval process replace the Updated CIP and Second Open Case Review QAR. Refer to [Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the ROI](#) for the tasks and responsibilities of the investigator in preparing the Prenotification ROI for review. This review occurs at the close of the [fact gathering](#) and [potential violations analysis](#) stages of the investigation and before the claimant and the employer are notified of the determination. As the reviewer, you must complete this review as soon as possible. VCMS requires that you complete a review of all ROI sections, outlined below, and provide comments and any necessary feedback to the investigator. VCMS won’t let you finalize your review unless you approve or disapprove each section and provide written feedback to the investigator for any disapproved sections. We encourage you to check items off the list as you complete them, saving your progress along the way. As you update the [VCMS pages that feed into the ROI](#), your attention focuses on that aspect of the review, which,



over time, ensures a full and meaningful review of the entire investigation. Your approval of the review authorizes the investigator to attempt to contact the claimant or the employer about VETS' determination of its investigative finding.

**Prenotification ROI Review Criteria:**

- Did the investigator contact, or attempt to contact, the claimant within five calendar days of receiving the employer's response?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>169</sup>
  - The investigator must contact the claimant within five calendar days of receiving the employer's response. Match the dates of the employer response against the date the investigator contacted the claimant.
  - The investigator must provide a summarized version of the employer's response. The investigator must not provide the employer's response directly to the claimant. Look for the summary response and compare it to the employer's response to ensure all information was transmitted accurately.
- Did the investigator give the claimant the opportunity to rebut any relevant employer allegation that may affect the case's outcome?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>170</sup>
  - The investigator must contact the claimant within five calendar days of receiving the response to inform them of the employer's position and offer the claimant an opportunity to rebut the information contained in the employer's response.
  - The investigator must follow up and collect any additional information or evidence the claimant offers to rebut any employer allegation(s).
  - Verify when contact was made with the claimant, that the claimant was informed about the employer's position statement and their opportunity to provide rebuttal information, and that the contact was documented on Form 1063 or through other correspondence and uploaded to VCMS.
  - Verify whether the claimant took that opportunity and offered rebuttal information or evidence.
  - Verify whether the evidence and information the claimant provided is attached to the case file.
- If the circumstances warranted it, did the investigator conduct a thorough and objective [onsite investigation](#)?
  - Look to VCMS Case Documents, Form 1063, and Investigator Notes pages.<sup>171</sup>
  - Verify whether an onsite investigation was warranted by the case's circumstances and facts gathered.
  - If yes, verify the investigator conducted an onsite visit.

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<sup>169</sup> [VCMS Agency User Guide](#).

<sup>170</sup> [VCMS Agency User Guide](#).

<sup>171</sup> [VCMS Agency User Guide](#).

- Verify the file contains any necessary Forms 1063 or Witness Statements documenting such onsite visit.
- Verify whether any documents obtained during the onsite visit were uploaded to VCMS.
- Did the investigator update the claimant properly and correctly on case developments?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>172</sup>
  - The investigator must inform the claimant promptly and correctly on developments in the case and provide an opportunity for the claimant to respond to matters that may impact the outcome of the case.
  - Look for case developments in the investigator notes. As you find them, verify the investigator completed a Form 1063 documenting that they contacted the claimant about case developments and offered them the opportunity to respond.
- Did the investigator respond promptly and correctly to the employer's questions and issues raised?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>173</sup>
  - The investigator must promptly and correctly respond to any employer questions or issues raised, including any [legal issues that were referred to SOL](#).
  - Review any responses from the employer in writing or memorialized on a Form 1063. Note any questions or issues raised by the employer.
  - Verify the employer received a response to any question or issue raised. Verify the investigator memorialized the response to those questions on a Form 1063.
- Did the investigator seek assistance from VETS or SOL subject-matter experts, as needed?
  - Look to VCMS Form 1063 and Investigator Notes pages.<sup>174</sup>
  - Review the circumstances of the case to determine if there was an issue involved where the investigator should have contacted a VETS or SOL subject-matter expert.
  - Review the case to make sure any requests for such assistance are documented on a Form 1063 or investigator case note.
- Did the investigator request a [subpoena](#), if necessary, and obtain employer compliance?
  - Look to VCMS Case Documents, Form 1063, and Investigator Notes pages.<sup>175</sup>
  - The investigator must submit accurate and complete subpoena requests in a timely manner.
  - The investigator must document the subpoena request in the case file.
  - Verify any subpoena requests are documented correctly in the case file.
- Did the investigator upload all relevant documents and enter their associated VCMS metadata fields?

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<sup>172</sup> [VCMS Agency User Guide](#).

<sup>173</sup> [VCMS Agency User Guide](#).

<sup>174</sup> [VCMS Agency User Guide](#).

<sup>175</sup> [VCMS Agency User Guide](#).

- Look to VCMS Case Documents, Chronology of Facts, and Potential Violations pages.<sup>176</sup>
- Review the VCMS case file, particularly the Case Documents, Chronology of Facts, and Potential Violations pages, to determine if all documents mentioned were obtained and uploaded by the investigator.
- Review each document uploaded to ensure the investigator entered any associated metadata fields.
- Note any missing documents that you believe the investigator should gather to have a complete and accurate investigation and case file.
- Did the investigator document all relevant phone, in-person, or other verbal contacts on a Form 1063?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>177</sup>
  - The investigator must document all such contacts and attempts at contact on a Form 1063.
  - Verify there's a complete and accurate Form 1063 for any reference to a contact or attempted contact with a relevant person in the case.
- Did the investigator correctly date note, or stamp, all incoming documents?
  - Look to the VCMS Case Documents page(s).<sup>178</sup>
  - Determine the received date for each incoming case document.
  - Verify all case documents were uploaded correctly using the proper action date that corresponds to the actual received date.
- Did the investigator document all other investigating activities (including email) promptly and correctly in the case file?
  - Look to VCMS Case Documents, Form 1063, and Investigator Notes pages.<sup>179</sup>
  - Verify the action dates of documents uploaded, created, or submitted are prompt in time based on the last modified date.
  - Verify any investigator notes, Form 1063, or other information that indicates a response or further action needed was followed up on promptly by the investigator.
  - Verify any emails mentioned in the investigator notes or a Form 1063 are uploaded to the case file.
- Did the investigator upload all emails referenced in the investigator case notes?
  - Look to VCMS Case Documents, Form 1063, and Investigator Notes pages.<sup>180</sup>
  - Verify the information in the case file follows a flow of receiving information (action date), promptly documenting it in the case file (last modified date), and providing a prompt response, as required.
- Did the investigator document their investigation promptly and correctly in VCMS?

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<sup>176</sup> [VCMS Agency User Guide.](#)

<sup>177</sup> [VCMS Agency User Guide.](#)

<sup>178</sup> [VCMS Agency User Guide.](#)

<sup>179</sup> [VCMS Agency User Guide.](#)

<sup>180</sup> [VCMS Agency User Guide.](#)

- Look to VCMS Case Documents, Form 1063, and Investigator Notes pages.<sup>181</sup>
- Verify that the dated case information (e.g., investigator notes, case documents) has last modified dates that occur regularly throughout the 90-day investigative window.
- If you see a week or longer where there was no apparent activity on the case, request information on this delay from the investigator. This request should be submitted verbally to the investigator and documented using the comment feature on the VCMS review.
- Did the investigator update VCMS Issue Analysis page(s) at 50 and/or 70 days, and update other VCMS data accordingly?
  - Look to VCMS Issue Analysis page(s).<sup>182</sup>
  - The investigator must outline any information missing to complete the case analysis and include an action plan to identify and obtain that information.
  - The investigator must outline, as part of their action plan, relevant persons they might need to interview.
- Did the investigator obtain [extension\(s\)](#) from the claimant at 75 days, if the investigation may exceed 90 days, and thereafter, as needed? Did they update VCMS accordingly at each of these times?
  - Look to VCMS Case Documents, Form 1063, and Investigator Notes pages.<sup>183</sup>
  - The investigator must get the claimant's approval for the extension in writing.
  - Verify there's such a written extension, the action date(s) of the extension(s) obtained are accurate and timely, and the last modified dates show that VCMS was updated timely.
- Did the investigator prepare a chronology and other relevant employer and [comparator information](#) correctly above?
  - Look to VCMS Case Documents, Chronology of Facts, Potential Violations, and Witnesses pages.<sup>184</sup>
  - Verify the chronology is in the order the events occurred, not in the order the investigator uncovered the facts.
  - If [comparators](#) were appropriate, verify the investigator conducted interviews and documented them properly in VCMS Documents.
  - Verify that all facts are incorporated into the Chronology of Facts.
- Did the investigator correctly and completely analyze all the issues identified above?
  - Look to VCMS Case Summary and Potential Violations pages.<sup>185</sup>
  - Verify the investigator applied the facts to the analysis to draw an accurate conclusion.

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<sup>181</sup> [VCMS Agency User Guide.](#)

<sup>182</sup> [VCMS Agency User Guide.](#)

<sup>183</sup> [VCMS Agency User Guide.](#)

<sup>184</sup> [VCMS Agency User Guide.](#)

<sup>185</sup> [VCMS Agency User Guide.](#)

- Did the investigator obtain all relevant documentary and [comparator evidence](#) identified above?
  - Look to VCMS Case Documents, Chronology of Facts, Issue Analysis, Potential Violations, and Witnesses pages.<sup>186</sup>
  - Verify the investigator entered information listed in the evidence count for every potential violation either substantiated or unsubstantiated.
  - Verify that the evidence (documents and witness statements) supports the conclusion proposed for the analysis.
  - Verify, in VCMS, that the investigator provided a response for each document.
  - Ensure any [witness](#) that wasn't interviewed includes an explanation demonstrating why the investigator decided it was unnecessary to interview them.
- Did the investigator interview all persons with relevant knowledge identified above?
  - Look to VCMS Case Documents and Witnesses pages.<sup>187</sup>
  - Verify the investigator conducted interviews, documented them appropriately on a Witness Statement, and uploaded them into VCMS.
  - Verify, in VCMS, that the investigator marked each witness listed on the Witnesses page as “yes” or “no.”
- Did the investigator [compute full and accurate monetary damages](#), as appropriate?
  - Look to VCMS Potential Violations page and review if each potential violation includes the remedy requested by the claimant and the remedy determined appropriate by the investigator.<sup>188</sup>
  - Review the way the investigator outlined damages. Validate their calculation is accurate and supported by the evidence.
- Did the investigator draw the correct conclusion about all potential violations?
  - Look to VCMS Case Documents, Case Summary, Chronology of Facts, and Potential Violations pages.<sup>189</sup>
  - Verify that the conclusion drawn is supported by the facts within the case.

#### *14.1.3 Complete Preclosing ROI Review and Comments (USERRA)*

The Preclosing ROI and its VCMS preparation and approval process replace the Updated CIP and Closed Case Review QAR, which VETS previously used and uploaded to older case management systems. Refer to [Plan and Track Your Investigation Using the VCMS Tools and Pages that Feed into the ROI](#) for the tasks and responsibilities of the investigator in preparing the Preclosing ROI for review. This review occurs before the investigator sends [closing letters to the claimant and the employer and closes the case in VCMS](#). It includes a review of the Preclosing ROI, the proposed closure code, and the draft closing letters to the claimant and employer. As the reviewer, VCMS requires you review and approve each section and provide written feedback

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<sup>186</sup> [VCMS Agency User Guide](#).

<sup>187</sup> [VCMS Agency User Guide](#).

<sup>188</sup> [VCMS Agency User Guide](#).

<sup>189</sup> [VCMS Agency User Guide](#).

to the investigator for any disapproved section. VCMS won't let you finalize your approval of the ROI unless you complete a full review of each ROI section. We encourage you to check items off the list as you complete them, saving your progress along the way. As you update the [VCMS pages that feed into the ROI](#), your attention focuses on that aspect of the review, which, over time, ensures a full and meaningful review of the entire investigation. Completing your review signifies to the investigator that they may send the closing letters to the parties and close the case in VCMS.

If the proposed case closing code is [Substantiated, Not Resolved](#), the designated reviewer for the Preclosing ROI is the RAVET or their designee. The RAVET, or their designee, will follow the Preclosing ROI review criteria below, in addition to the requirements explained further down in this section. For all other proposed [case closing codes](#), the designated reviewer is the investigator's direct supervisor, SI, or any other regional ROI reviewer, as assigned. The reviewer will follow the review criteria set forth below.

### **Preclosing ROI Review Criteria:**

- Did the investigator release a correct determination notification to the employer, or a not-substantiated claim-determination notification to the claimant, as appropriate?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>190</sup>
  - Verify the investigator accurately documented verbal determination notifications on a Form 1063 and notification of determination letters in VCMS Documents page.
- Did the investigator conduct a thorough and objective [case resolution conference](#), if beneficial?
  - See VCMS Case Documents, Form 1063, Investigator Notes, and Issue Analysis pages.<sup>191</sup>
  - Verify whether a conference would have been beneficial in this case.
  - Verify whether the investigator conducted and documented a thorough case resolution conference.
  - Verify whether the investigator properly uploaded all relevant documents and notes, including updating any requested VCMS metadata fields.
- Did the investigator prepare the settlement agreement in the correct format, as appropriate?
  - Look to VCMS Case Documents and Form 1063 pages.<sup>192</sup>
  - Verify the investigator uploaded and correctly logged a copy of the written settlement agreement.
  - Verify the settlement agreement is complete and connected to the appropriate settlement attempt on the VCMS Settlements page.

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<sup>190</sup> [VCMS Agency User Guide](#).

<sup>191</sup> [VCMS Agency User Guide](#).

<sup>192</sup> [VCMS Agency User Guide](#).

- If the settlement agreement was for less than the claimant’s full entitlement under USERRA, make sure this was explained to the claimant and that the investigator provided notice of the claimant’s rights to both parties.
- Did the investigator [prepare closing letters](#) using the correct format and [close the VCMS case](#) accordingly?
  - Look to VCMS Case Documents page.<sup>193</sup>
  - Review the draft closing letters to claimant and employer.
  - Verify the draft letters are accurate using the appropriate VCMS template and dated the date that the case will be closed in VCMS.
- Did the investigator use the correct closing code?
  - See VCMS Case Closure and Summary pages.<sup>194</sup>
  - Verify the investigator [selected the appropriate closing code](#) in VCMS.
  - Verify the investigator properly closed the case in VCMS.

#### 14.1.4 Complete the CIP Review (VEOA and VP)

The [CIP](#) serves as a case review for open cases, and, together with the Case Status Report and VP Open/Closed Case QAR Form, performs a QA function as well. The review examines primary aspects of cases alleging VEOA and VP violation(s). The reviewer should compare the checklist items below to the completed CIP. The standards for such review are broken into the major sections of the investigation and CIP. You can document your review and answers to the checklist items below on a Case Status Report and VP Open/Closed Case QAR Form, as needed.

#### **VEOA and VP Checklist (CIP, Case Status Report, and VP Open/Closed Case QAR Form):**

- [Case Opening](#): Within seven calendar days of receipt of a Form 1010 or written complaint:
  - Was the case opened, including VCMS entry?
  - Did the investigator [contact, or attempt to contact, the claimant](#)?
  - Did the investigator [contact, or attempt to contact, the federal agency](#)?
  - Did the investigator document these contacts, and/or attempts to contact, on a Form 1063?
  - Was the information received from the [Form 1010](#) or written complaint sufficient?
  - Did the [Form 1010](#) or written complaint clearly state the issue(s)? If not, was the issue(s) determined in follow-up contact(s)?
  - Was sufficient information available to proceed? If not, were follow-up contact(s) performed to secure essential information?

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<sup>193</sup> [VCMS Agency User Guide](#).

<sup>194</sup> [VCMS Agency User Guide](#).

- *Potential Violation(s) or Types of Potential Violation(s), Issues and Remedies, [Determining Eligibility](#):*
  - Does the violation(s) or complaint(s) alleged relate to federal hiring under VEOA, VP, or any related statutes or regulations?
  - Was the complaint filed within 60 days of the potential violation?
  - Are the remedies due under VEOA or VP and the remedies requested by the claimant identified in the case file?
  - Did the investigator analyze the complaint and properly determine eligibility for VEOA or VP?
  - Did the investigator contact the federal agency within the prescribed time limits?
  - Did the investigator follow appropriate procedures for contacting the federal agency?
- *Documentation in VCMS:*
  - Verify phone or in-person contact(s) with interested parties (including proceedings at conferences) are documented on Form 1063.
  - Verify all relevant Form 1063s are uploaded to VCMS and their associated metadata fields entered.
  - Verify the investigator created a written [CIP](#) prior to proceeding with the investigation that:
    - Identified the issues in the complaint, any evidence needed to make a factual determination, and how evidence is to be obtained.
    - Revised the plan to identify potential obstacles to resolution and the means for gathering additional evidence, if necessary.
    - Uploaded the original and any subsequent CIPs to VCMS.
- *Investigation:*
  - Were the relevant issues explored?
  - Was relevant information and documentation obtained during [onsite investigations](#), if any?
  - Were all investigative leads followed and documented, including all relevant information and documentation obtained in addition to onsite investigations, if any?
  - Was the progress of the investigation noted?
  - Did the investigator respond to the federal agency's questions on VETS' policy and procedure and on VEOA and VP legal issues?
  - Was a mentor assigned if the case was open longer than 45 days?
  - Was the claim substantiated and were the parties informed?
  - Were the investigator's activities reported and updated in VCMS?
- *MSPB Appeal:*
  - If the case wasn't resolved, did the investigator inform the claimant in a letter, sent by [authorized carrier](#), that notified the claimant of their right to appeal the case to MSPB and the timetable for such appeal?
  - Were appropriate entries made in VCMS?



- Was an Open Case Review QAR Form completed by the investigator's supervisor or SI upon receipt of the initial agency position statement?
- *Case Closure:* Did the investigator:
  - Close the case when appropriate?
  - Address all relevant problems about closing the case?
  - Prepare a closing letter using the VCMS template based on procedures?
  - Have the closing letters to the claimant and federal agency approved by the investigator's supervisor or SI prior to release to the claimant?
  - Notify the claimant and any other appropriate parties?
  - Report case closing in VCMS?
  - Forward substantiated claims to the RO for summarization and submission to OSC for review as a possible PPP?
- *Corrective Action:*
  - Identify problem areas early in the case processing and address them in writing to the investigator handling the case as comments on the CIP.
  - Make additional efforts to ensure the suggested corrective actions are taken.
- *Effective Case Handling:*
  - Were all the actions that led to a case determination planned and completed?
  - Is the case file fully documented?
  - Is the information in VCMS accurate and timely entered?
  - Were all the claimant's concerns adequately addressed?
- *Training Needs:*
  - What training needs are required to improve the investigator's performance?
  - What material or equipment is required to provide the investigator adequate means to conduct investigations, maintain a case file, provide direct input into VCMS, access information and resources, perform research in support of the case, and perform issue analysis?

## 14.2 Responsibilities of Other Reviewers

Case reviews happen at multiple levels, for multiple reasons. For additional information on case reviews above the first level, refer to:

- [Create and Review the MOR](#),
- [QA VEOA and VP Levels of Review](#), and
- [QA USERRA Levels of Review](#).

## Chapter 15 | Refer a Case

This chapter outlines how to refer cases for litigation to DOJ or OSC. The sections outline who is responsible for the steps in each process, what steps they're responsible for completing, and how to complete those steps. Case referrals are important. They can happen because a VETS investigation substantiated the violation, but the claimant and employer can't resolve the dispute without resorting to litigation through the courts, or VETS found that the potential violation wasn't substantiated or wasn't eligible for coverage, and the claimant disagrees with the outcome. These are emotional times for claimants, who feel that regardless of whether the VETS investigation found a violation, they still haven't achieved resolution. It's unacceptable for VETS to drop its responsibility at this stage. The right of referral is the right to have DOJ or OSC consider representing a claimant before the MSPB or in a court of law. VETS staff must prepare complete, accurate, and organized case files to demonstrate to attorneys within DOJ or OSC that VETS' determination is correct and ready for their consideration. During the investigation, an investigator is the neutral factfinder and central actor in facilitating an amicable resolution between the claimant and the employer. At the point of referral, the investigator is the neutral fact-reporter and central actor in explaining VETS' determination, who must help DOJ or OSC see that this case has sufficient evidence to warrant their consideration.

### 15.1 Refer a USERRA Case

Under USERRA, a claimant has a right to refer their case to DOJ or OSC, as appropriate, once an assigned investigator has completed the investigation of their claim, determined if a violation of USERRA has occurred, and has closed the case. This requirement is contained in sections 4323 and 4324 of USERRA. Note that this right is a right to refer the case for DOJ or OSC to *consider* representing the claimant. It's not a guarantee of representation. Under those circumstances, VETS will notify the claimant and prepare an MOR in VCMS to either DOJ or OSC. For USERRA cases, VETS notifies the claimant of their eligibility to refer their case in the closing letter. The claimant must submit a referral request by email to [USERRAReferral@dol.gov](mailto:USERRAReferral@dol.gov), by fax to (404) 452-2313, or by mail to Veterans' Employment and Training Service (VETS), Attention: USERRA Referral, 200 Constitution Ave NW, Room S-1325, Washington, DC 20210. The standards for referring cases from VETS to either DOJ or OSC are governed by an MOU between the agencies and are outlined in a subsection below.

**Note:** The decision by DOJ or OSC to represent a claimant is independent from whether a VETS investigation substantiated a violation. For example, a VETS investigation may determine a violation occurred, but DOJ declines to represent the claimant for what DOJ finds to be a lack of sufficient evidence.

A claimant may not request referral of their USERRA case to DOJ or OSC until VETS has [completed its investigation](#). An investigation is considered complete if VETS has determined if a violation of USERRA has occurred and closed the case with a closing code that represents that determination. VETS has 90 calendar days, or within an extension of time agreed to by the claimant to complete this investigation. If the claimant requests a referral before the investigation

is complete, advise them that VETS can't take such an action until the investigation is complete and VETS determines whether the potential violation is substantiated. If the claimant wishes, they may suspend investigation of their claim and proceed using private counsel.

Within VETS, after the claimant requests that their USERRA case be referred to DOJ or OSC, a case referral moves from:

1. The investigator, who drafts the case referral in the form of an MOR; to
2. The RO in the case's jurisdiction, where an [MOR reviewer](#) performs a [first-level review](#) of the MOR; to
3. A different region, selected on a rotating basis, where another [MOR reviewer](#) performs a [second-level review](#) of the MOR; to
4. The NO, where the CSI or a designee [approves and transmits the MOR to DOJ or OSC](#).

An investigator is often the person who prepares the MOR. However, in certain circumstances, a referral may be reassigned to another person, in the region that has jurisdiction of the case, who prepares the MOR or completes the MOR, even if started by another person. For the sections about drafting an MOR, we use the words "you" and "your" to describe the person who drafts the MOR. Refer to the Case Referral Chapter in the [VCMS Agency User Guide](#) for additional instructions on developing, reviewing, and transmitting MORs.

### *15.1.1 Referral Processing Timeline and Checklist*

The following checklist outlines the steps and process for moving from a request to refer a USERRA case to submitting the MOR to DOJ or OSC. The checklist includes steps for multiple roles within VETS. Note the role and step to find the places that require your action. VETS has only 60 calendar days to complete all these steps, so communication and teamwork are required.

All due dates are subject to adjustment based on extensions pre-approved by the claimant; if a due date falls on a non-business day, then the due date will be the last business day before the due date. Refer to [VCMS Agency User Guide](#), Refer a Case, for VCMS instructions on case referrals.

#### **MOR Process and Responsibilities Checklist:**

1. Upon [submission of a referral request](#), VCMS:
  - a. Notifies the investigator, first level reviewers from the region of the case, and the State Director for the state the investigator is assigned to, that the referral request has been received and processed and notifies them of the current deadline for processing the referral request.
2. *Within three calendar days* of receiving the referral request, the RO:
  - a. Assigns review of the investigation to an [appropriate reviewer](#), who will use the VCMS [Case Quality Measures](#) page and approved [Preclosing ROI](#) to analyze the investigation and its final determination for completeness and accuracy.

- b. Determines if the RAVET will complete the first level review of the MOR, or if the RAVET will assign a [designated reviewer](#) to complete the first level review of the MOR on behalf of the RO.
3. *Within five calendar days* of the referral request, the investigator:
  - a. Verifies the referral request date from the VCMS Case Summary page.
  - b. Forwards a referral advisory letter using the template in VCMS to the employer or the counsel of record informing them about the referral request.
4. *Within 21 calendar days* of the referral request, the investigator:
  - a. Prepares an MOR in accordance with instructions in this chapter.
  - b. Submits the MOR for review to the RAVET or the RAVET's designated first level reviewer.
5. *Within 30 calendar days* of the referral request, the RAVET or the RAVET's designated first level reviewer:
  - a. Completes review of the MOR in line with requirements described in this chapter and the procedures described in the [VCMS Agency User Guide](#), Refer a Case, sending the case back to the investigator if deficiencies are found during the review, or approving the MOR if it meets all requirements.
  - b. Consults the RSOL, if necessary, as part of this review process.
6. *Within 37 calendar days* of the referral request, the RAVET or the RAVET's designated first level reviewer:
  - a. Provides approval of the MOR to initiate a second level review.
7. *Within 45 calendar days* of the referral request, the designated Second Level Reviewer:
  - a. Reviews the MOR to determine if the findings are supported by the evidence, and if the MOR is sufficiently detailed.
  - b. Approves the Second level review within VCMS.
8. *Within 60 calendar days* of the referral request, the CSI:
  - a. Reviews the MOR, including any comments from first level or second level reviewers, to confirm that the MOR meets agency standards for transmittal to DOJ or OSC.
  - b. If not approved:
    - i. Note any deficiencies in the comments section, and
    - ii. Reject the MOR back to the appropriate step for correction.
  - c. If approved:
    - i. Approve the MOR for transmittal to DOJ or OSC.
9. Remember:
  - a. As the [designated reviewer](#), you may require the investigator to request that the claimant withdraw their referral request and obtain an extension to the investigative deadline to reopen the case and continue the investigation (e.g., conduct additional interviews or request additional documents).
  - b. As investigator, you are responsible for a complete, clear, concise, and well-documented referral.

- i. This requires careful review to ensure your case file is organized and your MOR is well-written in clear, concise terms, and backed up by documentation (exhibits).
- ii. Don't submit for review an MOR or referral letter that's not ready. We recommend you follow the VCMS MOR tool and [guidance outlined in this chapter](#), and in the [VCMS Agency User Guide](#).
- iii. If you have questions, ask them before you submit the document for review.
- iv. If the claimant doesn't approve an extension, note the refusal in the case file, resolve the deficiencies or errors to the maximum extent possible within 60 calendar days of the referral request, and transmit the referral to DOJ or OSC not later than calendar Day 60.

If the First Level Reviewer and the Second Level Reviewer disagree as to the deficiencies or errors noted by one another, they'll submit their disagreement to the CSI, who will determine the appropriate resolution. If the First Level Reviewer and CSI continue to disagree, the discussion will be elevated to the RAVET and Director of CID. If the RAVET and Director of CID do not agree, the Director of the Office of National Programs and Director of the Office of Field Operations will render a decision. If the Director of the Office of National Programs and Director of the Office of Field Operations disagree, then the Deputy Assistant Secretary of Operations and Management will make a final decision.

#### *15.1.2 Accepting and Processing a Referral Request (USERRA)*

If VETS' efforts don't resolve a claim to the satisfaction of the claimant, you'll send a closing letter that notifies the claimant of:

1. The results of the investigation; and
2. The claimant's right to proceed under the enforcement provisions in:
  - a. [38 U.S.C. § 4323](#) (against a state or private employer), or
  - b. [38 U.S.C. § 4324](#) (against a federal executive agency or OPM under USERRA)<sup>195</sup>.

USERRA violations require the claimant to submit a written request for referral (outlined in the next subsection). A referral request obligates the claimant to cooperate fully with VETS (as they did during the investigation), and DOJ or OSC. This means providing notice of any change of address, phone number, or email address, or any periods of unavailability. Remind the claimant of these obligations when the case moves to the referral stage.

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<sup>195</sup> Investigators should consult with the Solicitor's office if their case involves a claim with an employer in the legislative or judicial branches of the federal government.

### 15.1.2.1 Claimant Submits Written Referral Request (USERRA)

For cases alleging USERRA violation(s), when the claimant wishes to proceed with referring their case to DOJ or OSC, the claimant must submit a written referral request to the VCDC. Referrals can be requested by the claimant by email to [USERRAreferral@dol.gov](mailto:USERRAreferral@dol.gov); by fax to (404) 562-2313; or by mail to Veterans' Employment and Training Service (VETS), Attention: USERRA Referral, 200 Constitution Ave NW, Room S-1325, Washington, DC 20210. Referral requests received by email, fax, or mail are processed by a member of the VCDC upon receipt and submitted on the claimant's behalf, if appropriate. VCMS sends a confirmation of the referral request having been processed to the claimant and investigator after submission.

Once VETS receives a claimant's written request for referral, it may only be withdrawn in writing by the claimant, or deemed withdrawn by VETS after proper notice to the claimant for lack of interest. Under no circumstances may VETS employees receive and process a USERRA referral request directly. Any VETS employee who receives a referral request must forward it immediately to [USERRAreferral@dol.gov](mailto:USERRAreferral@dol.gov) for processing by the VCDC. The investigator must upload a copy of the referral request and any accompanying documents to VCMS and fill in any associated metadata fields.

### 15.1.2.2 Identify the Date VETS Received the Claimant's Referral Request (USERRA)

As with all cases alleging USERRA violation(s), timing is important. DOL must submit a case referral to DOJ or OSC within 60 calendar days of DOL's receipt of the claimant's written referral request. This 60-calendar-day window must cover all VETS' work on the referral request, Solicitor reviews, if any, and any internal routing problems in handling the request. The date VETS is deemed to have received the request starts that clock. Any administrative delays in routing the referral request to the appropriate investigator or to the VCDC won't alter this date of receipt.

When a claimant emails the referral request to [USERRAreferral@dol.gov](mailto:USERRAreferral@dol.gov), the date the claimant sent the email is the date VETS received the referral request. When a claimant faxes the referral request to (404) 562-2313, the date that VETS received the request is the date generated by the fax. When a claimant mails the referral request to the correct mailing address, the date that VETS received the request is the date that the letter was postmarked (the Mailbox Rule).<sup>196</sup> When a claimant mails the referral request to an incorrect mailing address, the date that VETS received the request is the date that the VCDC receives the request.

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<sup>196</sup> Mail sent to the last known address of the recipient via the U.S. Postal Service certified mail is presumed to have arrived at its destination.

### 15.1.2.3 Prepare the Case File for Referral

A case file can't be referred unless it's complete, accurate, and organized. This file must contain the following before transmission to DOJ or OSC.

#### **Complete, Accurate, and Organized Case File Checklist:**

- Contains all information; documents; correspondence from and to the parties, including ROI or CIP; the employer's written position statement; the VETS "employer's notification of referral" letter; and any other relevant material received or developed, including all reports of contact, signed statements, memoranda to file, and the report of the case resolution conference, if applicable.
- Contains copies of the appropriate DD-214, DD-215, or release certificate; a copy of relevant orders, if issued; FEMA DTS alerts and/or notices for FEMA reservists; or other documents confirming eligibility for rights or benefits.
- Contains copies of witness statements, investigator's notes of interviews, and/or documents or compilations summarizing [comparator information](#) for any case involving a [comparator](#).
- All materials are legible.
- All Forms 1063 are accurate and complete.

### 15.1.2.4 Request Expedited Referral

Cases with violations that have an immediate financial impact on the claimant must be referred to the Second Level Reviewer as soon as possible, with the Second Level Reviewer informed in advance of the high-priority status. Those cases include a non-federal employer (USERRA), where the violation involves an unemployed claimant; the claimant was denied a significant benefit of employment; or where the employer reemployed the claimant to a position that's of significantly lower seniority, status, and pay. The RO will inform the NO of such case circumstances, so the Second Level Reviewer will know of the priority status before beginning their review.

### 15.1.2.5 Request Extension to Case Referral (USERRA)

VETS has 60 calendar days to process the claimant's USERRA referral request. There are times when the preparation of the referral might take longer than 60 calendar days. In those instances, the First Level Reviewer assigned to the referral must help the investigator contact the claimant, explain the time limitations, and request an extension. If the claimant doesn't grant the extension, or fails to respond to the extension request, then VETS will:

1. Complete the MOR to the maximum extent possible.
2. Transmit the case to DOJ or OSC not later than calendar Day 60 through the CSI (following the second level review), or by the last day of any extension pre-approved by the claimant.

### 15.1.3 Create and Review the MOR

For USERRA violations, use the MOR tool in VCMS, and, if necessary, consult with the RSOL.<sup>197</sup> If necessary, you can ask fellow investigators, your supervisor, and/or the SI for samples of MORs that have similar circumstances to your case. The nuances required for referrals in USERRA, VEOA, and VP violations are addressed in the next two subsections.

#### 15.1.3.1 MOR Development

All case files referred to DOJ or OSC for consideration of representation will be accompanied by an MOR with linked exhibits. Upon submission of a referral request, VCMS will display a tab at the top of the page that allows access to the MOR page. The draft MOR can be accessed by selecting the case number listed under the Investigator MOR section. The MOR form displays a navigation bar to the left of the screen and an editing form to the right of the screen. Below the navigation and editing sections, the MOR will display ebuttons to navigate through the form, save your work, or cancel.

The MOR form contains five main sections: Background Information; Evaluation; Remedies; Settlement; and Final. Each main section has several sub-sections within it. Each section can be accessed by selecting the section the user wants to navigate to from the menu on the left of the screen or using the navigation buttons at the bottom of the page.

#### 15.1.3.2 VCMS MOR Functionality

Any field in the MOR that corresponds directly with a field in the investigative case file will automatically be populated with default text. Any field that contains default text that is pulled from an investigation data entry field where the source data is blank, or null will have the suggested entry in brackets (e.g. [XX]). The fields in the MOR that do not directly connect to a data field in the case file will initially generate with null or empty values. Null fields will typically have suggested text or instructions displayed in gray within the field or within a help text tool tip next to the label for each field.

While fields in the MOR may or may not be initially populated with values from other sections of the case file, the fields in the MOR are not directly linked to the fields in other sections of the case file, meaning that if a change or update is made to the MOR, it will not change any value within the case file. For example, if potential violations are added or removed in Section F of the MOR, these changes will not update or alter the values that were entered in the potential violations page of the case file. This ensures that the case file, as of the time of case closure, will remain mostly unchanged.

VCMS will automatically display fields in the MOR that should be filled in and hide fields that should not be filled in based on characteristics and facts identified during the investigation.

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<sup>197</sup> [VCMS Agency User Guide](#), Refer a Case.



Based on the logic within VCMS, investigators should complete as many of the fields displayed in the MOR as possible to avoid delays in approval of their developed MOR, and to avoid possible rework.

Nearly every field or paragraph in the MOR can be supported with evidence by selecting one or more exhibits or documents beneath them. The selection of these documents will automatically add them to the Exhibits section of the MOR. Exhibits act as references to identify the source document(s) for each fact presented in the MOR. Every field or paragraph should have documents or exhibits identified, even if it is a concurring email or statement from someone verifying there is no dispute of a fact. The exhibits or documents fields in the MOR are drop-down fields that allow for the selection of any document contained in the Case Documents page of VCMS, and which have not been deselected as exhibit options using the MOR Exhibit Selection tool. The documents or exhibit drop-down fields are automatically sorted alphabetically and can be searched by typing into the field to look for a specific document.

### 15.1.3.3 MOR Background Section

The Background Info section contains eleven sections. The first five sections (A through E) are grouped together in the section navigation menu, while the other six sections are identified in the menu individually.

*Section A* contains the Referral Expiration Date. This is date is linked to the DOL Referral Deadline from the summary page of the casefile. The value in this field will update during MOR development and review if the deadline is extended at any point.

*Section B* asks, “Has there been a violation of USERRA?” with an automated response of “Yes” or “No” depending on whether any identified potential violations have been identified by the investigator as having been substantiated. Initially, this field will match the entries from the potential violations page of the case file, but will update during MOR development if changes are made to *Section F, the Potential Violations Section*, of the MOR.

*Section C* is titled “The Claimant” and contains contact information for the claimant. This section will automatically populate with data from the Case Summary page of the case file. The investigator should confirm that the full name, street address, phone number and email of the claimant is entered correctly and should update these values as necessary.

*Section D* is titled “The Employer” and contains contact information for the employer and the employer’s representative. If an investigator’s case involves a joint employer situation, or successor-in-interest issue, the MOR allows for the additional of more than one employer to the MOR.

*Section E* displays the case number. This field will not change during the referral phase of the investigation and is read-only.

*Section F* displays the Potential Violations identified by the claimant or investigator. It will initially populate with values matching the contents of the Potential Violations page. It displays content in a grid showing the Potential Violation, whether each potential violation is substantiated, the statutory reference for each potential violation, and the regulatory reference for each potential violation. Investigators should ensure all potential violations investigated are listed, with proper corresponding provisions of USERRA identified.

*Section G* is the Procedural Synopsis section of the MOR. The Procedural Synopsis section includes fields for the Claimant's Military Affiliation, the Claim Background, and Claimant's reasons for filing the claim. The investigator should use the sections to address at least the following elements:

- What is the claimant's military affiliation?
- When did the claimant first file a claim?
- When did VETS close the case?
- When did the claimant request referral?
- A brief explanation – in one or two sentences – of the claimant's reasons for filing the claim.

*Section H* is the Claimant Background section of the MOR. The Claimant Background section contains five subsections:

- Subsection i. Employment
- Subsection ii. Uniformed Service
- Subsection iii. Notice
- Subsection iv. Reemployment Request, and
- Subsection v. Other Information.

*Section H subsection i. Employment* requires the investigator to discuss the claimant's Employment Period, Title and Salary, Work Schedule, Employment Contract Agreement or Contract, Collective Bargaining Agreement, and Arbitration Agreement. In this section the investigator must at least answer the following questions:

- When and where did the claimant begin employment with the relevant employer?
- What was the claimant's current position, schedule, salary, etc. when the relevant employment actions took place?
- Has the claimant signed an employment agreement or other type of agreement to arbitrate employment-related claims?

*Section H subsection ii. Uniformed Service* asks the investigator to identify the claimant's Cumulative Uniformed Service time, 5-Year Service Limit Eligibility, Service Description at Time of Initial Adverse Act, and if the Claimant is Actively Serving. The investigator must answer in this section:

- What is the claimant's uniformed service experience?
- If applicable, what are the claimant's current rank (both number and name), most recent duty station, and unit they are or were assigned to?
- If applicable, when was the claimant's last tour of duty in a uniformed service branch?
- If applicable, what were the claimant's rank, duty station, unit, and activities while on deployment?
- What are the relevant dates of deployment and type(s) of discharge?
- If applicable, when is the claimant's next projected deployment?

*Section H subsection iii. Notice* requests information about how the claimant provided notice to the employer regarding their uniformed service obligation or status. At minimum, the investigator must identify:

- When did the claimant notify the employer of their orders or FEMA DTS alerts or notices, as appropriate?
- Who did the claimant notify?
- How did the claimant notify their employer?

*Section H subsection iv. Reemployment Request* requests information about how the claimant applied for reemployment or attempted to return to employment following uniformed service. The investigator must at least describe:

- When did the claimant request reemployment?
- Who did the claimant request reemployment from?
- How did the claimant request reemployment?

*Section H subsection v. Other Information* asks the investigator to identify information about the claimant's union membership, and their participation in an employer pension plan. Specifically, the investigator must describe the following:

- Is the claimant in a union?
- If so, is there a collective bargaining agreement or other union involvement that would affect the case?
- Is the employee part of a pension plan?
- If so, what type of plan and why are the plan administrators relevant to the case?

*Section I is the Employer Background* section of the MOR. The employer background section contains four subsections:

- Subsection i. Structure of the Employer
- Subsection ii. Decision Maker(s)
- Subsection iii. Uniformed Service Members, and
- Subsection iv. Other Employers

*Section I subsection i. Structure of the Employer* requires the investigator to provide the following information about the employer:

- All information necessary to understand the structure of the employer about the claimant's job, such as the management structure above the claimant and other employees who could be comparators or who could corroborate any of the evidence.
- Where is the employer located and how large is its business/agency?
- Where is the employer's central office located?
- Does the employer have a physical office near the location where the events occurred?

*Section I subsection ii. Decision Maker(s)* asks the investigator to describe any employee of the employer who was identified as a decision maker by the investigator. It asks for their name, title, role, whether they are the claimant's supervisor, whether they can hire or fire employees, and whether the decision maker is a veteran or uniformed service member. The investigator should consider for each person:

- Who made the employment decision(s) at issue?
- What is their relationship to the claimant?
- Do they directly supervise the claimant?
- Do they have power to hire or fire the claimant?
- If more than one person was involved, what role did each person play, and what is the relationship among the different people involved?

*Section I subsection iii. Uniformed Service Members* asks about the status of other employees within the employer. Specifically, the investigator must identify the following:

- How many employees are veterans or uniformed service members?
- Are there other employees eligible for USERRA protection that have had similar experiences as the claimant?
- Are the managers or relevant decision-makers veterans or uniformed service members?

*Section I subsection iv. Other Employers* asks for additional information about any other employer who is involved in the investigation, for example, pension plan providers, joint employers, subcontractors, or successors in interest. *Subsection iv.* asks the investigator to consider and respond to the following:

- Are there two employers in a joint-employer situation, such as where there is a contractor working for a different employer (e.g., a private company contracted by a military agency to perform services on a military base)?
- What is each employer's relationship to the claimant?
- Which employers can affect hiring and firing decision?
- Which employers can assign and supervise the work of the claimant?
- Which employers were involved in making the employment-related decision at issue?

- How to the employers interact with one another?
- Who within each employer was responsible for the claimant and decisions at issue?

*Section J. Summary of Dispute* contains a detailed account of each potential violation investigated. It will contain a subsection for each potential violation, previously identified in *Section F*. For each potential violation, the investigator is asked if the violation was substantiated, and if the violation was substantiated, the date of the violation, the statutory and regulatory references for the violation, the claimant's explanation for the violation, the employer's position and explanation for the violation, and a detailed description of the violation. Each description or explanation should be a brief one to two sentences summary.

#### 15.1.3.4 MOR Investigative Findings Section

The Investigative Finding Section lists all the facts that the investigator found that were relevant to each potential violation. Upon MOR generation, the Investigative Findings section will initially be populated with every entry from the Chronology of Facts page of VCMS that was listed as "relevant." Each fact on the page asks the investigator for a description of the fact, the date of the fact, what potential violation(s) from the case the fact is related to, whether the fact was disputed, and if the fact was disputed, who was it disputed by.

For facts and findings that are disputed, the investigator should state each party's version of the fact. Each version of the fact should identify who provided the party's version of the fact, and the basis for their knowledge.

You may have to decide what you think is true from contradictory evidence (such as two witnesses disagreeing on a date). In this situation, first state as a fact what you think is true and the source of the evidence. Next note the evidence that contradicts your conclusion. Finally explain why your conclusion is correct and why the contradictory evidence is not credible or should be disregarded.

If you cannot tell which version of a fact is accurate, explain the competing facts, and note that it is not clear which version is true.

This section should also be used to describe comparators. Proper comparator evidence can be critical in determining if discrimination, reemployment, and retaliation claims are substantiated. Each fact about a comparator should provide information about how they were interpreted. For example, if there are lengthy spreadsheets or multiple sets of employee documents or applications, they can be added as exhibits, and you can write a summary of your analysis interpreting the data.

#### 15.1.3.5 MOR Evaluation Section

The Evaluation section can have a total of three sections, but only the sections that match identified Potential Violation Types will be active and required for completion. These sections are controlled by the choices made by the investigator during the investigation on the Potential

Violations page of the case file, and do not change based on changes to Section F of the MOR. The three sections are Discrimination, Reemployment, and Retaliation.

Each of the three Evaluation sections have three subsections (i. through iii.). The first subsection of each Evaluation section (i.) describes the Claimant's Case. The second subsection of each Evaluation section (ii.) describes the Employer's Case. The third subsection of each Evaluation section (iii.) describes the conclusion the investigator reached after consideration of all evidence.

#### 15.1.3.5.1 Evaluation Section A. Discrimination

*Evaluation Section A., Discrimination subsection i.* asks the investigator to describe the Claimant's Prima Facie Case. To establish a prima facie case of discrimination, the investigator must set forth the evidence, direct and/or circumstantial, that shows that the claimant's uniformed service or veteran status was a motivating factor in the adverse employment action. This subsection contains required templated language at the top of the subsection that cannot be changed and is followed by six fields that should be completed.

The first field allows for a description of the adverse act. In this field you must make clear the adverse employment action(s) or lack thereof. An adverse action can be a wide range of employment actions, from demotion, to termination, to changes in working conditions, to exposing the claimant to a hostile work environment. If you have a hostile work environment claim, please consult SOL for guidance on how to develop the case. This section can then be used to set forth and analyze any direct evidence. Direct evidence includes evidence (oral or written) that the claimant's status regarding uniformed service motivated the adverse employment decision.

You then must set forth and analyze the circumstantial evidence in the case. The types of circumstantial evidence are called the "*Sheehan*" factors and come from *Sheehan v. Dept. of the Navy*, 240 F.3d 1009, (Fed. Cir. 2001)." The first *Sheehan* factor is labeled "a. Knowledge of the Claimant's Uniform Service Activity."

The second *Sheehan* factor is labeled "b. Proximity in Time between Uniform Service Activity and Adverse Act." This factor is used to establish a timeline containing the dates of all important events, such as notice to the employer of military obligations, adverse action or denial of benefits, intervening events, or events that occurred soon before notice or after the adverse action.

The third *Sheehan* factor is labeled "c. Employer's Expressed Hostility Toward Uniform Service." This section should be used to describe all the relevant facts and context of the alleged hostility, any corroborating witnesses, identify who expressed hostility and how they may have been involved in the adverse act.

The fourth *Sheehan* factor is labeled "d. Inconsistencies Between Proffered Reasons and Other Actions of Employer." This section should be used to provide a description of facts obtained

from the employer, including details obtained through follow-up, and compare those facts to any inconsistent statements, or actions taken by the employer.

The fifth *Sheehan* factor is labeled “e. Disparate Treatment Toward Claimant Compared to Other Employees.” This factor should compare the treatment of the claimant as compared to other employees with similar work records or offenses, and other service-members. For the disparate treatment factor, use comparator evidence to identify similarly situated employees and explain what makes them similarly situated (e.g., same or similar jobs, same manager, similar level of experience). Next, compare treatment of the claimant with that of similarly situated employees without military obligations. Then, compare treatment of the claimant with that of other uniformed service-members, and, when possible, look at source documents rather than uncorroborated statements of the employer or the claimant.

*Evaluation Section A., Discrimination subsection ii.* asks the investigator to describe the Employer’s Rebuttal. If the facts support a prima facie case of discrimination, the investigator must set forth and analyze the facts that may or may not show that the employer would have taken the adverse employment action for nondiscriminatory reasons, regardless of the claimant’s uniformed service.

*Evaluation Section A. Discrimination subsection iii.* asks the investigator to describe their conclusion. The investigator should provide an assessment of whether each potential violation is substantiated and whether they have determined that there was a violation of USERRA.

#### 15.1.3.5.2 Evaluation Section B. Reemployment

*Evaluation Section B., Reemployment subsection i.* asks the investigator to describe the Claimant’s Case. This subsection contains required templated language at the top of the subsection that cannot be changed and is followed by two fields that should be completed. The first field is labeled “a. Eligibility.” The second field is labeled “b. Proper Escalator Position Including Seniority Rights and Benefits.”

*Evaluation Section B., Reemployment subsection ii.* asks the investigator to describe the Employer’s Affirmative Defense. There are limited defenses available to employers who refuse to reinstate eligible claimants, notably undue hardship, impossibility/unreasonableness of reemployment, or the job was of a temporary nature and there was no expectation that it would continue beyond the claimant’s military service.

*Evaluation Section B. Reemployment subsection iii.* asks the investigator to describe their conclusion. The investigator should provide an assessment of whether each potential violation is substantiated and whether they have determined that there was a violation of USERRA.

#### 15.1.3.5.3 Evaluation Section C. Retaliation

*Evaluation Section C., Retaliation subsection i.* asks the investigator to describe the Claimant’s *Prima Facie* Case. To establish a *prima facie* case of retaliation as discrimination, the

investigator must set forth the evidence, direct and/or circumstantial, that shows that the claimant's protected activity was a motivating factor in the adverse employment action. This subsection contains required templated language at the top of the subsection that cannot be changed and is followed by six fields that should be completed.

The first field allows for a description of the adverse act. In this field you must indicate the establishment of a retaliation case by setting forth the facts that show or do not show that the claimant's exercise of a USERRA right or participation in a USERRA-related proceeding was a motivating factor in the adverse act. An adverse action can be a wide range of employment actions, from demotion, to termination, to changes in working conditions, to exposing the claimant to a hostile work environment. If you have a hostile work environment claim, please consult SOL for guidance on how to develop the case. This section can then be used to set forth and analyze any direct evidence. Direct evidence includes evidence (oral or written) that the claimants protected activity regarding USERRA motivated the adverse employment decision.

You then must set forth and analyze the circumstantial evidence in the case. The types of circumstantial evidence are called the "*Sheehan*" factors and come from *Sheehan v. Dept. of the Navy*, 240 F.3d 1009, (Fed. Cir. 2001)." The first *Sheehan* factor is labeled "a. Knowledge of the Claimant's Protected Activity."

The second *Sheehan* factor is labeled " b. Proximity in Time between Protected Activity and Adverse Act." This factor is used to establish a timeline containing the dates of all important events, such as when the employer became aware of the claimant's protected activity, when the adverse action or denial of benefits occurred, intervening events, or events that occurred soon before awareness or after the adverse action.

The third *Sheehan* factor is labeled " c. Employer's Expressed Hostility Toward Protected Activity." This section should be used to describe all the relevant facts and context of the alleged hostility, any corroborating witnesses, identify who expressed hostility and how they may have been involved in the adverse act.

The fourth *Sheehan* factor is labeled "d. Inconsistencies Between Proffered Reasons and Other Actions of Employer." This section should be used to provide a description of facts obtained from the employer, including details obtained through follow-up, and compare those facts to any inconsistent statements, or actions taken by the employer.

The fifth *Sheehan* factor is labeled "e. Disparate Treatment Toward Claimant Compared to Other Employees." This factor should compare the treatment of the claimant as compared to other employees with similar work records or offenses. For the disparate treatment factor, use comparator evidence to identify similarly situated employees and explain what makes them similarly situated (e.g., same or similar jobs, same manager, similar level of experience). Next, compare treatment of the claimant with that of similarly situated employees, and, when possible, look at source documents rather than uncorroborated statements of the employer or the claimant.



### 15.1.3.6 MOR Remedies Section

The Remedies section can have a total of four sections. Sections A through C are like the Evaluation sections in that these sub-sections are only active if the case has an identified potential violation type that matches the sub-section topic. The sub-sections within the Remedies section are:

- Discrimination Remedies
- Reemployment Remedies
- Retaliation Remedies
- Wage and Benefits

For each potential violation that is linked to a violation type listed, identify the remedy (i.e. back pay, promotion, etc.) that you think the claimant is entitled to. Identify in detail what facts were used to determine the amounts described in the Wage and Benefits section.

For a potential reemployment violation, include the date the claimant was entitled to return to work and at what rate/salary. If the claimant was reinstated, include the date they were actually reinstated and at what rate/salary.

For a potential discrimination or retaliation violation, include the date the adverse action occurred and the financial damages it created.

After describing the remedies due to the claimant, if any, use the Wage and Benefits calculation tool to determine the total amount of back wages and benefits due to the claimant. To do this, you will need to determine:

- For how many days is the claimant due back pay?
- What was the claimant's hourly pay rate they were entitled to?
- What is the calculation of damages?
- Is there interest due on the damages?
- Did the claimant attempt to mitigate damages by looking for other employment?
- If the claimant obtained other employment,
  - For how long were they employed?
  - What was their hourly rate of pay, and for how many hours did they receive that pay?
  - What was their total compensation for the time that they worked there?
- Did the claimant receive unemployment benefits, and if so, from which state?

### 15.1.3.7 MOR Settlement Section

If you find that there was at least one violation of USERRA, settlement should be attempted. Explain settlement efforts in detail including:

- When did the settlement attempts take place?
- What was VETS' first settlement request?
- When was the last settlement discussion and how were settlement discussions last left?
- What was requested?
- What was offered and by whom?
- What was the response?
- Is there a sense of whether the employer might be willing to settle in the future, and for what?
- Is there a sense of whether the claimant might be willing to settle, and for what?

If settlement was not attempted either for a substantiated or not substantiated potential violation, explain why.

#### 15.1.3.8 MOR Final Section

The Final section contains sub-sections for entry of a Conclusion statement, and a sub-section to organize Exhibits.

##### 15.1.3.8.1 Conclusion Subsection

The Conclusion subsection contains a single text field in which the investigator should explain their conclusion in one or two sentences. They should focus only on whether each potential violation was substantiated and what the remedy would be. If there are multiple potential violations, and different recommendations for each one, the investigator should add a separate one or two sentences summary with a recommendation for each.

##### 15.1.3.8.2 Exhibits Subsection

The Exhibits section is automatically populated with any exhibit that was selected anywhere throughout the MOR. The Exhibits section is displayed in a grid with columns for “Exhibit Number,” “Exhibit Name,” “Exhibit Description,” “Action Date,” and “Chronological Date.” The Exhibit Name is a hyperlink that allows the investigator or reviewer to review the exhibit being displayed upon selection in a separate tab. The exhibit description should be filled out by the investigator for each exhibit identified. Each description should be a brief one or two sentence description that identifies any relevant information about each exhibit listed (e.g., names or details about persons spoken to, relevant pages from the document, etc.). Finally, the investigator must enter the chronological date of each document as opposed to the date in which they became a part of the case file (Action Date). The Action Date is provided for each document as a convenient reference for the Investigator, but ultimately will not be populated in the final version of the MOR that is transferred to DOJ or OSC. The Exhibit grid will automatically sort and number the documents based on the chronological dates entered by the investigator.

### 15.1.3.9 Submission of the MOR for Review

Once all required sections have been completed by the investigator, the investigator can submit the MOR for first level review. If any required sections are incomplete, they will be identified in red text at the bottom of the page, and the “Submit” button on the conclusion page will be grayed out. If all sections are complete, the option to submit the MOR will be active at the bottom right of the screen on the Conclusion & Exhibits page of the MOR. Upon selection of the “Submit” button, the case will move into first level review. The investigator should confirm this status by checking the MOR page in VCMS to confirm the MOR is routed to the proper regional office with a status of “Pending.”

### 15.1.3.10 Review and Transfer of a USERRA MOR

Reviews of MORs are conducted in three phases:

1. First Level Review
2. Second Level Review
3. CSI Review

#### 15.1.3.10.1 First Level Review

First level reviews of cases can be conducted by any person with a First Level Reviewer VCMS role in the region that has jurisdiction over the referred case. While an initial reviewer is not automatically selected by VCMS, the RAVET for the region of a case’s jurisdiction is the default First Level Reviewer unless they have delegated responsibility for the first level review to another staff member such as the SI or DRAVET. If multiple personnel have been delegated responsibility for First Level Review of an MOR, they should coordinate with one another regarding who will conduct the review on behalf of the region.

To conduct the first level review, the reviewer should log into VCMS, select the case they intend to review, and navigate to the MOR page in VCMS by selecting it from the top menu inside the case file. From the MOR page, the reviewer should select the link in the Review Level column in the grid within the MOR Review Details section, which will navigate them into the MOR to conduct the review.

The First Level Reviewer must review all sections of the MOR. The first level review is the most comprehensive review and requires the reviewer to note their approval or disapproval of most primary sections (A., B., C., etc.) and secondary sections (i., ii., iii., etc.) throughout the MOR. Each approval section contains radio button option that asks if the reviewer approves of the section, and a comment block. The comment block is optional for approved sections, and mandatory for any disapproved section. If a section is disapproved, they should describe why the section was disapproved, and what changes are required, if they choose to reject the MOR.

During the MOR development and review phases, the First Level Reviewer is responsible for the quality and timeliness of referrals to DOJ and OSC. They must keep the NO informed of actions

taken on unusual or precedent-setting cases referred to DOJ or OSC. As they become known, the First Level Reviewer must also keep the NO informed of actions taken in cases litigated by private counsel. If necessary, the NO and NSOL will consult in these cases.

During the first level review, the reviewer should pay close attention to whether the investigator has provided information for every applicable field in the MOR. The reviewer should also note if any information that is presented does not have a source document, or exhibit selected, or if the exhibit does not contain the fact that it is attached to. The First Level Reviewer should also check that all descriptions to the MOR are written in complete sentences, with proper grammar and punctuation.

Once all sections of the MOR have been approved or disapproved, the reviewer has the option to approve or reject the overall MOR. Approvals will forward the MOR for second level review. Rejection of the MOR will send the MOR back to the investigator for correction. If all sections of the MOR have not been reviewed, the MOR will let the reviewer know which sections still require their review at the bottom of the screen in red. The options to approve or reject the MOR are located on the Conclusions & Exhibits page at the bottom right of the screen.

#### 15.1.3.10.2 Second Level Review

Second level reviews of cases can be conducted by any person with a Second Level Reviewer VCMS role in the region that is assigned to conduct the second level. Second level reviews are randomly assigned on a rotating basis, exempting any region removed from second level reviews by the VCDC. Second Level Reviewers are not automatically selected by VCMS, so personnel in the region should coordinate with one another regarding who will conduct the second level review.

Once a Second Level Reviewer is assigned from the assigned region, the reviewer should log into VCMS, and select the case they intend to review. They should then navigate to the MOR page in VCMS by selecting it from the top menu inside the case file. From the MOR page, the reviewer should select the link in the Review Level column in the grid within the MOR Review Details section that says Second Level Review, which will navigate them into the MOR to conduct the review.

The second level review can then review all sections of the MOR. The second level review is the requires the reviewer to note their approval or disapproval of most primary sections (A., B., C., etc.) throughout the MOR. Each approval section contains radio button option that asks if the reviewer approves of the section, and a comment block. The comment block is optional for approved sections, and mandatory for any disapproved section. If a section is disapproved, they should describe why the section was disapproved, and what changes are required, if they choose to reject the MOR.

Once all sections of the MOR have been approved or disapproved, the reviewer has the option to approve or reject the overall MOR. Approvals will forward the MOR on for CSI review.

Rejection of the MOR will send the MOR back to the First Level Reviewer for correction. If all sections of the MOR have not been reviewed, the MOR will let the reviewer know which sections still require their review at the bottom of the screen in red. The options to approve or reject the MOR are located on the Conclusions & Exhibits page at the bottom right of the screen.

If an MOR is rejected back to first level review, the First Level Reviewer should review the comments from the Second Level Reviewer and reject the MOR back to the investigator for correction if they concur with the changes. If the First Level Reviewer does not agree with the changes requested by the Second Level Reviewer, they should attempt to resolve any issues with the Reviewer directly. If they are unable to reach agreement on a resolution, the disagreement can be elevated as described in Section 15.1.1.

#### 15.1.3.10.3 CSI Review and Transfer of Case to DOJ or OSC

The CSI review of cases must be conducted by the VETS staff members with the CSI role. To conduct the CSI review, the CSI should log into VCMS and select the case they intend to review. They should then navigate to the MOR page in VCMS by selecting it from the top menu inside the case file. From the MOR page, the CSI should select the link in the Review Level column in the grid within the MOR Review Details section that says CSI Review, which will navigate them into the MOR to conduct the review.

The CSI review is an overall review of the MOR, and does not require approval or disapproval of individual sections of the MOR. Once the CSI has read and reviewed all sections of the MOR, including the approvals, disapprovals, and comments from reviewers, the CSI will decide whether to approve the MOR, and thereby transfer it to DOJ or OSC, or reject the MOR.

If the CSI chooses to reject the MOR, they can select which step of the approval process the MOR should return to, and they can select which step of the approval process the corrected MOR is submitted back to. For example, if an MOR only requires a small change by the investigator, the CSI can reject the MOR back to the investigator, and stipulate that a resubmitted MOR with the requested change can bypass the first level and second level reviews and go directly back to the CSI.

#### 15.1.4 Refer Case to DOJ or OSC

For cases alleging USERRA violation(s), a claimant with a USERRA violation against a federal executive branch employer may receive legal representation by OSC before the MSPB. OSC may agree to represent claimants whom OSC is reasonably satisfied are entitled to rights or benefits sought under USERRA.

A claimant with a claim against a private, state, or local employer may receive legal representation by DOJ, who may bring an action in the federal district court in which the employer maintains a place of business or exercises authority. DOJ will only bring an action if it's reasonably satisfied the claimant is entitled to the rights and benefits sought under USERRA.

#### 15.1.4.1 RO Responsibilities

Following transfer of a case to DOJ or OSC, the SI serves as the chief liaison with NSOL and the RSOL on individual matters referred to DOJ and OSC. The RO works with NSOL to track the status and results of cases referred to DOJ and OSC, including any decisions regarding representation, settlement, and/or litigation.

#### 15.1.4.2 NO Responsibilities

The NO may receive the text of a court or MSPB decision on a case alleging USERRA, VEOA, or VP violation(s). The NO will interpret the decision in consultation with RSOL and/or NSOL. If the decision is deemed appropriate for distribution, the NO must distribute the decision and interpretation to the field within 60 calendar days using SharePoint. The NO, in consultation with the Office of Strategic Outreach (OSO), determines whether a [press release](#) to the media is appropriate. On occasion, a court decision will impact VETS policy. The NO must make and communicate policy decisions and changes based on these court decisions to the field. Finally, the NO must monitor all decisions to determine whether to recommend that an appeal be made.

### 15.1.5 Actions to Take After Referring a Case

After VETS submits the referral package to DOJ or OSC for consideration of representing the claimant, VETS has a few other actions to take. First, the SI should distribute the MOR by ensuring the RO and SOL have access to a complete copy of the referral. Second, the RO, typically through the SI, must notify the claimant of the referral using the letter template in VCMS. Third, the RO, typically done by the SI, must secure and upload any after-obtained documents for access by the RO, SOL, DOJ or OSC. Fourth, if the case goes to litigation, understand who at VETS might need to attend a trial. Fifth, understand how VETS might use press releases on cases under litigation. Each step is described in the following subsections.

#### 15.1.5.1 Secure Case Documents

As part of the ongoing liaison with SOL about individual matters referred to DOJ or OSC, the RO must secure and upload after-obtained significant correspondence or documents relevant to the case. These may include:

- DOJ's transmittal to the applicable U.S. Attorney's Office.
- DOJ or OSC letter of declination, if applicable.
- Copy of the district court complaint or MSPB appeal filed, if any.
- Copies of motions and briefs in the litigation.
- Copies of the court or MSPB decisions or settlement documents.

#### 15.1.5.2 DOJ or OSC Declines

DOJ or OSC may decline to represent a claimant. If DOJ or OSC declines, the claimant may still hire private counsel at their own expense. DOJ or OSC informs the claimant directly of any declination in writing.

DOL has independent MOU agreements with DOJ and OSC, respectively. Those agreements include actions that DOJ and OSC must take if they intend to decline to represent a claimant for a violation that a VETS investigation substantiated. If DOJ intends to decline, DOJ will set a conference call with SOL and/or RSOL to explain the reasons for declining to represent the claimant. The VETS NO and appropriate RO, and, to the extent practical, the investigator and DVET, should also participate in the conference. If DOJ or OSC intends to decline, and VETS has questions regarding this declination, VETS will consult with SOL. The ASVET may participate, if warranted. Any questions received, verbally or in writing, concerning a declination by either DOJ or OSC will be referred to SOL for a response.

#### 15.1.5.3 DOJ or OSC Accepts

Once DOJ or OSC accepts a case, they'll furnish legal services to the claimant, except that the claimant's travel or other associated costs may be at their own expense. The investigator will advise their DVET and RO immediately of any contact with OSC, the U.S. Attorney's Office, or DOJ concerning a USERRA, VEOA, or VP matter. This includes any communications that happen during or after the decision to accept the referral and represent the claimant. As the investigator, you must write a report of the contact using Form 1063, which you'll submit to the SI for inclusion in the case file. The SI will upload a copy to VCMS and enter any associated metadata fields.

#### 15.1.5.4 Attend the Trial

The RO must work with the SOL to determine when cases are set for trial. They each may send a representative to attend and observe the trial, subject to supervisory approval. ROs are encouraged to use this attendance and observation for training purposes.

No VETS staff may testify at a trial in which DOL isn't a named party, unless released by SOL. If a [subpoena is served on a VETS employee](#), they must immediately notify the RO, typically through the SI, who will immediately notify the RSOL and VETS' NO. The subpoena should be forwarded by the fastest means available to the RO.

#### 15.1.5.5 Press Releases

VETS may, through the DOL OPA, publish nationally distributed press releases on pertinent and newsworthy court decisions and USERRA activities. The releases will be composed by OPA, based upon information provided by the VETS NO staff, in consultation with OSO. The NO will immediately distribute a copy of the approved release to RAVETs, who may coordinate with their DOL Regional OPA and RSOL.

## 15.2 VEOA/VP Case Referrals

For VEOA and VP cases, the claimant can't request that their case be referred to OSC but must file an appeal directly with the MSPB within 15 days of case closing. However, all substantiated VEOA and VP violations in VCMS are referred automatically to OSC for consideration of whether a [PPP](#) occurred.

### *15.2.1 Create and Review Referrals for VEOA and VP Violations*

For VEOA and VP violations, you must ensure the referral letter you draft to OSC also includes a:

- Statement that the matter is being referred to OSC for consideration as a possible PPP for disciplinary action purposes.
- Description of the case identifying the claimant, the agency, and the issues outlined using the [IRAC method](#).
- Summary of the violations.
- Description of the case's status:
  - Claimant has been made whole,
  - Claimant decided not to pursue the case, or
  - Claimant decided to appeal to MSPB.
- Statement of any discriminatory or flagrant behavior by the agency that was revealed by the investigation.
- Statement that the RSOL was consulted and concurred with the referral.

In accordance with VETS' MOU with OSC, the RSOL must be consulted and concur with the referral to OSC. Coordinate RSOL review by sending a copy of the referral letter and a copy of the case file to the RSOL to ensure that the required consultation occurs and that the RSOL concurs with the referral. Resolve any obstacles to RSOL concurrence. If RSOL concurs, have the RAVET sign and date the referral letter, and send the referral letter and a copy of the case file to OSC. If the RSOL doesn't concur, note the non-concurrence in the case file and take no further action in the case.

Sending the referral letter may not be the end of your involvement with the case. Requests by OSC for further information, documentation, or other assistance regarding a referred case will be made to the RAVET involved. Note that OSC may further investigate potential violations of [5 U.S.C. § 2302\(b\)\(11\)](#) pursuant to its authority under [5 U.S.C. § 1214](#). After deciding whether disciplinary action will be taken, OSC will notify the RAVET.

Also, keep in mind that VETS has agreed to notify OSC whenever a person who has filed a preference claim informs VETS that they intend to file an appeal of the potential violation with the MSPB. This notification will be made through the RAVET in whose region the case was handled without regard as to whether the claims were substantiated.



## Chapter 16 | Close a Case

This chapter outlines how to appropriately close a case for USERRA and VEOA/VP cases. It includes the responsibilities of investigators and designated reviewers and explains the importance of applying the correct closing codes. VETS' investigative files live on after the investigation concludes. The case closure process is the final step in ensuring that VETS has a complete, accurate, and organized case file. If that case file is needed later, the file must be able to stand on its own and speak to what transpired in the case. This is sometimes referred to as a "completely fungible case file." It means anyone should be able to pick up the case file and understand exactly what transpired.

### 16.1 Closing USERRA Cases

USERRA cases may only be closed in VCMS after the Preclosing ROI is approved (except if the case is being closed as a [Duplicate Claim, or Claim Reassigned](#)) and the [Standard Occupational Code](#) isn't blank on the Case Summary page of VCMS. VCMS pre-populates the case's closing code based on the planned closing code you selected when preparing the Preclosing ROI.

VCMS helps you identify whether you have completed all the actions necessary to close a case. If you missed a step, you'll be unable to select the appropriate closing code. Instead, you'll see red text explaining the steps you missed, as in the example below. If this occurs, go back, and correct these errors before attempting to close the case.

When ready to close a case, you will ensure the case file contains adequate supporting documentation to justify the use of USERRA closing code. You will then use VCMS to prepare a closing letter for the [claimant](#) and the [employer](#) based on the circumstances of the case. The letters must be sent by [authorized carrier](#).

USERRA cases may be closed with a variety of closure codes, with associated closure types that should be applied to cases based on your findings during investigation, or a reason necessitating an administrative closure of case. The primary USERRA Codes are:

1. Administrative
2. Claim Reassigned
3. Claim Resolved
4. Duplicate Claim
5. Not Eligible
6. Not Substantiated
7. Substantiated, Not Resolved

The closure types for each of these closure codes are described in the following sections.

### 16.1.1 Administrative Closure (USERRA)

Under USERRA, an administrative closure is appropriate for seven reasons:

1. [Active federal court proceeding](#)
2. [Active MSPB proceeding](#)
3. [Active state court proceeding](#)
4. [Claimant requests not to pursue claim](#)
5. [Claimant temporarily unavailable](#)
6. [Lack of interest](#), and
7. [Pursuing through ESGR](#).

The following steps apply to all administrative closing codes. For potential USERRA violations, the claimant must be advised, in writing, that:

- If their situation has changed, they have the right for VETS to investigate their claim.
- If VETS finishes that investigation, then they may exercise their right to refer the case to DOJ or OSC.
- They have the right to retain private counsel at their own expense.
- They have the right to file a lawsuit in a court of competent jurisdiction or an appeal to the MSPB, as appropriate.

Remember that VETS is required to investigate each complaint submitted and determine, as a result of each investigation, if the actions alleged in each complaint occurred, 38 U.S.C. § 4322 (d). Therefore, closing investigations administratively should be a measure of last resort, as it is a failure of VETS to meet our statutory obligations under USERRA. Only in the situations described in this chapter are administrative closures appropriate.

All letters associated with this code must be sent by [authorized carrier](#). If the claimant tries to request suspension of their investigation after you inform them that the claim isn't eligible or if the violation is substantiated, don't close it as [Administrative: Claimant Requests Not to Pursue](#). Instead, use the appropriate closing codes for [Not Eligible](#) or [Not Substantiated](#). Under no circumstance should you discourage a claimant from allowing VETS to complete investigation of a submitted claim. Administratively closed cases are excluded from VETS' count of completed investigations. Additional requirements can be found in the subsections below.

#### 16.1.1.1 Active Federal Court Proceeding

The CSI must conduct the review of the preclosing ROI. The CSI verifies that the investigator and SI followed all the steps, as appropriate, listed in [Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action](#). Prior to the CSI's review, the investigator (i.e., you) should provide VCMS with the parallel action's docket number (i.e., identifying number the federal court assigns to the action) and a copy of the pleading. The claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the

investigation, so that the claimant can later exercise their right to referral to DOJ or OSC, as appropriate, and that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must follow the steps outlined in the [preceding section's introduction \(Administrative Closure\)](#).

#### 16.1.1.2 Active MSPB Proceeding

The CSI must conduct the review of the preclosing ROI. The CSI verifies that the investigator and SI followed all the steps, as appropriate, listed in [Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action](#). Prior to the CSI's review, the investigator (i.e., you) should provide VCMS with the parallel action's docket number (i.e., identifying number the federal court assigns to the action) and a copy of the pleading. The claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so that the claimant can later exercise their right to referral to DOJ or OSC, as appropriate, and that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must follow the steps outlined in the [preceding section's introduction \(Administrative Closure\)](#).

#### 16.1.1.3 Active State Court Proceeding

The CSI must conduct the review of the preclosing ROI. The CSI verifies the investigator and SI followed all the steps, as appropriate, listed in [Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action](#). Prior to the CSI's review, the investigator (i.e., you) should provide VCMS with the parallel action's docket number (i.e., identifying number the federal court assigns to the action) and a copy of the pleading. The claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so that the claimant can later exercise their right to referral to DOJ or OSC, as appropriate, and that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must follow the steps outlined in the [preceding section's introduction \(Administrative Closure\)](#).

#### 16.1.1.4 Claimant Requests Not to Pursue Claim

Administrative: Claimant Requests Not to Pursue Claim refers to when the claimant submits a request of their desire to suspend investigation of their claim. A request can be submitted by the claimant either directly in VCMS using the "Investigation Suspension Request" option from the related actions page of the case file, or by submitting the request to VETS in writing. They can submit these by email to [VETS1010@dol.gov](mailto:VETS1010@dol.gov), by fax to (404) 562-2313, or by mail to Veterans' Employment and Training Service (VETS), Attention: Investigation Suspension, 200 Constitution Ave NW, Room S-1325, Washington, DC 20210. Upon receipt of a VCMS system notification of a request to suspend an investigation, discuss the circumstances of the suspension with the claimant, and inform the claimant in writing that:

- If they change their mind, they have the right for VETS to resume investigation of their claim upon request.

- They have the right to withdraw their request to suspend investigation of their claim up until the point at which they are notified by their investigator that their case has been properly closed.
- If VETS finishes the investigation after withdrawal of the suspension request, or upon reopening of the case, then the claimant may exercise their right to refer the case to DOJ or OSC, as appropriate.
- They have the right to retain private counsel at their own expense.

If a claimant submits a request to VETS staff member, rather than to the points of contact above, the VETS staff member should forward the request to [VETS1010@dol.gov](mailto:VETS1010@dol.gov) to be processed by the VCDC. All received requests to suspend investigation of a claim will be backdated by the VCDC to the date that the claimant submitted the request.

Develop closing letters for the claimant, and if necessary, the employer, and submit them in a preclosing ROI to your reviewer for approval. Upon approval of the preclosing ROI and the closing letter(s), the letter(s) must be sent by [authorized carrier](#). Claimant requests to suspend an investigation after a prenotification or preclosing ROI has been submitted following a determination of whether a violation of USERRA has occurred, will be denied by VCMS or the VCDC unless an exception to this rule is approved by the assigned investigator, the SI from the investigator's region, and the CSI. Under no circumstances should an investigator encourage a claimant to request suspension of their investigation, but may provide instruction regarding how to do so, upon request.

#### 16.1.1.5 Claimant Temporarily Unavailable

VETS must complete investigations within specific time periods. Based on this, there might be times when it makes most sense to close a claim while the claimant is unavailable to participate fully, but where the claimant is in limited contact with the investigator (unlike Lack of Interest closures). A request can be submitted by the claimant to temporarily suspend investigation of their claim either directly in VCMS using the "Investigation Suspension Request" option from the related actions page of the case file, or by submitting the request to VETS in writing. They can submit these by email to [VETS1010@dol.gov](mailto:VETS1010@dol.gov), by fax to (404) 562-2313, or by mail to Veterans' Employment and Training Service (VETS), Attention: Investigation Suspension, 200 Constitution Ave NW, Room S-1325, Washington, DC 20210. In their request, the claimant should include the reason and timeframe that they'll be unavailable. VCMS will capture an anticipated date to reopen the case in VCMS. The claimant must be advised, in writing, that:

- If they change their mind, they have the right to request that VETS reopen their case to resume investigation of their claim.
- If VETS finishes that investigation, then they may exercise their right to refer the case to DOJ or OSC, as appropriate.
- They have the right to retain private counsel at their own expense.

Develop closing letters for the claimant, and if necessary, the employer, and submit them in a preclosing ROI to your reviewer for approval. Upon approval of the preclosing ROI and the closing letter(s), the letter(s) must be sent by [authorized carrier](#). Claimant requests to suspend an investigation after a prenotification or preclosing ROI has been submitted following a determination that their claim isn't eligible, or the violation couldn't be substantiated will be denied by VCMS or the VCDC unless an exception to this rule is approved by the assigned investigator, the SI from the investigator's region, and the CSI. Under no circumstances should an investigator encourage a claimant to request suspension of their investigation, but may provide instruction regarding how to do so, upon request.

#### 16.1.1.6 Lack of Interest

Administrative closure is appropriate when the claimant displays a clear lack of interest. Examples include failure to reply to VETS' letters, failure to give VETS a change of address, failure to supply information the claimant could easily obtain, and failure to attend scheduled meetings or conferences. For all claims, document the lack of cooperation or interest on a Form 1063 and include all attempts at contact. You'll send two different letters for this closing code. First, inform the claimant in writing that, if they don't contact VETS by a date certain (at least 10 days from the date of the letter), VETS will close the case for lack of interest.

- For cases alleging USERRA violation(s), ask for a date no earlier than ten calendar days after the date of your letter.
- For cases alleging VEOA or VP violation(s), ask for a date no earlier than ten calendar days after the date of your letter, or within 60 days of the original filing of their claim, no later than a date certain that you have calculated, whichever is earlier.

Administratively close the case if, by the deadline, the claimant fails to respond, the carrier doesn't verify delivery, or the carrier returned the letter as undeliverable. You'll then send the closing letter(s).

Second, prepare the appropriate [closing letter\(s\)](#) to the claimant, and, if necessary, the employer. For USERRA cases, the claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so the claimant can later exercise their right of referral to DOJ or OSC, as appropriate. For VEOA and VP cases, if still within 60 calendar days of the original filing of their claim with VETS, the claimant must be advised, in writing, of their right to request, no later than the 60<sup>th</sup> calendar day after the original filing, that VETS reopen their case to complete the investigation and protect their right to appeal to the MSPB. In all cases, the claimant must be advised that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must follow the steps outlined in [Administrative Closure](#).

### 16.1.1.7 Pursuing through ESGR

Claimants should submit a request in VCMS or in writing to [VETS1010@dol.gov](mailto:VETS1010@dol.gov) of their desire to suspend investigation of their claim (alleging USERRA, VEOA, and/or VP violations) to work with an ESGR ombudsperson. Upon receipt of a VCMS system notification of a request to suspend an investigation, discuss the circumstances of the suspension with the claimant, and inform the claimant in writing that:

- If they change their mind, they have the right for VETS to investigate their claim.
- If VETS finishes that investigation, then they may exercise their right to refer the case to DOJ or OSC, as appropriate.
- They have the right to retain private counsel at their own expense.

Develop closing letters for the claimant, and if necessary, the employer, and submit them in a preclosing ROI to your reviewer for approval. Upon approval of the preclosing ROI and the closing letter(s), the letter(s) must be sent by [authorized carrier](#). Claimant requests to suspend an investigation after a [prenotification](#) or [preclosing ROI](#) has been submitted following a determination that their claim is [Not Eligible](#), or the violation couldn't be substantiated will be denied by VCMS or the VCDC. Under no circumstances should an investigator encourage a claimant to request suspension of their investigation, but may provide instruction regarding how to do so, upon request.

### 16.1.2 Claim Reassigned

Claim Reassigned refers to claims that are closed and reopened in a new jurisdiction. This is necessary anytime that an investigator determines that the employer's address' state, as submitted in the Form 1010, is incorrect, and the state in which the employer took the adverse act was different than the one listed. This action will apply a new case number to the reopened case, identifying the new two-letter state identifier in the reopened case.

This closure code is automatically applied to a parent case once it is reassigned out of jurisdiction by a person with a Regional Assigner, or National Assigner account in VCMS. This closure type is not available to the investigator through the Close Case action on the Related Actions page of VCMS, or in the Preclosing ROI. Claim Reassigned closed cases are excluded from VETS' count of [completed cases](#).

### 16.1.3 Claim Resolved Closure (USERRA)

Claim Resolved refers to when the employer grants all or substantially all the claimant's entitlements under the law. There are three variations available (i.e., includes settlement agreement, doesn't include settlement agreement, and resolved prior to determination). You should request a copy of the settlement agreement, even in cases where the parties wrote their own settlement agreement. If the settlement is confidential, the parties may not share a copy of

the agreement with VETS. For all settlement agreements, or settlement attempts, you must also enter any details of the agreement on the VCMS Settlements page.<sup>198</sup>

The closing letters must also include notification that, if the claimant isn't fully satisfied with the resolution of their case, they may request that VETS refer their case to DOJ or OSC or the claimant may file a private action. For all cases, when there's a written settlement agreement, you must attach it to the closing letters you send in the case.

When the case's resolution involves the payment to the claimant of any monies, and it's not possible to obtain immediate full payment, make the necessary arrangements for the following:

- Have the employer cut a check for the balance, made payable to the claimant.
- Employer must forward this check to the investigator.
- Log the settlement payment.
- Forward the check to the claimant.

The parties might agree to present or send the check directly to the claimant. You are still responsible for obtaining verification of payment (e.g., a copy of the check) and [entering the payment verification into VCMS](#).<sup>199</sup>

Claim Resolved closed cases are included in VETS' count of [completed cases](#).

#### 16.1.3.1 Claim Resolved: Includes Settlement Agreement

First, you must have followed the requirements in the preceding section. Second, you must have prepared, submitted, received, and uploaded the Settlement Agreement and Release Form (or a similar one created and submitted by the employer). An employer's settlement agreement must outline all the relevant points of agreement based on the substantiated violations. The process steps for each closing code are the same, as outlined below.

If either party wishes to alter the language in the Settlement Agreement and Release Form template, the SI must review and forward to RSOL for a legal review. If it appears the agreement exceeds the scope of USERRA, or if the agreement appears to not grant all remedies due to the claimant, the investigator will inform the claimant of this, and advise they consider reviewing it with their attorney prior to signature.

#### 16.1.3.2 Claim Resolved: No Settlement Agreement

There may be cases where the parties, for whatever reason, refuse to reduce their agreement to writing. In those cases, you'll use Claim Resolved: No Settlement Agreement. You must include in the closing letters to both parties language that outlines the relief VETS obtained for the

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<sup>198</sup> [VCMS Agency User Guide](#).

<sup>199</sup> [VCMS Agency User Guide](#).

claimant. If there was no written settlement agreement between the parties, then the claimant must be advised, in writing, that:

- If they change their mind, they have the right for VETS to reopen their claim for investigation.
- If VETS finishes that investigation, then they may exercise their right to refer the case to DOJ or OSC, as appropriate.
- They have the right to retain private counsel at their own expense.

The letters must be sent by [authorized carrier](#).

#### 16.1.3.3 Claim Resolved: Resolved prior to Determination

There may be cases where the parties agree to resolve a claim during the initial stages of an investigation, without the need for VETS to complete an investigation and determine if a submitted claim is substantiated or determine the appropriate remedies due. In these instances, you will use Claim Resolved: Resolved prior to Determination. You must include in the closing letters to both parties language that outlines the relief the claimant received. If there was no written settlement agreement between the parties, then the claimant must be advised, in writing, that:

- If they change their mind, they have the right for VETS to reopen their claim for investigation.
- If VETS finishes that investigation, then they may exercise their right to refer the case to DOJ or OSC, as appropriate.
- They have the right to retain private counsel at their own expense.

The letters must be sent by [authorized carrier](#).

#### 16.1.4 Duplicate Claim

Duplicate Claim refers to a situation where VETS discovers the claimant filed more than one claim against the same employer involving the same circumstances (USERRA, VEOA, or VP). This also covers circumstances where the claimant filed complaints with multiple VETS offices. Before you close a case using this closing code, VCMS requires that you enter the duplicate case number on the VCMS close case screen. Discuss the case circumstances and eligibility with the claimant about whether to reopen the original case, refer it, or continue an already open investigation by adding any new and material information to the case file. VCMS will only allow an SI or higher-level user to close a case for this reason. When closing a case as a duplicate to a previously filed case, make sure to identify the previously filed case by case number and status.

Duplicate closed cases are excluded from VETS' count of [completed cases](#).



### 16.1.5 Not Eligible Closure (USERRA)

[Not Eligible](#) refers to an already open case where the investigator finds the claimant doesn't meet the eligibility requirements for protection under USERRA. There are four reasons in VCMS to use this closing code, which are described in the following subsections:

1. [Federal court decision](#),
2. [Ineligible claimant](#),
3. [MSPB decision](#), or
4. [State court decision](#).

Discuss the case circumstances and eligibility with the claimant and prepare the appropriate [closing letters](#) to the claimant, and, if necessary, the employer. The claimant must be advised, in writing, of their USERRA rights to referral to DOJ or OSC, or to seek private counsel. The letters must be sent by [authorized carrier](#). Not Eligible closed cases are included in VETS' count of [completed cases](#).

#### 16.1.5.1 Not Eligible: Federal Court Decision

The CSI must conduct the review of the preclosing ROI. The CSI verifies the investigator and SI followed all the steps, as appropriate, listed in [Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action](#). Prior to the CSI's review, the investigator (i.e., you) should provide VCMS with the parallel action's docket number (i.e., identifying number the federal court assigns to the action) and a copy of the decision. You should always make multiple attempts to obtain a copy of the decision. The claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so that the claimant can later exercise their right to referral to DOJ or OSC, as appropriate, and that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must also follow the steps outlined in [the preceding section's introduction \(Not Eligible\)](#).

#### 16.1.5.2 Not Eligible: Ineligible Claimant

You use this subcode if you filled out the VCMS Eligibility page and the claimant failed any of the four sections (i.e., [no employee-employer relationship](#), [disqualifying character of service](#), [no protected status](#), and [no protected activity](#)). Any closing letters sent must also follow the steps outlined in [the preceding section's introduction \(Not Eligible\)](#). For more information about these requirements, refer to [Determine USERRA Eligibility](#) and [Determine VEOA and VP Eligibility](#).

#### 16.1.5.3 Not Eligible: MSPB Decision

The CSI must conduct the review of the preclosing ROI. The CSI verifies the investigator and SI followed all the steps, as appropriate, listed in [Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action](#). Prior to the CSI's review, the investigator (i.e., you) should provide VCMS with the parallel action's docket number (i.e., identifying number the federal court assigns to the action) and a copy of the decision. You should always make multiple

attempts to obtain a copy of the decision. The claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so that the claimant can later exercise their right to referral to DOJ or OSC, as appropriate, and that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must also follow the steps outlined in [the preceding section's introduction \(Not Eligible\)](#).

#### 16.1.5.4 Not Eligible: State Court Decision

The CSI must conduct the review of the preclosing ROI. The CSI verifies the investigator and SI followed all the steps, as appropriate, listed in [Claimant Has Concurrent Claim Under a State Law or CBA or Files a Parallel Court Action](#). Prior to the CSI's review, the investigator (i.e., you) should provide VCMS with the parallel action's docket number (i.e., identifying number the federal court assigns to the action) and a copy of the decision. You should always make multiple attempts to obtain a copy of the decision. The claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so that the claimant can later exercise their right to referral to DOJ or OSC, as appropriate, and that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must also follow the steps outlined in [the preceding section's introduction \(Not Eligible\)](#).

#### 16.1.6 Not Substantiated Closure (USERRA)

Not Substantiated refers to a finding that the claimant isn't entitled to any relief for reasons other than failure to meet eligibility requirements. Discuss the case circumstances and [eligibility](#) with the claimant and prepare the appropriate [closing letters](#) to the claimant, and, if necessary, the employer. The claimant must be advised, in writing, of their USERRA rights to referral to DOJ or OSC, or to seek private counsel. The letters must be sent by [authorized carrier](#).

Once a claimant has established their eligibility, meaning that they have an [employee/employer relationship](#) (all claim types); they do not have a [disqualifying discharge](#) (reemployment, and discrimination claims); they have [protected status](#) (discrimination claims); and/or they have participated in a [protected activity](#) (retaliation claims), it is the obligation of the investigator to conduct a thorough investigation by obtaining evidence and making the appropriate contacts. If a [prima facie case](#) cannot be established following the investigation, the claim should be closed as Not Substantiated, and referral rights provided. Not Substantiated closed cases are included in VETS' count of [completed cases](#).

You use this subcode if you filled out the VCMS Eligibility page and the claimant failed any of the four sections (i.e., no employee-employer relationship, disqualifying character of service, no protected status, and no protected activity). Any closing letters sent must also follow the steps outlined in [the preceding section's introduction \(Not Eligible\)](#). For more information about these requirements, refer to [Determine USERRA Eligibility](#) and [Determine VEOA and VP Eligibility](#).

### *16.1.7 Substantiated, Not Resolved Closure (USERRA)*

Substantiated, Not Resolved refers to when the investigation substantiates the violation, but the VETS investigator is unable to help the claimant and employer resolve the violations cooperatively. This is found more often in USERRA violations than in VEOA or VP violations. VCMS provides four subcodes to use based on the relevant circumstances:

1. No settlement attempted with a federal employer
2. Settlement attempted with a federal employer
3. No settlement attempted with a non-federal employer, and
4. Settlement attempted with a non-federal employer.

For any of the subcodes, you must provide justification in VCMS for why this code was necessary. If you select a settlement attempted option, you must also upload any draft settlement documents and information about the settlement attempts.

This closing code can be the most upsetting to claimants. VETS substantiated the violation(s), but VETS was unable to help the claimant resolve the claim. To minimize these outcomes, there are additional responsibilities for investigators and designated reviewers in these cases. Don't close your case with this code without first reviewing the following sections, which outline additional requirements to use when closing these cases:

- [Prepare and Send Notification of Determination to Employer](#), and
- [Complete Preclosing ROI Review Checklist and Certification](#).

In those cases where you determined that a claim is substantiated, but you haven't been able to resolve the case, you'll forward the Preclosing ROI to the CSI, who serves as the designated reviewer for this closing code. Prior to approval of the Preclosing ROI and closing letters in cases with a finding of Substantiated, Not Resolved, the Director, Office of National Programs (ONP); the Director, Office of Field Operations (OFO); and the Director, CID, or their designee(s), will make every reasonable effort to resolve the case, as appropriate, including leveraging additional resources within VETS, where warranted. Before closing the case as Substantiated, Not Resolved for each case where VETS finds a substantiated claim, but couldn't achieve resolution of the case, the CSI will notify the Director, ONP; the Director, OFO; and the Director, CID of the case's resolution status. If the claimant impedes resolution, then the notification can be made after case closure. VETS' senior leadership, and in rare circumstances the Department's senior leadership, may be better able to access and intercede with the appropriate higher-level decisionmakers of federal executive agencies and with state or private employers.

The RAVET, or their designee, will consider making the following additional efforts in every substantiated case:

- Schedule a prenotification teleconference with the investigator, investigator’s supervisor, SI, and the RAVET (or their designee) to strategize overcoming any barriers to resolution and a plan to seek any additional resources that may facilitate the case’s resolution.
- Ensure that complete and accurate notification of determination letters, based on approved templates, are sent to employers, and followed up on without delay.
- Conduct a case resolution conference.
- [Request assistance from RSOL](#), where the employer is represented by counsel.
  - A best practice is to include a copy of the most recent, completed version of the Prenotification ROI with your request for assistance to RSOL.
  - RSOL assistance will be subject to the RSOL’s available resources, taking appropriate legal consideration into account.
- Seek assistance, when appropriate, from NO in contacting the employer’s higher-level decisionmaker. For federal executive agencies, this may involve contacting the [CHCO](#), or equivalent, and/or in coordinating with our federal partners, such as DOD, OPM, and the VA to help overcome any barriers in resolution.

The next steps come only after you and your designated reviewer have completed the steps in the above-mentioned sections, and the National Office informs you that you may close the case as Substantiated, Not Resolved. Discuss the case circumstances with the claimant and prepare the appropriate [closing letters](#) to the claimant and the employer. The claimant must be advised, in writing, of their USERRA rights to referral to DOJ or OSC, or to seek private counsel. The letters must be sent by [authorized carrier](#). [Substantiated, Not Resolved](#) closed cases are included in VETS’ count of [completed cases](#).

## 16.2 Closing VEOA/VP Cases

When ready to close a VEOA or VP case you will ensure the case file contains adequate supporting documentation to justify the use of VEOA or VP closing code. You will then use VCMS to prepare a closing letter for the [claimant](#) and the [employer \(if required\)](#) based on the circumstances of the case. The letters must be sent by [authorized carrier](#).

VEOA and VP cases may be closed with a variety of closure codes, with associated closure types that should be applied to cases based on your findings during investigation, or a reason necessitating an administrative closure of case. The primary VEOA/VP Codes are:

1. [Administrative](#)
2. [Untimely Filing](#)
3. [Claim Reassigned](#)
4. [Claim Resolved](#)
5. [Duplicate Claim](#)
6. [Not Eligible](#)
7. [Not Substantiated](#), and
8. [Substantiated, Not Resolved](#).

The closure types for each of these closure codes are described in the following sections.

Cases involving potential VEOA and/or VP violations do not require approval of a preclosing ROI. You may select “Related Actions” in VCMS, from the menu at the top of the screen.<sup>200</sup> Then select “Close a Case.”

### *16.2.1 Administrative Closures (VEOA/VP)*

Under VEOA and VP, an administrative closure is appropriate for three reasons:

1. [Claimant requests not to pursue claim \(Claim Withdrawn\)](#)
2. [Lack of interest](#), and
3. [Prematurely filed claim](#).

For potential VEOA and VP violations, the claimant must be advised that, if their situation changes and they would like VETS to continue investigating their claim, they must make that request to VETS within 60 days of the original filing of their claim, no later than a date certain that you have calculated.

All letters associated with this code must be sent by [authorized carrier](#). If the claimant tries to withdraw the case after you inform them that the claim isn’t eligible or the violation couldn’t be substantiated, don’t close it [administratively](#). Instead, use the appropriate closing codes for [Not Eligible](#) or [Not Substantiated](#). Under no circumstance should you encourage a claimant to withdraw their claim. Administratively closed cases are excluded from VETS’ count of completed investigations. Additional requirements can be found in the subsections below.

#### *16.2.1.1 Claimant Requests Not to Pursue Claim (Claim Withdrawn)*

Administrative: Claimant Requests Not to Pursue Claim, or Claim Withdrawn, refers to when the claimant submits a written request to their investigator to suspend investigation of their claim or withdraw their claim.

Develop closing letters for the claimant, and if necessary, the employer, and submit them to your supervisor for approval. Upon approval of the closing letter(s), the letter(s) must be sent by [authorized carrier](#). Under no circumstances should an investigator encourage a claimant to request suspension of their investigation, or withdraw their claim, but may provide instruction regarding how to do so, upon request.

#### *16.2.1.2 Lack of Interest*

Administrative closure is appropriate when the claimant displays a clear lack of interest. Examples include failure to reply to VETS’ letters, failure to give VETS a change of address, failure to supply information the claimant could easily obtain, and failure to attend scheduled

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<sup>200</sup> [VCMS Agency User Guide](#), Case Closure.

meetings or conferences. For all claims, document the lack of cooperation or interest on a Form 1063 and include all attempts at contact. You'll send two different letters for this closing code. First, inform the claimant in writing that, if they don't contact VETS by a date certain (at least 10 days from the date of the letter), VETS will close the case for lack of interest.

- For cases alleging VEOA or VP violation(s), ask for a date no earlier than ten calendar days after the date of your letter, or within 60 days of the original filing of their claim, no later than a date certain that you have calculated, whichever is earlier.

Administratively close the case if, by the deadline, the claimant fails to respond, the carrier doesn't verify delivery, or the carrier returned the letter as undeliverable. You'll then send the closing letter(s).

Second, prepare the appropriate [closing letter\(s\)](#) to the claimant, and, if necessary, the employer. For USERRA cases, the claimant must be advised, in writing, of their right to request that VETS reopen their case to complete the investigation, so the claimant can later exercise their right of referral to DOJ or OSC, as appropriate. For VEOA and VP cases, if still within 60 calendar days of the original filing of their claim with VETS, the claimant must be advised, in writing, of their right to request, no later than the 60<sup>th</sup> calendar day after the original filing, that VETS reopen their case to complete the investigation and protect their right to appeal to the MSPB. In all cases, the claimant must be advised that they always retain the right to seek private counsel. The letters must be sent by [authorized carrier](#). Any closing letters sent must follow the steps outlined in [Administrative Closure](#).

### 16.2.1.3 Prematurely Filed

Administrative closure without providing MSPB appeal rights is appropriate when the claimant clearly filed a claim alleging a VEOA violation on a vacancy announcement for which the selection process was still underway. For each of the circumstances described below, you'll prepare and send the appropriate [closing letter to the claimant](#). The letters must be sent by [authorized carrier](#), and follow the requirements outlined in the introduction to [Administrative Closure](#). The list below provides examples of claims filed prematurely and additional action steps for you to take, if required.

#### Was the Claim Filed Prematurely?

- Filing a VEOA claim prior to the agency creating the certification list.
- Filing a VEOA claim after the certification list was created, but prior to the selection of an applicant from the list for the position at issue.
  - *Action:* Investigate the complaint as a denial of consideration under VEOA if you receive the complaint before a final selection is made, but after the act of alleged violation (e.g., denying consideration on a merit promotion announcement).
  - In this situation, the claimant identified a specific allegation concerning the denial of preference rights under [5 U.S.C. § 3304\(f\)\(1\)](#).

- If the investigation uncovers that the claimant was erroneously denied consideration, and the investigator can't resolve the issue with the agency, the case is considered [Substantiated, Not Resolved](#). Remember to provide the claimant with notice of their MSPB appeal rights.
- Filing a claim alleging a VEOA or VP violation for a position under continuous open announcement, where a certificate of qualified candidates is sent forward to the agency. The claim is premature when the certificate is issued, the claimant is in the proper place on the certificate, but no selection has been made.
- Filing a claim alleging a VEOA or VP violation after being notified of non-referral to the best qualified category, and the certificate was prepared properly under the CATRAT process.
- Filing a claim alleging a VEOA or VP violation while a pass-over request is under consideration. The claim is premature until the final action has been taken on the pass-over request. This applies to both MP and open competitive announcements.
  - *Action:* Contact the agency to determine the results of the recruitment.

When closing a case administratively as prematurely filed, notify the claimant that if, after a selection has been made, they believe that their VP rights were violated in the selection process, they may file a new complaint with our agency within 60 days of the adverse action.

### *16.2.2 Untimely Filing Closures (VEOA/VP)*

Untimely Filing refers to a case where the investigator finds the claimant filed their complaint after 60 calendar days from the time of the potential violation. This isn't the same thing as [filing a claim prematurely](#). For an untimely filing, provide the claimant an opportunity to explain why the claim wasn't actually filed late, or justify why any lateness should be excused and the case shouldn't be closed as untimely, by sending the untimely filing template letter in VCMS. Discuss the case circumstances and eligibility with the claimant and, if found to have been untimely filed, prepare the appropriate [closing letter](#) to the claimant. The claimant must be advised, in writing, of their VEOA and VP appeal rights to the MSPB. The letters must be sent by [authorized carrier](#). Untimely Filing closed cases are included in VETS' count of completed investigations.

### *16.2.3 Claim Reassigned*

Claim Reassigned refers to claims that are closed and reopened in a new jurisdiction. This is necessary anytime that an investigator determines that the claimant's address' state, as submitted in the Form 1010, is incorrect, and the claimant resides in a different state than the one listed. This action will apply a new case number to the reopened case, identifying the new two-letter state identifier in the reopened case.

This closure code is automatically applied to a parent case once it is reassigned out of jurisdiction by a person with a Regional Assigner, or National Assigner account in VCMS. This closure type is not available to the investigator through the Close Case action on the Related

Actions page of VCMS. Claim Reassigned closed cases are excluded from VETS' count of completed investigations.

#### *16.2.4 Claim Resolved Closures (VEOA/VP)*

Claim Resolved refers to when the employer grants all or substantially all the claimant's entitlements under the law. You should request a copy of any settlement or other agreements, even in cases where the parties wrote their own settlement agreement. If the settlement is confidential, the parties may not share a copy of the agreement with VETS. For all settlement agreements, or settlement attempts, you must also enter any details of the agreement on the VCMS Settlements page.<sup>201</sup>

The closing letters must also include notification that, if the claimant isn't fully satisfied with the resolution of their case, they may appeal the alleged violation to the MSPB within 15 calendar days from the date of receipt of the closing letter. When there's a written settlement agreement, you must attach it to the closing letters you send in the case. Claim Resolved closed cases are included in VETS' count of completed investigations.

#### *16.2.5 Duplicate Claim*

Duplicate Claim refers to a situation where VETS discovers the claimant filed more than one claim against the same employer involving the same circumstances. This also covers circumstances where the claimant filed complaints with multiple VETS offices. Remember that before you close a case using this closing code, you must enter the duplicate case number on the VCMS close case screen. Discuss the case circumstances and eligibility with the claimant about whether to reopen the original case, refer it, or continue an already open investigation by adding any new and material information to the case file. VCMS will only allow an SI and/or RI and higher users to close a case for this reason. When closing a case as a duplicate to a previously filed case, make sure to identify the previously filed case by case number and status. Duplicate closed cases are excluded from VETS' count of completed investigations.

#### *16.2.6 Not Eligible Closures (VEOA/VP)*

[Not Eligible](#) refers to an already open case where the investigator finds the claimant doesn't meet the eligibility requirements for protection under VEOA, or VP.

Discuss the case circumstances and eligibility with the claimant and prepare the appropriate [closing letters](#) to the claimant, and, if necessary, the employer. The claimant must be advised, in writing, of their VEOA and VP appeal rights to the MSPB. The letters must be sent by [authorized carrier](#). Not Eligible closed cases are included in VETS' count of completed investigations.

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<sup>201</sup> [VCMS Agency User Guide](#).



### *16.2.7 Not Substantiated Closures (VEOA/VP)*

Not Substantiated refers to a finding that the claimant isn't entitled to any relief for reasons other than failure to meet eligibility requirements. Discuss the case circumstances and [eligibility](#) with the claimant and prepare the appropriate [closing letters](#) to the claimant, and, if necessary, the employer. The claimant must be advised, in writing, of their VEOA and VP appeal rights to the MSPB. The letters must be sent by [authorized carrier](#).

Once a claimant has established personal eligibility, meaning that they meet requirements described in the statutes and regulations pertaining to VP and VEOA, it is the obligation of the investigator to conduct a thorough investigation by obtaining evidence and making the appropriate contacts. Not Substantiated closed cases are included in VETS' count of completed investigations.

### *16.2.8 Substantiated, Not Resolved Closures (VEOA/VP)*

Substantiated, Not Resolved refers to when the investigation substantiates the violation, but the VETS investigator is unable to help the claimant and employer resolve the violations cooperatively.

This closing code can be the most upsetting to claimants. VETS substantiated the violation(s), but VETS was unable to help the claimant resolve the claim. To minimize these outcomes, there are additional responsibilities for investigators and ROs in these cases. Don't close your case with this code without first reviewing the following section [Prepare and Send Notification of Determination to Employer](#), which outlines additional requirements to use when closing these cases.

Before closing the case as Substantiated, Not Resolved for each case where VETS finds a substantiated claim involving a federal executive agency employer, but couldn't achieve resolution of the case, the RAVET, or their designee, will notify the Director, Office of National Programs (ONP); the Director, Office of Field Operations (OFO); and the Director, CID of the case's resolution status. If the claimant impedes resolution, then the notification can be made after case closure. VETS' senior leadership, and in rare circumstances the Department's senior leadership, may be better able to access and intercede with the appropriate higher-level decisionmakers of federal executive agencies.

The RAVET, or their designee, will consider making the following additional efforts in every substantiated case:

- Schedule a prenotification teleconference with the investigator, DVET (if applicable), SI, and the RAVET (or their designee) to strategize overcoming any barriers to resolution and a plan to seek any additional resources that may facilitate the case's resolution.
- Ensure that complete and accurate notification of determination letters, based on approved templates, are sent to employers, and followed up on without delay.

- Conduct a case resolution conference.
- Seek assistance, when appropriate, from NO in contacting the employer's higher-level decisionmaker, [CHCO](#), or equivalent, and/or in coordinating with our federal partners, such as DOD, OPM, and the VA to help overcome any barriers in resolution.

The next steps come only after you and the RO have completed the steps in the above-mentioned sections, and the RAVET, or their designee, informs you that you may close the case as Substantiated, Not Resolved. Discuss the case circumstances with the claimant and prepare the appropriate [closing letters](#) to the claimant and the employer. The claimant must be advised, in writing, of their VEOA and VP appeal rights to the MSPB. The letters must be sent by [authorized carrier](#). Substantiated, Not Resolved closed cases are included in VETS' count of completed investigations.

### 16.3 Investigator's Responsibilities

The investigator is the one who prepares a case file. USERRA has no statute of limitations, which means a claim can be reopened at any time. Many USERRA, VEOA, and VP claims are referred for further litigation, in which the case file can be used, and portions entered into evidence. VETS needs to maintain complete, accurate, and organized case files. Your responsibility, as the investigator, is to check every aspect of your case. You must include all relevant notes and documents, as well as completing and receiving approval after multiple levels of case review. It's your responsibility to prepare your case file for those who may need to access it after you have moved on to other investigations. Your case file must speak for you when you are unavailable.

### 16.4 Reviewer's Responsibilities

The reviewer's responsibility in case closing is as important as the investigator's role. You'll verify and validate each aspect of the investigator's case and organization. You must look over the entire investigative file, including the relevant evidence, to evaluate one final time whether the case is complete, accurate, and organized. You should point out any inconsistencies or missing information. Early and thorough case reviews put you ahead and allow the case closing review to take minimal time.

## Chapter 17 | Quality Assurance (QA)

The Quality Assurance Review (QAR) is a work evaluation tool designed to assist every level of program operations on a routine, periodic basis. The review provides VETS personnel current information to assess and improve individual and agency effectiveness, efficiency, timeliness, and service. This chapter explains how VETS conducts QARs for cases alleging USERRA, VEOA, and VP violation(s), who is responsible for those reviews, and the timeframes in which such reviews must be completed.

### 17.1 VEOA and VP QA Process and Standards

The QAR for cases alleging VEOA and VP violation(s) measures whether, and to what extent, case processing and management activities follow the policies and procedures described in this Manual. The review process encourages self-assessment and continuous improvement and provides timely information necessary to effectively manage cases and identify staff training needs. For further information on staff training and QA, [Training and Professional Development](#).

#### *17.1.1 Types of Review (VEOA and VP)*

VETS requires review of both open and closed cases. The investigator conducts the initial open case review as a self-assessment with limited management oversight. If a case remains open beyond 45 days, the case requires a rigorous management review. The purpose of the open case review is to ensure the investigator planned their investigative actions, executed those actions, and this resulted in gathering sufficient information to make an appropriate case determination. A reviewer's primary focus is ensuring the planned actions are timely and appropriate and will resolve the case.

##### 17.1.1.1 Open Case Review: Open Case Status Report (VEOA and VP)

The report is a self-assessment of a VEOA or VP case by the investigator. Investigators prepare VP Open Case Status Report Forms on a regular basis, as prescribed in the [Levels of Review](#). The report is based on the standards relating to the conduct of an open case investigation described in the next subsection. The report verifies you determined the case issues, the claimant provided appropriate documentation, you contacted the federal agency, and you recorded appropriate and timely entries in VCMS. In this report, you state the case's status, identify barriers to resolution and steps to overcome the barriers, and indicate the expected case closure date. The report format is flexible. We encourage the investigator to adapt the questions to the circumstances of each case. We also encourage you to include observations on personal training and equipment needs that might improve your ability to conduct case investigations.

##### 17.1.1.2 Open and Closed Case Reviews: QAR (VEOA and VP)

QARs apply to both open and closed VEOA and VP cases and will be done according to the requirements outlined in [VEOA and VP QA Process and Standards](#). The review examines

primary aspects of a case alleging VP violation(s). Refer to [Complete CIP \(VEOA and VP\)](#) for the QAR standards. The standards governing review for each QAR area include case opening, potential violation or complaint, issues and remedies, determining eligibility, documentation, investigation, MSPB appeal, case closure, corrective action, effective case handling, and training needs.

### 17.1.1.3 Closed Case Reviews (VEOA and VP)

The VETS NO coordinates closed case reviews on an annual basis using random sampling. Closed case reviews evaluate case activities. The review examines the claim, potential violations, types of potential violations, and issues, looking at the quality, effectiveness, and timeliness of the investigation. This includes examining the investigator's actions and resolution of the case. The review is a means to identify training needs, offer recommendations for staff improvement, and elevate systemic deficiencies to the NO for their awareness and potential resolution.

### 17.1.2 Levels of Review (VEOA and VP)

The QARs ensure regular and periodic review and oversight of the case activity by appropriate levels of staff and management. Personnel involved in the review process include supervisors at the state, regional, and national offices. There are also reviews by support staff, including the VCDC and SIs. The DVET, designated reviewer (typically the SI), and RAVET have the primary roles. When appropriate, a written corrective action plan agreed to between the investigator and their immediate supervisor may be implemented using a Form 1063.

#### **Form 1063 as Corrective Action Plan:**

- Cover the corrective actions in narrative form.
- Identify:
  - Deficiencies identified during the review
  - Impact level of those deficiencies, and
  - Corrective action plan for each identified deficiency.

### 17.1.2.1 Responsibilities of the State VETS Offices (VEOA and VP)

The following outlines state staff's responsibilities for QARs:

- *Investigator:*
  - Performs self-assessments by completing a Case Open Status Report Form for each open case after the case is open for 30 days.
  - Completes a Case Open Status Report Form for every 30 days the case remains open.
  - Forwards a copy of each Case Open Status Report Form to immediate supervisor.
- *Investigator's Supervisor:*
  - Reviews the report along with information available in VCMS for timeliness and appropriateness.

- Requests additional information from the investigator, as needed, to conduct a more thorough review.
- Conducts a review using the Open/Closed Case QAR Form after a case is open for 45 days.
- Advises the RO of any case open longer than 45 days and expected to remain open beyond 60 calendar days (with the claimant's permission).
- *DVET, or the SI:*
  - Conducts a general review of all closed cases.
  - Conducts a QAR of 25 percent of cases closed each quarter.
  - Documents the findings on the VP Open/Closed Case QAR Form for 25 percent of cases reviewed.
  - Uploads a copy of the VP Open/Closed Case QAR Form to VCMS for each case reviewed.

QARs identify training gaps and highlight any resources, material, and/or equipment needs of the investigators. The investigator's immediate supervisor must identify and address training gaps through recommended refresher training and training plan updates, as appropriate. The immediate supervisor must ensure resource, material, and equipment requests, if any, are made through appropriate channels. When reviewing a case, the DVET or investigator's immediate supervisor should keep the following questions in mind:

1. What training is necessary and available that might improve the investigator's ability to conduct thorough and objective investigations?
2. What resources, materials, and/or equipment is needed to provide the investigator adequate means to:
  - a. Conduct investigations,
  - b. Maintain a case file,
  - c. Provide direct input into VCMS,
  - d. Access information and resources,
  - e. Perform research in support of the case, and
  - f. Perform analysis of the case?

For additional professional development and qualification standards, refer to [Training and Professional Development](#).

#### 17.1.2.2 Responsibilities of ROs (VEOA and VP)

The RAVET is ultimately responsible as the reviewing official. The RAVET may designate other reviewers but must ensure reviews are performed within the parameters outlined in this Manual. RAVETs must also ensure investigators and reviewers receive constructive and corrective feedback. The RAVET may require more frequent or additional state-level reviews, as appropriate, based on training needs or observed deficiencies.

At least annually, a designated management reviewer must physically review no less than 15 percent of open cases and no less than 25 percent of closed cases, selected using random sampling. We encourage regions to set higher sampling percentages. Reviews must include examining data from VCMS. Document findings on the VP Open/Closed Case QAR Form. The reviewer must prepare written findings per region policy. The reviewer must also provide feedback to each DVET and investigator on every case reviewed.

Annually, the VP Field Coordinator in the NO will select a nationwide random sample of 10 percent of closed cases or 20 closed cases, whichever is more. In the event a paper case file is chosen through the sampling, the Coordinator will request a copy of the case file from the appropriate RO. The Coordinator will review cases and related VCMS data with the assistance of the mentor team, comprised of SIs and other NO and RO staff. The Coordinator and/or mentor team will document findings on the Open/Closed Case QAR Form for each case reviewed. Each form must also be uploaded to the VCMS case file and a copy forwarded to the NO Director of the CID.

### 17.1.2.3 Responsibilities of the NO (VEOA and VP)

The NO Director of the CID, or their designee, reviews the Open/Closed Case QAR Forms and directs the VP Field Coordinator to prepare reports and memoranda for the reviews to the NO Director of National Programs. The NO administers the USERRA and VP QA processes, which includes monitoring the regional ROI review process to verify each region exercises appropriate and timely managerial oversight. The NO also provides feedback to regions commending effective performance and making suggestions or assisting, when appropriate. The NO will review the VP Field Coordinator's Annual QAR report and prepare additional reports and memoranda, as appropriate.

## 17.2 USERRA QA Process and Standards

The ROI review process functions as a QAR by ensuring regular and periodic review and oversight of the case activity by appropriate levels of staff and management. Personnel involved in the review process include supervisors at the state, regional, and national offices. There are also reviews by support staff, including the VCDC and SIs. The DVET, designated reviewer (typically the SI), and RAVET have the primary roles.

### 17.2.1 Types of Review (USERRA)

The types of reviews cover open cases, closed cases, and policy. There are up to three formal ROI reviews, discussed below, for open cases. [Completed cases](#) are reviewed at the end of each quarter to ensure VETS conducts proper case processing and achieves clear outcomes. The NO also reviews training curricula provided to all investigators through the NVTI. The NO reviews national policy documents, including this Manual, and updates the content based on changing statute, regulations, case law, and information from the case review and QA processes.

Each year, VETS marks programmatic goals for various programs. VETS' ongoing

open and closed case audits for Fiscal Year (FY) 2023 include goals focused on:

- Substantiated USERRA claims resolved prior to closing.
- Completed investigations of eligible claims that include completed interviews of at least the claimant plus one person.
- Completed investigations that were fully reviewed and approved prior to closure.

### 17.2.2 *Open Case Reviews (USERRA)*

The ROI identifies systemic issues and recommends corrective actions, as appropriate. USERRA investigations receive a minimum of three formal reviews: [Preliminary ROI](#), [Prenotification ROI](#), and [Preclosing ROI](#). In reviewing the Preliminary ROI, designated reviewers should review and comment on all subsections across the ROI, providing meaningful feedback comments to investigator. In the other ROI Reviews, there's open and forthright communication about what the investigator did well, what they might have missed, and what can be improved upon in this investigation and those to come. When appropriate, a written corrective action plan agreed to between the investigator and their immediate supervisor may be implemented using a Form 1063.

#### **Form 1063 as Corrective Action Plan:**

- Cover the corrective actions in narrative form.
- Identify:
  - Deficiencies identified during the review
  - Impact level of those deficiencies, and
  - Corrective action plan for each identified deficiency.

#### 17.2.2.1 *RO Open Case Review Responsibilities (USERRA)*

The ROI serves as a self-assessment tool for investigators and a QA mechanism for reviewers and evaluators to use in measuring and improving individual and agency effectiveness, efficiency, timeliness, and service. Any employee within a region with a Regional Assigner VCMS role may perform ROI reviews, reviewing each ROI subsection using the review and comment tools within each ROI.

ROI reviews also identify training gaps and highlight any resources, material, and/or equipment needs of the investigators. The investigator's immediate supervisor must identify and address training gaps through recommended refresher training and training plan updates, as appropriate. The immediate supervisor must ensure resource, material, and equipment requests, if any, are made through appropriate channels. When using the ROI to review a case, the assigned ROI Reviewer should keep the following questions in mind:

1. What training is necessary and available that might improve the investigator's ability to conduct thorough and objective investigations?

2. What resources, materials, and/or equipment is needed to provide the investigator adequate means to:
  - a. Conduct investigations
  - b. Maintain a case file
  - c. Provide direct input into VCMS
  - d. Access information and resources
  - e. Perform research in support of the case, and
  - f. Perform analysis of the case?

For additional professional development and qualification standards, refer to [Training and Professional Development](#).

#### 17.2.2.2 Responsibilities of ROs (USERRA)

The RAVET is ultimately responsible for case work within their region, including reviews of all cases within their region, whether or not the assigned investigator or assigned ROI Reviewer is from their region. The RAVET may delegate case reviews to any management staff within their region but must ensure reviews are performed within the [parameters outlined in this Manual](#). RAVETs must also ensure investigators and reviewers receive constructive and corrective feedback. The RAVET may require more frequent or additional ROI reviews, as appropriate, based on training needs or observed deficiencies. Management and support staff reviewers use the ROI to conduct and document required reviews.

#### 17.2.3 National QA Reviews (USERRA)

The NO CID staff provides the QA role through VCMS by periodically monitoring the regional ROI review process to verify each region is exercising appropriate and timely managerial oversight. The NO also provides feedback to the region commending effective performance and making suggestions or assisting, when appropriate. The NO will review all available data and conduct further analysis by preparing additional reports and memoranda, as appropriate.

##### 17.2.3.1 USERRA Case Quality Measures (CQM)

The NO CID staff uses the VCMS Case Quality Measures (CQM) to evaluate the overall quality of casework within VETS. Each fiscal quarter, all cases with [completed investigations](#) that were closed during the quarter have a final CQM score applied to them, and are averaged by region, and nationally to assess any strengths, weaknesses, and variation in VETS investigative performance. The CQM are weighted calculations that are based on the legacy Lean Six Sigma (LSS) reviews, QAR evaluation tool, and ROI Checklist. The CQM are automated based on the contents of each case file, and the issues being investigated in each USERRA case. The CQM are designed to answer the following questions about each completed case: VETS National Review Team (VNRT). The NO CID staff must request copies of cases be made available for review by the appropriate ROs. The NO CID staff, with the support of VNRT, must review the cases and related data in VCMS. The NO CID staff will summarize the results of the review in a QAR



report each quarter. The random sample will exclude case activity among referrals still in process by the field staff, RSOL, NSOL, DOJ, or OSC.

1. Did the case meet all statutory, regulatory, and policy-based timeliness requirements?
2. Does the case file identify all the issues in the case?
3. Were all possible issues in the case investigated?
4. Did the investigator make every effort to obtain all possible evidence?
5. Does the case file contain sufficient evidence to support each fact?
6. Is detailed analysis of the evidence and each fact in the case file?
7. Is the case file complete and was it documented in a timely manner?
8. Did the investigator reach a correct determination that is fully supported by facts and evidence in the case file?
9. Did VETS take all necessary steps to resolve substantiated claims?
10. Did VETS proceed through a case in a timely manner?
11. Is the case file fungible and organized in a clear way?

The CQM are derived primarily from the legacy ROI Checklist. As such, they are a reliable tool for ROI reviewers to use during an investigation to ensure investigators are complying with requirements identified in this manual and following existing guidance and best practices. ROI Reviewers should utilize the VCMS CQM User Interface (UI) during each ROI review to assess the completeness of an investigation at the point of review.

#### 17.2.3.1.1 VCMS CQM User Interface

The CQM are available for review by investigators, reviewers, and others who have access to each case file. They are presented to VCMS users in the Quality Measures page within VCMS that can be accessed using the menu at the top of the page. The Quality Measures page has three components:

1. Quality Score, which identifies current numerator, denominator, and score of the case file
2. Closure Type, which allows an investigator or reviewer to select a planned closure type from a drop-down list, due to different measures applying to different cases depending on their outcome, and
3. Deficiencies, which provide an itemized list of elements from the case file that missing.

#### 17.2.3.1.2 CQM Elements and Calculations

The CQM review elements are divided into 12 sections that include:

1. Timeliness
2. Summary
3. 1063s
4. Eligibility
5. Potential Violations
6. Chronology of Facts

7. Witnesses
8. Issue Analysis: Reemployment
9. Issue Analysis: Discrimination
10. Issue Analysis: Retaliation
11. Settlements, and
12. Case Documents.

The following table describes each measure, the rules for each measure, and their weighted score.

<b>ID</b>	<b>MEASURE</b>	<b>RULE</b>	<b>WEIGHT</b>
1	Was an investigator assigned to a claim within 1 business day of the claim being created?	Excluded for duplicate and reopened cases.	3
2	Did initial contact with the claimant occur within 3 business days of claim received?	Excluded for duplicate and reopened cases.	5
3	Did initial contact after reopening with the claimant occur within 3 business days of the reopened date?	Included only for reopened cases. Excluded for Duplicate cases.	5
4	Did initial contact with the employer occur within 3 business days of claim received?	Excluded for duplicate, administrative, not eligible, and reopened cases. Excluded if “Are you currently employed?” is “Yes.”	5
5	Did initial contact with the employer occur within 7 business days of claim received?	Excluded for duplicate, administrative, not eligible, and reopened cases. Exclude if “Are you currently employed?” is “No.”	5
6	Did initial contact after reopening with the employer occur within 3 business days of the reopened date?	Included only for reopened cases. Excluded for duplicate, administrative, and not eligible cases. Exclude if “Are you currently employed?” is “Yes.”	5
7	Did initial contact after reopening with the employer occur within 7 business days of the reopened date?	Included only for reopened cases. Excluded for duplicate, administrative, and not eligible cases. Exclude if “Are you currently employed?” is “No.”	5
8	Was the preliminary ROI reviewed within 3 business days of submission?	Excluded for duplicate, administrative, and not eligible cases.	3
9	Was the prenotification ROI reviewed within 3 business days of submission?	Excluded for duplicate, administrative, and not eligible cases.	3
10	Was the preclosing ROI reviewed within 3 business days of submission?	Excluded for duplicate cases.	3
11	Was the preclosing ROI approval date earlier than the case closure date?	Excluded for duplicate, and administrative cases.	5

<b>ID</b>	<b>MEASURE</b>	<b>RULE</b>	<b>WEIGHT</b>
12	Are there any lapses in the Investigative Deadline, where a new deadline was not negotiated prior to the expiration of the prior deadline?	Excluded for duplicate cases.	10
13	Has the case file been updated at least once every 10 days?	Excluded for duplicate cases.	10
14	Is a value entered for "Are you currently employed?"	Excluded for duplicate cases.	2
15	Is a SOCS code entered?	Excluded for duplicate, and administrative cases.	1
16	Is the employer representative name entered?	Excluded for duplicate, administrative, and not eligible cases.	1
17	Is the employer representative address entered?	Excluded for duplicate, administrative, and not eligible cases.	1
18	Is the employer representative phone number entered?	Excluded for duplicate, administrative, and not eligible cases.	1
19	Is the employer representative email entered?	Excluded for duplicate, administrative, and not eligible cases.	1
20	Is there at least 1 phone, video conference, in person, or attempted phone contact for the claimant?	Excluded for duplicate and AP cases.	8
21	Is there at least 1 phone, video conference, in person, or attempted phone contact for the employer or employer's representative?	Excluded for duplicate, administrative, not eligible, and AP cases.	8
22	Have 1063s been created within 7 days of their conducted-on date?	Excluded for duplicate cases.	5
23	Have all 1063s been finalized?	Excluded for duplicate and administrative cases.	5
24	Does the case contain the start date of employment or the date of application/interview?	Excluded for duplicate, administrative, and not eligible cases.	3
25	Does the case have documentation selected in the employee-employer relationship section of the eligibility page?	Excluded for duplicate, administrative, and not eligible cases.	3

ID	MEASURE	RULE	WEIGHT
26	Does the case contain a value for character of service other than “Not Applicable?”	Included for cases with a potential violation type of Discrimination, Reemployment, or Rights and Benefits. Excluded for duplicate, administrative, and not eligible cases. Excluded if “Has claimant been separated or discharged from uniformed service?” is “No.”	3
27	Does the case have documentation selected in the Character of Service section of the eligibility page?	Included for cases with a potential violation type of Discrimination, Reemployment, or Rights and Benefits. Excluded for duplicate, administrative, and not eligible cases. Excluded if “Has claimant been separated or discharged from uniformed service?” is “No.”	3
28	Does the case have documentation selected in the Protected Status section of the eligibility page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, and not eligible cases.	3
29	Does the case have a protected activity selected in the Protected Activity section of the eligibility page other than "Has not participated in a protected activity?"	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, and not eligible cases.	3
30	Does the case have documentation selected in the Protected Activity section of the eligibility page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, and not eligible cases.	3
31	Is a violation type selected for each listed potential violation?	Excluded for duplicate, administrative, and not eligible cases.	1 per violation
32	Does each listed potential violation identify the remedy requested by the claimant?	Excluded for duplicate, administrative, and not eligible cases.	1 per violation
33	Does each listed potential violation indicate if it was substantiated or not?	Excluded for duplicate, administrative, and not eligible cases.	1 per violation
34	Does each listed potential violation that is marked as substantiated identify the remedy determined appropriate by the investigator?	Included if any potential violations are identified as “Substantiated.” Excluded for duplicate, administrative, and not eligible cases.	1 per substantiated violation
35	Does each substantiated violation have an evidence count greater than or equal to 1?	Included if any potential violations are identified as “Substantiated.” Excluded for duplicate, and administrative cases.	1 per substantiated violation
36	Did the investigator include at least 3 relevant facts in the Chronology of Facts section?	Excluded for duplicate, administrative, and not eligible cases.	5

ID	MEASURE	RULE	WEIGHT
e	Has the investigator selected whether each fact is relevant?	Excluded for duplicate, administrative, and not eligible cases.	5
38	Has the investigator selected whether each relevant fact is disputed?	Excluded for duplicate, administrative, and not eligible cases.	5
39	Is each relevant fact from the Chronology of Facts page supported by a Document?	Excluded for duplicate, administrative, and not eligible cases.	5
40	Has the investigator provided analysis for each relevant fact?	Excluded for duplicate, administrative, and not eligible cases.	5
41	Were potential witnesses identified	Excluded for duplicate, administrative, and not eligible cases.	5
42	Is at least 1 witness identified as the decision maker	Excluded for duplicate, administrative, and not eligible cases.	2
43	Were any witnesses interviewed	Excluded for duplicate, administrative, and not eligible cases.	5
44	Was at least one witness listed as the decision maker interviewed.	Excluded for duplicate, administrative, and not eligible cases.	2
45	Do all witnesses have an interview status other than "Pending"	Excluded for duplicate, administrative, and not eligible cases.	5
46	Were witness statements or documentation memorializing an interview obtained	Excluded for duplicate, administrative, and not eligible cases.	5
47	Do all witnesses who have an interviewed status other than "Yes" have a Reason Not Interviewed entered	Excluded for duplicate, administrative, and not eligible cases.	5
48	Does the case identify the date the claimant left their position for uniformed service on the summary page.	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
49	Does the case identify the uniformed service start date on the summary page.	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
50	Did the investigator identify if the amount of time between leaving for uniformed service and start of uniformed service is reasonable in the Left Employment to Perform Service Section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2

ID	MEASURE	RULE	WEIGHT
51	Did the investigator select at least one document in Left Employment to Perform Service Section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
52	Did the investigator complete the Analysis section of the Left Employment to Perform Service Section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
53	Does the case identify the date the claimant provided notice to their employer in the Summary page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
54	Did the investigator identify if the amount of time between providing notice and leaving for uniformed service is reasonable in the Advance Notice section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
55	Did the investigator select at least one document in Advance Notice section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
56	Did the investigator complete the Analysis section of the Advance Notice section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
57	Did the investigator identify the date the claimant returned to work or applied to return to work on the Summary page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
58	Did the investigator select at least one document in the Timely Return to Work section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
59	Did the investigator complete the Analysis section of the Timely Return to Work section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
60	Did the investigator add at least one Uniformed Service Period to the Five-Year Service Limit section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2

ID	MEASURE	RULE	WEIGHT
61	Do all added service periods listed have evidence selected in the Five-Year Service Limit section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
62	Did the investigator complete the Analysis section of all service periods included in the Five-Year Service Limit section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
63	Did the investigator identify the claimant's position at the start of service in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
64	Did the investigator identify the claimant's Pay at the start of service in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
65	Did the investigator identify the claimant's position at the end of service in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
66	Did the investigator identify the claimant's pay at the end of service in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
67	Did the investigator identify if the reemployment position is the proper escalator position in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
68	Did the investigator select evidence in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
69	Did the investigator complete the analysis section in the Denied Proper Reinstatement or Reemployment section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2

ID	MEASURE	RULE	WEIGHT
70	Did the investigator identify the type of leave used in the Type of Leave section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Vacation with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
71	Did the investigator identify the type of leave that should have been used in the Type of Leave section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Vacation with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
72	Did the investigator identify if the type of leave used was improper in the Type of Leave section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Vacation with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
73	Did the investigator select evidence in the Type of Leave section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Vacation with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
74	Did the investigator complete Analysis in the Type of Leave section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Vacation with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
75	Did the investigator add at least one non-seniority benefit to the Non-Seniority Benefits section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Other Non-Seniority Benefits with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	3
76	Did the investigator select evidence for each non-seniority benefit added to the Non-Seniority Benefits section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Other Non-Seniority Benefits with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
77	Did the investigator include analysis for each non-seniority benefit added to the Non-Seniority Benefits section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Other Non-Seniority Benefits with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
78	Did the investigator select the issue type in the Health Plan Coverage section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Health Plan with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2



ID	MEASURE	RULE	WEIGHT
79	Did the investigator select evidence in the Health Plan Coverage section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Health Plan with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
80	Did the investigator complete analysis in the Health Plan Coverage section of the Reemployment / Rights & Benefits Issue Analysis page?	Included for cases with a potential violation of Health Plan with a type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	2
81	Did the investigator add at least one adverse act to the Adverse Acts section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	4
82	Did the investigator identify who performed the act for each adverse act listed in the Adverse Acts section of the Discrimination issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
83	Did the investigator select evidence for who performed the act for each adverse act listed in the Adverse Acts section of the Discrimination issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
84	Did the investigator identify who may have witnessed or was aware of the act for each adverse act listed in the Adverse Acts section of the Discrimination issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
85	Did the investigator select evidence for who may have witnessed or was aware of the act for each adverse act listed in the Adverse Acts section of the Discrimination issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
86	Did the investigator select evidence for What date did the adverse act occur for each adverse act listed in the Adverse Acts section of the Discrimination issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
87	Is analysis provided for each piece of evidence submitted in the Discriminatory Motive - Direct Evidence section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination, if the Discrimination Issue Analysis page includes any direct evidence. Excluded for duplicate, administrative, or not eligible cases.	3

ID	MEASURE	RULE	WEIGHT
88	Is the analysis section completed for the Proximity in Time section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
89	Did the investigator select whether the employer expressed hostility toward the claimant in the Expressed Hostility & Knowledge section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
90	Did the investigator select whether the employer was aware of the claimant's protected status in the Expressed Hostility & Knowledge section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination where "Did the employer express hostility toward the claimant?" is "Yes." Excluded for duplicate, administrative, or not eligible cases.	2
91	Was at least one statement provided in the Expressed Hostility & Knowledge section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination where "Did the employer express hostility toward the claimant?", and "Was the employer aware of the claimant's protected status?" are "Yes." Excluded for duplicate, administrative, or not eligible cases.	2
92	Did the investigator include evidence for each statement listed in the Expressed Hostility & Knowledge section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination where "Did the employer express hostility toward the claimant?", and "Was the employer aware of the claimant's protected status?" are "Yes." Excluded for duplicate, administrative, or not eligible cases.	2
93	Is the analysis section completed for the Expressed Hostility & Knowledge section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
94	Did the investigator include the claimant's provided reason for the adverse act in the Inconsistencies section of the Discrimination Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Discrimination and the Discrimination Issue Analysis page includes at least 1 Adverse Act. Excluded for duplicate, administrative, or not eligible cases.	2
95	Did the investigator include the employer's provided reason for the adverse act in the Inconsistencies section of the Discrimination Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Discrimination and the Discrimination Issue Analysis page includes at least 1 Adverse Act. Excluded for duplicate, administrative, or not eligible cases.	2

ID	MEASURE	RULE	WEIGHT
96	Did the investigator include evidence in the Inconsistencies section of the Discrimination Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Discrimination and the Discrimination Issue Analysis page includes at least 1 Adverse Act. Excluded for duplicate, administrative, or not eligible cases.	2
97	Did the investigator include analysis in the Inconsistencies section of the Discrimination Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Discrimination and the Discrimination Issue Analysis page includes at least 1 Adverse Act. Excluded for duplicate, administrative, or not eligible cases.	2
98	Did the investigator include at least one comparator in the Disparate Treatment section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
99	Did the investigator include evidence for each comparator provided in the Disparate Treatment section of the Discrimination Issue Analysis page?	Included for cases with a potential violation type of Discrimination. Excluded for duplicate, administrative, or not eligible cases.	2
100	Did the investigator add at least one adverse act to the Adverse Acts section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	4
101	Did the investigator identify who performed the act for each adverse act listed in the Adverse Acts section of the Retaliation issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
102	Did the investigator select evidence for who performed the act for each adverse act listed in the Adverse Acts section of the Retaliation issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
103	Did the investigator identify who may have witnessed or was aware of the act for each adverse act listed in the Adverse Acts section of the Retaliation issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
104	Did the investigator select evidence for who may have witnessed or was aware of the act for each adverse act listed in the Adverse Acts section of the Retaliation issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2

ID	MEASURE	RULE	WEIGHT
105	Did the investigator select evidence for What date did the adverse act occur for each adverse act listed in the Adverse Acts section of the Retaliation issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
106	Is analysis provided for each piece of evidence submitted in the Discriminatory Motive - Direct Evidence section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation if the Retaliation Issue Analysis page includes any direct evidence. Excluded for duplicate, administrative, or not eligible cases.	3
107	Is the analysis section completed for the Proximity in Time section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
108	Did the investigator select whether the employer expressed hostility toward the claimant in the Expressed Hostility & Knowledge section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
109	Did the investigator select whether the employer was aware of the claimant's protected activity in the Expressed Hostility & Knowledge section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation where "Did the employer express hostility toward the claimant?" is "Yes". Excluded for duplicate, administrative, or not eligible cases.	2
110	Was at least one statement provided in the Expressed Hostility & Knowledge section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation where "Did the employer express hostility toward the claimant?" and "Was the employer aware of the claimant's protected status?" are "Yes". Excluded for duplicate, administrative, or not eligible cases.	2
111	Did the investigator include evidence for each statement listed in the Expressed Hostility & Knowledge section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation where "Did the employer express hostility toward the claimant?" and "Was the employer aware of the claimant's protected status?" are "Yes". Excluded for duplicate, administrative, or not eligible cases.	2
112	Is the analysis section completed for the Expressed Hostility & Knowledge section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
113	Did the investigator include the claimant's provided reason for the adverse act in the Inconsistencies section of the Retaliation Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Retaliation where the Retaliation Issue Analysis page includes at least 1 adverse act. Excluded for duplicate, administrative, or not eligible cases.	2

ID	MEASURE	RULE	WEIGHT
114	Did the investigator include the employer's provided reason for the adverse act in the Inconsistencies section of the Retaliation Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Retaliation where the Retaliation Issue Analysis page includes at least 1 adverse act. Excluded for duplicate, administrative, or not eligible cases.	2
115	Did the investigator include evidence in the Inconsistencies section of the Retaliation Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Retaliation where the Retaliation Issue Analysis page includes at least 1 adverse act. Excluded for duplicate, administrative, or not eligible cases.	2
116	Did the investigator include analysis in the Inconsistencies section of the Retaliation Issue Analysis page for each adverse act?	Included for cases with a potential violation type of Retaliation where the Retaliation Issue Analysis page includes at least 1 adverse act. Excluded for duplicate, administrative, or not eligible cases.	2
117	Did the investigator include at least one comparator in the Disparate Treatment section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
118	Did the investigator include evidence for each comparator provided in the Disparate Treatment section of the Retaliation Issue Analysis page?	Included for cases with a potential violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	2
119	Has at least 1 settlement attempt been entered	Excluded for duplicate, administrative, not substantiated, or not eligible cases.	3
120	Have all uploaded documents been uploaded within 7 days of their action date	Excluded for duplicate cases.	5
121	Do documents have a secondary category other than "Other"	Excluded for duplicate cases.	0.5 per document to 10 max
122	Does case documents contain a file with a tertiary category of Claimant Performance Evaluations, Personnel File, Claimant Award & Bonuses, Claimant Scoring Rubric, or Claimant Interview Notes.	Excluded for duplicate, administrative, or not eligible cases.	1
123	Does case documents contain a file with a tertiary category of Employer Policy, Pension Policy Documents, Pension Plan Document, Health Plan Documents, or Health Policy Documents	Excluded for duplicate, administrative, or not eligible cases.	1

ID	MEASURE	RULE	WEIGHT
124	Does case documents contain a file with a tertiary category of DD-214, DD-215, NGB-22, Statement of Service, Military Mobilization Orders, FEMA DTS alerts or notices for FEMA reservists; Leave & Earnings Statement, or Notice of Obligation.	Included for cases with a potential violation type of Discrimination, Reemployment, or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
125	Does case documents contain a file with a tertiary category of DD-214, DD-215, NGB-22, Statement of Service.	Included for cases with a potential violation type of Discrimination, Reemployment, or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases. Excluded for cases where “Has the claimant been separated or discharged from Uniformed Service?” is “No.”	2
126	Does case documents contain a file with a tertiary category of Employment Contract, Personnel File, Position Description, or Position Announcement	Included for cases with a potential violation type of Discrimination, Reemployment, or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
127	Does case documents contain a file with a secondary category of Reinstatement and tertiary category of Correspondence	Included for cases with a potential violation of Reinstatement with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
128	Does case documents contain a file with a tertiary category of Claimant Payroll Record, or Claimant Timesheets	Included for cases with a potential violation of Vacation or Payrate with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
129	Does case documents contain a file with a tertiary category of Comparator Leave Requests, or Comparator Timesheets	Included for cases with a potential violation of Vacation or Payrate with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
130	Does case documents contain a file with a tertiary category of Comparator Payroll Records	Included for cases with a potential violation of Vacation or Payrate with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
132	Does case documents contain a file tertiary category of Plan Contributions/Payroll Records, Employer Contributions or Claimant Payroll Record	Included for cases with a potential violation of Pension with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1

ID	MEASURE	RULE	WEIGHT
133	Does case documents contain a file with a secondary category of Pension and tertiary category of Correspondence	Included for cases with a potential violation of Pension with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
134	Does case documents contain a file with a tertiary category of Pension Policy Documents, or Pension Plan Document	Included for cases with a potential violation of Pension with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
135	Does case documents contain a file with a secondary category of Reasonable Accommodation/Retraining for Disabled and tertiary category of Correspondence or Retraining Information	Included for cases with a potential violation of Reasonable Accommodations/Retraining for Disabled with a violation type of Reemployment. Excluded for duplicate, administrative, or not eligible cases.	1
136	Does case documents contain a file with a tertiary category of Disability Benefit Information, or Medical Records	Included for cases with a potential violation of Reasonable Accommodations/Retraining for Disabled with a violation type of Reemployment. Excluded for duplicate, administrative, or not eligible cases.	1
137	Does case documents contain a file with a tertiary category of Health Plan Documents, or Health Policy Documents	Included for cases with a potential violation of Health Plan with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
138	Does case documents contain a file with a tertiary category of Health Plan Election Form, Health Plan Documents	Included for cases with a potential violation of Health Plan with a violation type of Reemployment or Rights & Benefits. Excluded for duplicate, administrative, or not eligible cases.	1
139	Does case documents contain a file with a tertiary category of Position Description, or Position Announcement.	Included for cases with a potential violation of Initial Hiring Discrimination with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
140	Does case documents contain a file with a tertiary category of Claimant Resume, or Claimant Application	Included for cases with a potential violation of Initial Hiring Discrimination with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1

ID	MEASURE	RULE	WEIGHT
141	Does case documents contain a file with a tertiary category of Claimant Scoring Rubric, or Claimant Interview Notes	Included for cases with a potential violation of Initial Hiring Discrimination with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
142	Does case documents contain a file with a tertiary category of Comparator Resume, or Comparator Application	Included for cases with a potential violation of Initial Hiring Discrimination with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
143	Does case documents contain a file with a tertiary category of Comparator Scoring Rubric, or Comparator Interview Notes	Included for cases with a potential violation of Initial Hiring Discrimination with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
144	Does case documents contain a file with a secondary category of Initial Hiring Discrimination and tertiary category of Correspondence	Included for cases with a potential violation of Initial Hiring Discrimination with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
145	Does case documents contain a file with a tertiary category of Restructuring Documents, Layoff/Termination Notices, or Severance Agreements.	Included for cases with a potential violation of Layoff or Special Protected Period Discharge with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
146	Does case documents contain a file with a secondary category of Layoff or Special Protected Period Discharge and tertiary category of Correspondence	Included for cases with a potential violation of Layoff or Special Protected Period Discharge with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
147	Does case documents contain a file with a tertiary category of Position Description, or Position Announcement.	Included for cases with a potential violation of Promotion with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
148	Does case documents contain a file with a tertiary category of Claimant Resume, or Claimant Application	Included for cases with a potential violation of Promotion with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1



ID	MEASURE	RULE	WEIGHT
149	Does case documents contain a file with a tertiary category of Claimant Scoring Rubric, or Claimant Interview Notes	Included for cases with a potential violation of Promotion with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
150	Does case documents contain a file with a tertiary category of Comparator Resume, or Comparator Application	Included for cases with a potential violation of Promotion with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
151	Does case documents contain a file with a tertiary category of Comparator Scoring Rubric, or Comparator Interview Notes	Included for cases with a potential violation of Promotion with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
152	Does case documents contain a file with a secondary category of Promotion and tertiary category of Correspondence	Included for cases with a potential violation of Promotion with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
153	Does case documents contain a file with a tertiary category of Claimant Disciplinary Record, Claimant Grievances, Claimant Performance Evaluations, or Personnel File	Included for cases with a violation type of Discrimination, or Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1
154	Does case documents contain a file with a secondary category of Discrimination as Retaliation and tertiary category of Correspondence	Included for cases with a violation type of Retaliation. Excluded for duplicate, administrative, or not eligible cases.	1

#### 17.2.4 VETS National Review Team LSS Quarterly Review Selection Process (USERRA)

VETS National Review Team (VNRT) is tasked with completing QA reviews of closed cases on an as needed basis. The NO CID staff must request copies of cases be made available for review by the appropriate ROs. The NO CID staff, with the support of VNRT, must review the cases and related data in VCMS. The NO CID staff will summarize the results of the review in a QAR report each quarter. The random sample will exclude case activity among referrals still in process by the field staff, RSOL, NSOL, DOJ, or OSC. The NO uses the process outlined in this subsection to select cases for its LSS Quarterly Reviews.

1. The first worksheet in the FYXX\_QX\_LSS\_VCMS.xlsx contains the raw USERRA case file report, as provided by VCMS (USERRA Case File Export).
2. Duplicate data from the first worksheet as a second worksheet (USERRA Case File Export(2)).

3. Extract all cases that closed during the previous quarter in a new worksheet (Cases) and retain the Case Number, Region, Open Date, Close Date, Case Age, and Closing Code.
4. Remove any cases that were closed as Case Reassigned, Duplicate, or case was reopened for referral and closed immediately. Note: VCMS will only have Case Reassigned that needs to be removed.
5. Add a new column (Unit), which will be calculated and used for selection by random number generator, as described later.
6. Sort the data by Region and Case Number.
7. The Unit column should be calculated as “1” for the first case in the list, and then as the previous number in the column plus the Case Age of the previous case in the list.
  - a. **Example:** Units equal 43 for the second case on the list, which is calculated as 1 (previous number on the list).
  - b. The Unit column essentially assigns a range of numbers to each case that corresponds to the Case Age.
8. Selection occurs on a separate worksheet (Selection).
  - a. Label cell C3 “Total Units,” and enter the maximum value calculated on Cases worksheet in cell D3.
  - b. Label cells from B6 to F6, “Selection,” “Random Number,” “Case Number,” “Case Age,” and “Region,” respectively.
  - c. Enter selection number from 1 to 15 in cells B7 to B21.
  - d. Enter the following formula in cells C7 to C27: “ROUND(RAND()\*\$D\$3,0)”.
  - e. Enter the following formula in cells D7 to D27: “VLOOKUP(C7,Cases!\$<column case number>\$<last row cases),2,TRUE)”, then select the case with the closest unit number.
  - f. Enter the following formula into cells E7 to E27: “VLOOKUP(D7,Cases!\$<column case number>\$<start row cases>:\$<column case age>\$<last row case age>,<column number of search array for case age>,FALSE)”, then get information from the exact case number selected.
  - g. Enter the following formula in cells F7 to F27: “VLOOKUP(D7,Cases!\$<column case number>\$<start row cases>:\$<column case region>\$<last row case region>,<column number of search array for region>,FALSE)”.
  - h. Re-calculate the formulas until each region has two to three cases.
  - i. The page can be automatically changed, so you need to create an image copy of the selection, which is currently saved on the Copy Selection worksheet.

#### 17.2.4.1 LSS Quarterly Review Storage (USERRA)

The NO stores all selected cases on its SharePoint site. Current, FY21, LSS case selections are stored in the Compliance Data SharePoint library. Previous LSS case selections are stored under [Quality Measures](#).

### 17.3 Time Periods Allowed to Complete Reviews

For cases alleging one or more USERRA violations, designated reviewers must complete their reviews within the following time constraints. Unless otherwise specified in this Manual, the designated reviewer has five calendar days following notification by the investigator that the ROI is prepared and ready for review. This applies to Preliminary, Prenotification, and Preclosing ROIs. The RAVET, or designated reviewer, will have 30 calendar days following the receipt of a closed case file to complete the review. Regions may impose additional timeframes, as needed, in consideration of the final storage location for older, closed paper files.

For cases alleging VEOA and VP violation(s), designated reviewers must complete their reviews within the following time constraints. The designated reviewer in each office will complete a review of the Open Case Status Report (30-day report) and the VCMS case data within ten calendar days following receipt of the Open/Closed Case QAR Form from the investigator. The DVET will notify the RO within seven calendar days following receipt of the Open Case Status Report (60-day report) from the investigator, when a case has been open for 60 calendar days. For closed case reviews, the designated reviewer(s) must complete the review within 30 calendar days.

## Chapter 18 | Training and Professional Development

This chapter establishes the initial qualifications necessary for a VETS employee to be credentialed as a VETS investigator to conduct USERRA, VEOA, and VP investigations, and the continuing and successive experience and training requirements for a VETS investigator to maintain their competency to conduct and/or review such investigations in the future. The goal of these standards and requirements is to improve the quality of VETS' Compliance program and its investigations and to provide ongoing professional development for VETS' staff.<sup>202</sup> Training course titles and descriptions used in this Manual are current as of the date of publication. If they're later discontinued or unavailable, successor or equivalent courses will be substituted. The most up-to-date requirements may be found on the [Investigator Qualification Standards and Training site](#).

### 18.1 Qualification Standards

VETS investigators must meet the following [initial](#), [continuing](#), and/or [successive](#) qualification standards based on a combination of successfully completing designated training material and completing specified on-the-job training<sup>203</sup> requirements (completing investigation of claims). These standards enable VETS staff to conduct and/or review USERRA, VEOA, and VP investigations, and to be considered for additional training opportunities and assignment to other compliance-related duties.

1. *Level 1 Investigators* are eligible to be issued credentials as VETS investigators and conduct investigations.
2. *Level 2 Investigators* maintain credentials to conduct and/or review investigations.
3. *Level 3 Investigators* maintain credentials to conduct and/or review investigations and may also be considered for opportunities to serve as a mentor to Level 1 and 2 Investigators. Level 3 Investigators may also request assignment or be assigned to conduct QA Reviews for selected cases or participate in national workgroups.
4. *Level 4 Investigators* maintain all of the rights and benefits of Level 1 through 3 investigators, and may serve as instructors for USERRA, VEOA, and VP initial, continuing, and refresher training.

Records for investigator qualification standards will be maintained by the NO CID team. Records of investigator completed training will be uploaded (from LearningLink and NVTI reports) to a tracking system within 30 days of the start of each FY. Records of completed

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<sup>202</sup> Training course titles and descriptions used in this Manual are current as of the date of publication. If they're later discontinued or unavailable, successor or equivalent courses will be substituted.

<sup>203</sup> OPM defines on-the-job training to be “[h]ands on learning experience for employees to use required equipment and resources as they learn the job. This method of training would be the most effective learning environment for employees because they transfer learned skills onto the job as they gain the requisite knowledge and skills through instruction.” See [OPM's Low-Cost Training Options](#).

investigations and Preclosing ROI reviews of completed cases will also be uploaded within 30 days from the start of each FY.

### *18.1.1 Level 1 Investigator Qualification Standards*

To be credentialed as a Level 1 Investigator to conduct USERRA, VEOA, and VP investigations, you must first successfully complete the following initial qualification standards and training requirements, or the equivalent predecessor or successor courses, or be granted a temporary waiver. The training requirements for a Level 1 Investigator include the following courses:

1. “USERRA Investigators eLearning,” including NVTI 9643 (collectively referred to as NVTI 9631):
  - a. “USERRA Investigators eLearning” (NVTI 9631): An online cohort<sup>204</sup> designed as a prerequisite to “USERRA Investigators” (NVTI 9605) for VETS staff and their supervisors who engage in USERRA compliance- and investigative-related activities. The course provides information on the use of written communication and investigative writing to produce documentation relevant to USERRA case processing, and critical thinking skills and knowledge as they relate to the Federal Rules of Evidence.
  - b. “Introduction to the USERRA Statute and Regulations – Interpretation and Application” (NVTI 9643): A self-paced eLearning course consisting of a series of video lectures that provide an overview of USERRA from a legal perspective.<sup>205</sup>
    - i. It should familiarize and equip VETS staff with the proper tools, a basic understanding of the law and regulations and how they operate, and knowledge about how to properly identify issues and apply the law to factual circumstances.
    - ii. NVTI 9643 also provides the video content for the biennial SOL Video Lecture Series USERRA Refresher Training as part of the continuing training requirements for Level 2, 3, and 4 Investigators.
2. “USERRA 101” (NVTI 9641): A self-paced eLearning course consisting of online instruction and knowledge checks explaining the basic application of USERRA. Upon completion of this course, VETS staff will be able to apply the basic provisions of USERRA.
3. “USERRA 102” (NVTI 9642): The follow-on self-paced eLearning course to NVTI 9641, which consists of online instruction and knowledge checks to be completed after

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<sup>204</sup> Often also called an online university model, online cohorts have a participant cohort and instructor support. They feature a one-hour virtual kickoff with audio through a phone line that’s led by the instructor. In this kickoff, instructors review the course objectives and provide a technical overview of NVTI Student Central. After the virtual kickoff, participants work asynchronously to discuss and collaborate with others in the NVTI Student Central portal. Online cohorts are typically two to four weeks in length and have assignments and deadlines.

<sup>205</sup> These are eLearning elements that exist without instructor guidance or feedback; participants work independently and launch the learning in NVTI Student Central portal.

learning the basic tenets of USERRA in the NVTI 9641 course. NVTI 9642 will build upon that knowledge base and explore the legal basis and definitions of USERRA. Upon completion of this course, VETS staff will be able to explain the legal basis of USERRA.

4. “USERRA Investigators” (NVTI 9605): The capstone course intended to prepare VETS staff for the role of investigator. It has both lecture and scenario-based activities that provide the opportunity to practice the skills necessary to perform the role of VETS investigator. NVTI 9605 requires three prerequisite courses (NVTI 9631, 9641, and 9642), or an approved temporary waiver.<sup>206</sup>
5. “VP and VEOA Investigators” (NVTI 9606): A lecture-based course focusing on knowledge and skill application using case examples. It’s normally taken after successful completion of NVTI 9605. NVTI 9606 primarily addresses federal hiring procedures, including VP, access methods, MP, and how federal agencies select candidates. It also provides a standardized process for case processing, analyzing case files, and developing CIPs for VEOA and VP cases. NVTI 9606 improves staff competency in analyzing and investigating potential USERRA, VEOA, and VP violations.<sup>207</sup>
6. LearningLink Fundamentals of Writing, or equivalent course:
  - a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration.
  - h. Expected Results: Basic competency in business writing.

Upon successful completion of the initial qualification standards, or with an approved temporary waiver, the VETS investigator will achieve the training level of Level 1 Investigator. The Level 1 Investigator will be eligible to be issued credentials as a VETS investigator and authorized to conduct USERRA, VEOA, and VP investigations as a representative of the Secretary in accordance with [38 U.S.C. § 4326](#).

### *18.1.2 Level 2 Investigator Qualification Standards*

After qualifying as a Level 1 Investigator investigators may complete requirements to achieve and maintain a Level 2 Investigator qualification. Level 2 Investigator qualification requires completion of additional on-the-job training requirements and learning objectives. On-the-job training requirements include satisfactorily investigating and/or reviewing a total of at least four [completed cases](#) (USERRA, VEOA, and VP) and/or an equivalent number of reviews of

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<sup>206</sup> On successful completion of NVTI 9605 and its prerequisites, or with an approved temporary waiver, VETS Investigators will be deemed qualified to conduct USERRA investigations.

<sup>207</sup> On successful completion of NVTI 9606, or with an approved temporary waiver, VETS Investigators will be deemed qualified to conduct VP investigations.

[completed cases](#) in each FY (including a minimum of two [completed USERRA investigations](#) or their equivalent).<sup>208</sup>

The training requirements that must be completed to achieve a Level 2 Investigator qualification for VETS personnel who have already satisfied the Level 1 training requirements, and the continuing qualification requirements of satisfactorily investigating a total of at least four [completed cases](#) (USERRA, VEOA, and VP) and/or reviewing an equivalent number of [completed cases](#) each FY (including a minimum of two USERRA investigations and/or equivalent), are as follows:

1. SOL Biennial One-Day Continuing Compliance Training:
  - a. Timing: Second quarter of the FY; to be completed by Level 1 Investigators in the first two years of service as a VETS investigator.
  - b. Frequency: Biennial.
  - c. Duration: One day.
  - d. Location: Virtual.
  - e. Method: Webinar.
  - f. Instructors: SOL NO staff, VETS NO staff, and/or DOJ and/or OSC NO staff.
  - g. Prerequisites: NVTI 9605 USERRA Investigators and NVTI 9606 VP and VEOA Investigators, or equivalent predecessor courses.
  - h. Expected Results: Completion of biennial USERRA refresher training.
2. SOL Video Lecture Series USERRA Refresher Training (NVTI 9643) with Knowledge Checks:
  - a. Timing: Self-paced eLearning.
  - b. Frequency: Biennial (odd-numbered years).
  - c. Duration: About six hours.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: SOL NO staff and VETS NO staff.
  - g. Prerequisites: NVTI 9605 and NVTI 9606, or equivalent predecessor courses.
  - h. Expected Results: Completion of biennial USERRA refresher training.
3. LearningLink: DOL Annual USERRA Training, or equivalent course:
  - a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration.

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<sup>208</sup> For the purposes of satisfying on-the-job training requirements, reviews shall mean USERRA Preclosing ROI reviews and VP QA reviews only. Currently, equivalent credit for VP QA reviews isn't calculable through the VCMS but will be available in a future iteration. Until then, RAVETs seeking equivalent credit for VP QA reviews for their investigators can submit a temporary waiver request as set forth below.

- h. Expected Results: Completion of annual DOL training on USERRA.
- 4. LearningLink: DOL Annual Veterans Hiring Authority Training, or equivalent course:
  - a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration.
  - h. Expected Results: Completion of annual DOL training on VP in federal hiring training.
- 5. LearningLink: Fundamentals of Writing, or equivalent course:
  - a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration.
  - h. Expected Results: Basic competency in business writing.

Keep in mind that Level 2 Investigators are fully qualified to conduct and/or review USERRA, VEOA, and VP investigations, and it's expected that most investigators who may work in other non-compliance-related program areas may maintain steady-state as Level 2 Investigators throughout most of their career at VETS.

VETS investigators may be required to repeat the Level 1 Investigator training requirements for initial qualification standards if their RO, or the NO determines the investigator's knowledge, skills, and ability to conduct USERRA, VEOA, and VP investigations require remediation.

VETS investigators who haven't conducted a USERRA, VEOA, and VP investigation or equivalent within the last two fiscal years will undergo recursive training prior to case assignment, unless granted a temporary waiver. Recursive training will include NVTI 9641, 9642, 9643, and the first five days of NVTI 9605.

#### 18.1.2.1 DVETs, Acting DVETs, SIs, and Acting SIs (Continuing Qualification Standards)

To ensure effective and meaningful reviews of USERRA, VEOA, and VP investigations, Level 2 Investigators serving as DVET, Acting DVETs, SIs, and Acting SIs, who were hired on or after September 31, 2021, or who were hired prior to September 30, 2021 but who hadn't completed at least 15 USERRA Preclosing ROI reviews before the start of FY22 must not only complete Level 1 Investigator training, but also first conduct a minimum number of USERRA, VEOA, and VP investigations themselves **before they're eligible to review investigations conducted by others**. Under certain circumstances, these positions may also be granted a temporary waiver.



DVETs, acting DVETs, SI, and Acting SIs, who were hired before September 30, 2021 are exempt from the investigation requirement if they have completed at least 15 USERRA Preclosing ROI reviews prior to the start of FY22.

DVETs, Acting DVETs, SIs, and Acting SIs, who were hired after September 30, 2021, or who were hired prior to September 30, 2021 but who hadn't completed at least 15 USERRA Preclosing ROI reviews before the start of FY22, will **become eligible to perform ROI reviews of USERRA investigations conducted by others** only after they have satisfactorily conducted a total of at least three USERRA investigations themselves, unless granted a temporary waiver. Similarly, such persons will become eligible to perform QA reviews of VP claims investigated by others only after they have satisfactorily conducted a total of at least two VP investigations themselves, unless granted a temporary waiver. DVETs, acting DVETs, SIs, and acting SIs who were hired before September 30, 2021 are exempt from the investigation requirement if they have completed at least 15 USERRA Preclosing ROI reviews prior to the start of FY22.

Thereafter, DVETs, Acting DVETs, SIs, and Acting SIs can satisfy their annual on-the-job training requirements as Level 2, Level 3, and Level 4 Investigators by:

1. Investigating claims
2. Reviewing USERRA Preclosing ROIs of completed investigations submitted by others (each review will equal one-third of an investigation); or
3. A combination of both investigating and reviewing, if they met the minimum number of cases (i.e., USERRA investigations or equivalent number of USERRA Preclosing ROI reviews).

For instance, a DVET could satisfy their annual on-the-job training requirements for the continuing qualification standards as a Level 2 Investigator by performing any of the following activities (not an exhaustive list):

If they conduct the following activities in a fiscal year...	...how will they satisfy their Level 2 Investigator On-the-Job Training Requirements?
4 USERRA <a href="#">Completed Investigations</a>	<b>Yes:</b> Total of 4 <a href="#">completed investigations</a> , minimum of 2 USERRA investigations; no VEOA or VP investigations required.
3 USERRA <a href="#">Completed Investigations</a> and 1 VEOA or VP <a href="#">Completed Investigation</a>	<b>Yes:</b> Total of 4 <a href="#">completed investigations</a> , minimum of 2 USERRA investigations.
12 USERRA Preclosing ROI Reviews of <a href="#">completed cases</a>	<b>Yes:</b> Equivalent total of 4 total <a href="#">completed cases</a> (i.e., 12 reviews of <a href="#">completed investigations</a> ), minimum of 2 USERRA investigations (i.e., at least 6 USERRA reviews); no VEOA or VP investigations or reviews required.

If they conduct the following activities in a fiscal year...	...how will they satisfy their Level 2 Investigator On-the-Job Training Requirements?
1 USERRA <a href="#">Completed Investigation</a> , and 9 USERRA Preclosing ROI Reviews of <a href="#">completed cases</a>	<b>Yes:</b> Equivalent of 4 total <a href="#">completed cases</a> (i.e., 12 total reviews of <a href="#">completed investigations</a> ), minimum of 2 USERRA <a href="#">completed investigations</a> (i.e., at least 6 USERRA reviews of <a href="#">completed investigations</a> ).
2 VP <a href="#">Completed Investigations</a> and 6 USERRA Preclosing ROI Reviews of <a href="#">completed cases</a>	<b>Yes:</b> Equivalent of 4 total <a href="#">completed cases</a> (i.e., 12 total reviews of <a href="#">completed investigations</a> ), minimum of 2 USERRA investigations (i.e., at least 6 USERRA reviews of <a href="#">completed investigations</a> ).

### 18.1.3 Level 3 Investigator Qualification Standards

VETS investigators who complete the on-the-job training and learning objects for Level 1 and 2 Investigator qualifications may complete requirements to qualify as a Levels 3 Investigator. VETS investigators reach and maintain Level 3 Investigator status upon successful completion of:

1. All Level 3 Investigator training prerequisites
2. On-the-job training requirements to satisfactorily investigate and/or review a total of at least 7 [completed cases](#) (USERRA, VEOA, and VP) and/or review an equivalent number of [completed cases](#) (including a minimum of 4 USERRA investigations and/or equivalent), each year for 3 of the preceding 4 fiscal years; and
3. Supervisory approval to validate the investigator is ready for the increased role and responsibilities.

The training requirements that must be completed prior to achieving a Level 3 Investigator qualification for VETS personnel who have already satisfied the Level 2 training requirements, and the continuing qualification requirements of satisfactorily investigating and/or reviewing a total of at least 10 [completed cases](#) (USERRA, VEOA, and VP), and/or reviewing an equivalent number of [completed cases](#) each year for 3 of the preceding 4 FYs (including a minimum of 5 USERRA investigations and/or equivalent), are as follows:

1. SOL Biennial One-Day Continuing Compliance Training: See course description above.
2. SOL Video Lecture Series USERRA Refresher Training with Knowledge Checks: See course description above.
3. LearningLink: DOL Annual USERRA Training, or equivalent course: See course description above.
4. LearningLink: DOL Annual Veterans Hiring Authority Training, or equivalent course: See course description above.
5. LearningLink: Taking Effective and Professional Notes, or equivalent course:
  - a. Timing: Self-paced eLearning.

- b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration.
  - h. Expected Results: Basic competency in notetaking when interviewing.
6. LearningLink: Communicating Effectively with Customers, or equivalent course:
- a. Timing: Self-paced eLearning.
  - b. Frequency: Regularly available.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration.
  - h. Expected Results: Basic competency in communicating with various stakeholders.
7. LearningLink: Audience and Purpose in Business Writing, or equivalent course:
- a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration; LearningLink Fundamentals of Writing, or equivalent course.
  - h. Expected Results: Enhanced competency in business writing.
8. LearningLink: Clarity and Conciseness in Business Writing, or equivalent course:
- a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration; LearningLink Fundamentals of Writing, or equivalent course.
  - h. Expected Results: Enhanced competency in business writing.

Unless granted a temporary waiver, Level 3 Investigator-candidates who haven't met the on-the-job training requirement will be reverted to the training level for which they qualify. Level 3 Investigators will be eligible to perform all the tasks of Level 2 Investigators, as well as attend Level 4 Investigator training requirements. Level 3 Investigators can also be considered for service as mentors to Level 1 and 2 Investigators, as needed, and as QA Reviewers for periodic case reviews.

#### 18.1.4 Level 4 Investigator Qualification Standards

VETS investigators who complete the on-the-job training and learning objects for Level 1, 2, and 3 Investigator qualifications may complete requirements to qualify as a Level 4 Investigator. VETS investigators reach and maintain Level 4 Investigator status upon successful completion of:

1. All Level 4 Investigator training prerequisites
2. On-the-job training requirement to satisfactorily conduct and/or review a total of at least 9 USERRA, VEOA, and VP [completed investigations](#), and/or an equivalent number of reviews (including a minimum of 5 USERRA investigations and/or equivalent), each year for 5 of the preceding 6 fiscal years; and
3. Supervisory approval to validate the investigator is ready for the increased role and responsibilities.

The training requirements that must be completed prior to achieving a Level 4 Investigator qualification for VETS personnel who have already satisfied the Level 1, 2, and 3 Investigator training requirements, and the continuing qualification requirements of satisfactorily investigating and/or reviewing a total of at least 9 [completed cases](#) (USERRA, VEOA, and/or VP), and/or reviewing an equivalent number of [completed cases](#) each year for 5 of the preceding 6 FYs (including a minimum of 5 USERRA investigations and/or equivalent), are as follows:

1. SOL Biennial One-Day Continuing Compliance Training: See course description above.
2. SOL Video Lecture Series USERRA Refresher Training with Knowledge Checks: See course description above.
3. LearningLink: DOL Annual USERRA Training, or equivalent course: See course description above.
4. LearningLink: DOL Annual Veterans Hiring Authority Training, or equivalent course: See course description above.
5. LearningLink: Professional Writing and Email Etiquette, or equivalent course:
  - a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites:
    - i. LearningLink registration;
    - ii. LearningLink Audience and Purpose in Business Writing, or equivalent course; and
    - iii. LearningLink Clarity and Conciseness in Business Writing, or equivalent course.
  - h. Expected Results: Professional competency in business writing.
6. LearningLink: Improve Your Technical Writing Skills Course, or equivalent course:

- a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites:
    - i. LearningLink registration;
    - ii. LearningLink Audience and Purpose in Business Writing, or equivalent course; and
    - iii. LearningLink Clarity and Conciseness in Business Writing, or equivalent course.
  - h. Expected Results: Professional competency in technical writing.
7. LearningLink: Editing and Proofreading Business Documents Course, or equivalent course:
- a. Timing: Self-paced eLearning.
  - b. Frequency: Annual.
  - c. Duration: One hour.
  - d. Location: Virtual.
  - e. Method: Video and online knowledge checks.
  - f. Instructors: LearningLink.
  - g. Prerequisites: LearningLink registration; LearningLink Professional Writing and Email Etiquette, or equivalent course.
  - h. Expected Results: Professional competency in business writing.

Unless granted a temporary waiver, Level 4 Investigators who haven't met the on-the-job training requirement will be reverted to the training level for which they qualify. Level 4 Investigators may perform all the tasks of Level 2 and 3 Investigators. They also can be considered for service as field representatives on compliance-related working groups, as VETS-designated instructors for the NVTI 9605 USERRA Investigators course, and as VETS-designated instructors during biennial continuing compliance and USERRA refresher training, as needed.

## 18.2 Validate Qualification and Training Standards

The following section outlines the requirements to validate an investigator's or reviewer's qualifications, as well as information about training standards. This section provides additional details about how to document training completion, how to use temporary waivers, requirements-based scheduling of the NVTI 9605 training course, who will serve as USERRA training instructors, and the annual investigators training calendar. If at any time you have questions about these standards, we encourage you to speak with your immediate supervisor.

### *18.2.1 Document Training Completion*

In accordance with the [Department’s Personnel Regulation \(DPR\) Chapter 410](#), the Learning Management System (LMS), also known as LearningLink, will serve as the system of record for all training except for NVTI coursework. To request, record, and approve external training, the electronic version of [Standard Form 182 \(SF-182\)](#) “Authorization, Agreement, and Certification of Training” in LearningLink will be used for all training, including training through NVTI and regardless of whether costs are incurred. For internal training, administrative processes in LearningLink will be used to create training events, schedule offerings, register for courses, assign courses, and record learning history. DOL internal and external training data will be reported to OPM via LearningLink. VETS requires adherence to this policy to ensure VETS staff have an automated list of their training completions throughout their history as federal employees, and that each person’s training file is maintained and up to date. Training records used to validate qualification levels will be uploaded to a tracking tool maintained by the NO CID team from LearningLink, and NVTI reports within 30 days of the start of each quarter. Training not recorded in 1 of those 2 systems won’t be used in the qualification of calculations.

### *18.2.2 Temporary Waivers*

VETS will consider approving temporary waivers of the initial qualification standards for newly hired investigators to conduct USERRA, VEOA, and VP investigations when overseen by a Level 3 or Level 4 Investigator or an SI prior to successful completion of NVTI 9605 and/or NVTI 9606. Additionally, VETS will consider approving temporary waivers for Level 2, Level 3, and Level 4 Investigators who haven’t completed the requisite number of USERRA, VEOA, and VP investigations and/or reviews of completed cases to maintain their current training level, either initially or subsequently in the applicable fiscal years. Requests for temporary waivers should be forwarded from RAVETs with endorsement through the Director of the OFO to the Director of the CID. Temporary waivers will be approved by the Director of the ONP, in consultation with the Director of OFO. Temporary waivers of initial qualification standards for newly hired investigators will remain valid until the next time NVTI 9605 or NVTI 9606 is offered. Temporary waivers of on-the-job training requirements for Level 2, Level 3, and Level 4 Investigators will remain valid for one fiscal year.

Factors to be considered in approving temporary waivers include, but aren’t limited to, the following:

1. *For all investigators:*
  - a. Prior knowledge of, and experience with, USERRA, VEOA, and VP issues, laws, and regulations; and
  - b. Prior general experience as an investigator.
2. *For newly hired investigators:*
  - a. Successful completion of some, but not all, of the Level 1 Investigator training requirements; and

- b. Ability to be directly and closely overseen in investigations by a Level 3 or Level 4 Investigator or SI.
3. *For Level 2, Level 3, and Level 4 Investigators:* Prior specific experience as a Level 2, Level 3, or Level 4 Investigator, including the required number of USERRA, VEOA, and VP completed investigations and/or reviews of completed cases conducted each year over the preceding two, four, or six fiscal years, respectively.
4. *For Level 3 and Level 4 Investigators:* Prior experience as a mentor to Level 1 or Level 2 Investigators; QA Reviewer for periodic LSS reviews; field representative on compliance-related working groups; or as a VETS designated instructor at NVTI 9605, biennial continuing compliance training, or USERRA refresher training.

### *18.2.3 Requirements-Based Scheduling of NVTI 9605 (USERRA Investigations Training Course)*

VETS will plan to schedule at least one NVTI 9605 course each fiscal year, typically in August, but will also schedule additional courses based on additional training requirements. VETS will consider scheduling an additional course when six newly hired investigators require such training to qualify to conduct or review USERRA investigations, and the benefits of qualifying the newly hired investigators prior to the next scheduled course outweigh the costs of scheduling an additional course.

### *18.2.4 USERRA Training Cadre*

To create and maintain a cadre of capable and experienced VETS instructors for the NVTI 9605 course and biennial continuing compliance and USERRA refresher training, VETS will use a team approach to identify, train, and rotate compliance subject-matter experts from VETS national, regional, and state offices as VETS designated instructors.

In addition to a lead NVTI instructor and a legal instructor from national or regional Solicitor's Offices, each NVTI 9605 presented live or in the virtual classroom will feature two VETS-designated instructors:

1. A compliance subject-matter expert from VETS NO staff, and
2. A compliance subject-matter expert (a Level 4 Investigator or SI) from VETS regional or state office staff, with their supervisory approval.

VETS will pair a VETS-designated instructor with prior NVTI 9605 teaching experience with a newly designated instructor from the USERRA training cadre. Prior to serving as a VETS-designated instructor, VETS will ensure that newly designated instructors can attend virtual instructor training and other instructor preparatory sessions with NVTI, observe an NVTI 9605 module presented by an experienced VETS-designated instructor, and serve as a guest instructor for an NVTI 9605 module. In time, the NVTI 9605 training cadre will expand to approximately 10 instructors and include the following positions:

- *VETS NO staff:*
  - Director of the CID

- CSI
- Senior Compliance Policy Advisor; and
- Senior Compliance Program Analyst.
- *VETS regional and state office staff:*
  - SIs; and
  - Level 4 Investigators (and eventually RIs).

The timing and frequency for which VETS regional and state office staff will serve as instructors at NVTI 9605 and biennial continuing compliance and USERRA refresher training will be at the discretion of the respective RAVETs and determined in consultation between ONP and OFO.

### *18.2.5 Training Calendar*

The CSI will establish an annual investigator training calendar in the first quarter of each fiscal year, projecting the approximate dates for training requirements and training engagements throughout the year, which will be amended based on additional requirements.

## *18.3 Applying Lessons Learned and Best Practices from Feedback Loop*

VETS continuously seeks to improve the quality of the Compliance program and its investigations. Lessons learned and best practices gleaned from feedback will be looped back into continuous improvements to VETS' compliance policies and procedures, case management systems, and investigator training, and shared with VETS personnel with investigative responsibilities. Feedback relating to improvements to compliance policies and procedures, case management systems, and investigator training should be provided through the SI to the NO Director of Compliance and Investigations for consideration of appropriate action by the Senior Compliance Policy Advisor, Senior Compliance Analyst, and CSI, respectively. Feedback will also be shared with VETS investigative staff through monthly national and regional compliance calls, VETS USERRA "Flash for the Field" information sheets, biennial continuing compliance and USERRA refresher trainings, and development and refinement of NVTI curriculum. Sources of such feedback include, but aren't limited to, the sources outlined in the following subsections.

### *18.3.1 Feedback from Designated ROI Reviewers*

The ROI is an investigative, analytical, and assessment tool designed for investigators, reviewers, and evaluators of quality to use in all USERRA investigations by VETS. The ROI provides ready reference to the applicable legal standards under USERRA, the relevant documentary evidence to be obtained, and persons with relevant knowledge to be interviewed. The ROI also offers the ability to map an action plan tailored to the elements necessary to substantiate a USERRA violation, and to document issue analysis of the investigator's application of the relevant facts to the applicable law. Additionally, the ROI serves as a self-assessment tool for investigators and as a QA mechanism for reviewers and evaluators to use in measuring and improving individual and agency effectiveness, efficiency, timeliness, and service.



It's anticipated the ROI will also help identify any training gaps and/or highlight any resource, material, and/or equipment needs of the investigators. When using the ROI to review a case, the investigator's immediate supervisor or designated reviewer should keep the following questions in mind:

1. What training is necessary and available that might improve the investigator's ability to conduct thorough and objective investigations?
2. What resources, material, and/or equipment is needed to provide the investigator adequate means to conduct investigations, maintain an electronic case file, provide direct input into VCMS, access information and resources, perform research in support of the investigation, and perform analysis of the case?

The investigator's immediate supervisor is responsible for ensuring training gaps are identified and addressed through recommended refresher training and training plan updates, as appropriate, and that resource, material, and/or equipment requests, if any, are made through appropriate channels to the RAVET. A designated reviewer who isn't the immediate supervisor of the investigator should share their feedback from the ROI with the investigator's immediate supervisor.

### *18.3.2 Results of Periodic QA Reviews (USERRA)*

VETS conducts periodic QA Reviews, when required, and uses the following process. The VCDC selects a sample of cases closed during a period being reviewed and the VETS National Review Team (VNRT) reviews the cases and related data in VCMS and summarizes the results of the review in a QA Review report to the VETS NO. The VETS NO reviews the VCDC QA Review report and directs the VCDC to prepare reports and memoranda, as appropriate. Additionally, the VETS NO, with the support of the VCDC, provides feedback to RO staff, sharing lessons learned and best practices, commending effective performance, noting areas for improvement, and recommending corrective action when necessary. Lessons learned and best practices identified through periodic QA reviews will be included as a standing agenda item for national and regional compliance calls.

### *18.3.3 After-Action Reports (AARs) from Compliance Assistance Outreach Activities*

VETS provides responsive (i.e., on request, or in response) TA and engages in proactive compliance assistance outreach activities to help employees and employers understand their rights, benefits, and obligations under USERRA.<sup>209</sup> All such activities are referred to collectively as [CA](#), consistent with the usage of that term throughout the Department. Among these, VETS conducts USERRA briefings and presentations for various stakeholders, and actively seeks opportunities at all appropriate levels to conduct such activities. VETS also pursues innovative

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<sup>209</sup> Remember that "compliance assistance" refers to the proactive outreach activities to teach people and organizations how to comply with USERRA, VEOA, and VP. Capitalized "CA" refers to both the responsive TA activities and the proactive compliance assistance activities.

ways to provide CA to service members, employers, and other stakeholders in the virtual environment, including new opportunities to conduct USERRA webinars for professional organizations, industry and trade associations, and employer groups. Additionally, VETS seeks opportunities to partner with the Department's other compliance agencies to expand efforts to promote full compliance with USERRA. Participating VETS personnel should prepare AARs from CA outreach activities immediately following such activities in all instances. Lessons learned and best practices shared in such AARs can provide valuable feedback, not only in identifying opportunities for similar activities with other entities, but also for ways to improve how VETS should conduct CA in the future.

#### *18.3.4 Feedback from Internal and External Stakeholders*

VETS receives case-specific feedback from its partners at SOL, DOJ, and OSC through the USERRA case referral process. Pursuant to the MOU between DOL and DOJ, and DOL and OSC, when a claimant requests that VETS refer their USERRA claim to DOJ or OSC, one of the two may provide feedback to VETS either by requesting clarification of the analysis contained in the MOR or by requesting further investigative efforts by VETS. SOL may also provide feedback to VETS when it serves as VETS' liaison with DOJ and OSC, and facilitates communication between VETS and DOJ and OSC, if they request information concerning the referral or documents in the case file. In cases where DOJ or OSC arrives at a preliminary determination regarding representation that's different from the referred determination, DOJ or OSC notifies SOL of its preliminary determination and provides SOL and VETS an opportunity to request a call to discuss the rationale underlying the determination. A call allows VETS to provide its interpretation of USERRA, answer any questions regarding the evidence in the investigative file, and better understand the determination process. These each support VETS' efforts to continually improve the quality of investigations. Feedback provided to VETS through the USERRA case referral process should be noted immediately following such discussions by the SI and shared with the Director of CID, or their designee, for consideration of appropriate action.

### 18.4 Actions Required

This section outlines the actions required by various staffing levels within VETS. Specifically, there are subsections directed to NO Compliance staff, RAVETs, and all VETS investigative staff, respectively.

#### *18.4.1 NO Compliance Staff's Required Actions*

VETS' NO Compliance staff, through the CSI, will establish an annual investigator training calendar in the first quarter of each fiscal year, and schedule and/or make available the designated instructional content required for VETS investigators to meet their initial, continuing, and successive qualification standards. The NO Compliance staff will serve as VETS' instructors at the NVTI 9605 course and during the biennial continuing compliance and USERRA refresher

training and develop and maintain a cadre of capable and experienced USERRA instructors from the various regions.

NO Compliance staff, through the CSI, will expeditiously consider for approval requests for temporary waivers of initial training requirements and other temporary waiver requests from RAVETs endorsed through OFO. They'll assist the RAVETs in determining their investigators' current training level and tracking the completion of their investigators' on-the-job training requirements. They'll also ensure lessons learned and best practices gleaned from feedback collected from various sources are looped back into continuous improvements to VETS' compliance policies and procedures, case management systems, and investigator training, and shared with VETS personnel with investigative responsibilities.

#### *18.4.2 RAVETs' Required Actions*

RAVETs will ensure that VETS investigators in their respective regions meet initial, continuing, and/or successive qualification standards to competently investigate and/or review complaints submitted to the Secretary pursuant to USERRA, and track the status of their credentialing as VETS investigators and completion of their training requirements. They'll provide opportunities to complete the designated instructional content and the specified on-the-job training requirements subject to the availability of training funds and will request temporary waivers of initial training requirements and other waivers through OFO to ONP, when appropriate.

Additionally, RAVETs will ensure supervisory approval of the Level 3 and Level 4 status of their investigators to validate they're ready for the increased roles and responsibilities. They'll consider their Level 3 Investigators for service as mentors to Level 1 and 2 Investigators, as needed, and as QA Reviewers for periodic LSS case reviews. They'll also consider nominating their Level 4 Investigators as field representatives on compliance-related working groups.

RAVETs will identify and make available compliance subject-matter experts (Level 4 Investigators or SIs) from their regional or state offices to serve as instructors at the NVTI 9605 Investigators course and during biennial continuing compliance and USERRA refresher training, as needed. They'll provide feedback collected from various sources relating to improvements to compliance policies and procedures, case management systems, and investigator training through their SIs to the NO Director of the CID for consideration of appropriate action and further sharing with VETS personnel.

#### *18.4.3 All VETS Investigative Staff's Required Actions*

All VETS staff will document their completed training in accordance with [Department's Personnel Regulation \(DPR\) 410](#)<sup>210</sup> through LearningLink for all training successfully completed, including training through NVTI, regardless of whether costs are incurred, to ensure

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<sup>210</sup> The linked location requires access to DOL's LaborNet.

VETS staff have an automated list of their training completions throughout their history as federal employees and to ensure each person's training file is maintained and up to date.

### 18.5 VETS Investigator Mentorship Program (VIMP)

The VETS' Investigator Mentorship Program (VIMP) is for Veterans' Employment and Training Service (VETS) staff who investigate, administer, or monitor the quality of investigations of Uniformed Service Employment and Reemployment Rights Act (USERRA) and Veterans Preference (VP)/Veterans Employment Opportunity Act (VEOA) claims. This section provides the minimum requirements for establishing a formal but voluntary relationship between a mentor and a mentee. Specifically, the VIMP provides strategies, tools, and activities designed to support investigators and enhance their productivity and case quality. The Mentorship Program enhances the performance, technical knowledge, personal/professional growth, and the career advancement of employees.

#### *18.5.1 VIMP Background*

Mentorship is a one-on-one relationship between an employee who wants to improve their skills and a more experienced employee, who meet regularly. Mentorship is a relationship based on trust in which an investigator receives on-the-job training, guidance, support, and encouragement from, and equitable access to, a more experienced investigator (i.e., Level 3/Level 4 investigator). The mentor is typically someone outside of the mentee's chain of supervision.

While mentoring relationships can develop and operate informally, a more formal and structured approach is often most effective. Successful mentoring programs involve thoughtful planning, dedicated resources, and staff to implement the program and evaluate performance.

#### *18.5.2 Goals of the VIMP*

The Mentorship Program will measure success through attainment of the following goals:

- Developing a thorough understanding of the organization's mission, vision, values, and goals as they pertain to the investigation of USERRA and VEOA/VP claims.
- Developing skills and knowledge as they relate to the compliance program, by connecting investigative staff members with experienced Level 3 and Level 4 investigators who have volunteered to serve as mentors.
- Create opportunities to interact via conference call or in a virtual platform to establish and support the mentor/mentee relationship.
- Ability to locate, access, and develop familiarity with tasks and concepts that support compliance investigative activities.
- Promote open communication and dialogue within an investigator's own region as well as within other regions within the VETS organization.
- Promote creativity and innovation in job performance.

### *18.5.3 Participation in the VIMP*

Mentoring plays an important role in an investigator's development, engagement, and retention; all of which contribute significantly to individual and organizational productivity and create an atmosphere where an employee feels valued. A formal mentoring program can connect investigators with other professionals who are willing to help them learn, grow, and advance within the agency.

- A. Mentors: Mentors will be current, active Level 3 or Level 4 investigators. No more than two (2) mentees should be assigned to a mentor at any given time, and a request for a mentor to be assigned more than two mentees will be reviewed by the mentor's supervisor. Mentors will:
  - a. Be respected as an experienced and successful investigator in the organization.
  - b. Support the organization's mission, vision, and goals.
  - c. Stay accessible, committed, and engaged during the length of the program.
  - d. Optimally, the mentor assigned, and mentee will be an equivalent position; however, exceptions may be appropriate when approved by supervisors.
- B. Mentees: Any DOL-VETS employee who requests mentorship pertaining to compliance. Mentors will be assigned to Mentees by their RO as follows:
  - a. An employee (regardless of tenure or position) may request a mentor at any time, through their respective supervisor in consultation with the SI.
  - b. A new investigator will be assigned a mentor by their SI in consultation with the mentee's supervisor.
  - c. The Regional Office or DVET may request or determine a need for a mentor.
  - d. Mentors can be from mentee's region or from another region, but, to the extent practicable, the mentor and mentee should be in the same region.
- C. The opportunity to voluntarily become a mentor or mentee will be extended to staff who investigate, administer, or monitor the quality of investigations of USERRA and VP/VEOA claims. If not enough mentors or mentees volunteer priority assignment of a mentor will be given to new hires. Non-selected mentors will be assigned at the next available opportunity. For the purposes of succession planning and upward mobility opportunities, the VIMP will include Veteran Program Assistants (VPAs) assigned to mentors of a higher position.

### *18.5.4 Examples of Mentoring Activities*

**Shadowing Events:** Include the mentee in day-to-day tasks, meetings, witness interviews, and outreach events (when possible). The mentee will be able to observe how the mentor demonstrates their strong skills, knowledge, and competencies.

**Work Sharing:** Identify learning assignments where the mentee can assist with projects to better understand the compliance program and activities.

### *18.5.5 Time Commitment*

It is recommended that a mentor be paired with the mentee within 30 days of onboarding or upon request. The formal mentor/mentee relationship will last one year, from the date of the first scheduled meeting. It is recommended that the mentor and mentee meet at least once per pay period.

### *18.5.6 Mentoring Agreement*

The mentoring agreement documents the commitment of the mentor and mentee and establishes how and when they will meet.

### *18.5.7 Supervisor Responsibilities*

The supervisor(s) of the mentor/mentee should check-in on an informal basis within 30 days from the start of the program. The supervisor(s), with input from the mentor and mentee, will determine if adjustments are necessary. If the assigned mentor is not available (i.e., extended leave, ROAD detail, etc.), the supervisor of the mentee should request another mentor.

**Progress Report:** At the mid-year point, and the end of the formal mentorship program, the supervisor will ask the mentee and mentor to provide feedback on the mentorship program. The input will help to ensure the program is effective (see Mentorship Training Checklist and Evaluation Form). Honest and detailed feedback will offer insight for improvement professionally and programmatically; the feedback will be kept confidential and does not need to be shared between the mentor/mentee. The progress reports are submitted to the mentor/mentee's respective supervisor. Supervisors must keep feedback confidential and utilize the feedback to improve the mentorship program.

### *18.5.8 Mentorship Training Checklist*

To ensure mentoring goals are met, an action plan is recommended. The Mentorship Training Checklist contains an outline for VETS training platforms (Mentorship Training Checklist). The mentee will complete the checklist with help from the mentor. A mentor can use the training spreadsheet as a guide or discussion piece based on the relevancy to the position held by the mentee. This form can be maintained digitally. The checklist does not need to be shared with the supervisors(s) as it is used as a tool to check the progress of the mentorship program. Mentees can use the topics in the training spreadsheet to inquire about processes and to research programs, policy, and regulation. The training spreadsheet has a key at the bottom of the page that may be used to indicate the level of competency for the topics listed in that focus area. These selections are:

1. Able to perform with direct assistance
2. Able to perform with some assistance
3. Able to perform independently.

The Mentorship Training Checklist is a self-assessment tool completed by the mentee with the mentor. It will not be used for performance evaluation purposes, except to the extent that performance appraisals must take into account authorized absences during the course of working hours and factors outside the employee's control.

#### *18.5.9 Onsite Visits*

Depending on funding availability, it is encouraged that the mentee visits the mentor's location once during the 12-month program and that the mentor visit the mentee's location once during the 12-month program.

#### *18.5.10 Conclusion of the Mentor/Mentee Relationship*

Participants may voluntarily opt-in or opt-out of the mentorship program at any time. Some mentoring relationships will end because the mentee and mentor have achieved all their desired goals and mutually believe there are no benefits to be gained by continuing the mentorship relationship. When this occurs, the supervisor should agree and facilitate an appropriate transition for the mentee and mentor. A relationship may end early because the mentee or mentor departs the organization before the program concludes. In this case, the departing partner will coordinate with the remaining partner and the supervisor to allow for an appropriate transition. The supervisor should be prepared to quickly coordinate for a new mentor if the remaining partner is the mentee. Some mentoring relationships may experience challenges which may require a change in mentor, and a new mentor can be assigned at any point in the program. In the case of either the mentor or mentee being dissatisfied with the relationship, the individual should notify their direct supervisor.

#### *18.5.10.1 Mentorship Oversight Responsibilities*

VETS management through CID has developed and maintains a database where retention information related to the mentorship program is stored. VETS management through CID will recognize and acknowledge participants in the Mentoring Program. VETS management through the VCDC annually develops a roster of Level 3 and Level 4 investigators which identifies who may volunteer as mentors. [RO](#) management staff monitor mentor/mentee relationships in conjunction with each mentee's supervisor.

## Appendix A | Important Terminology

This appendix contains two sections defining important terms across this Manual.<sup>211</sup> First, there's an [Acronym and Abbreviation List](#). These are listed in alphabetical order with a reference to the first page on which the acronym is used within this Manual. The [Glossary](#) defines terms as they're understood within the confines of a VETS USERRA, VEOA, or VP investigation. (An index is also provided in Appendix E.)

### A.1 Acronym and Abbreviation List

<i>AARs</i> : After Action Reports.....	257
<i>ADVET</i> : Assistant Director for Veterans' Employment and Training .....	6
<i>AMP</i> : Agency Management Plan.....	257
<i>ASP</i> : Assistant Secretary for Policy.....	19
<i>ASVET</i> : Assistant Secretary for Veterans' Employment and Training .....	20
<i>CA</i> : Compliance Assistance.....	6
<i>CAC</i> : Common Access Card .....	287
<i>CAP</i> : Corrective Action Plan.....	91
<i>CATRAT</i> : Category Rating .....	62
<i>CBA</i> : Collective Bargaining Agreement.....	31
<i>C.F.R.</i> : Code of Federal Regulations.....	1
<i>CHCO</i> : Chief Human Capital Officer .....	80
<i>CID</i> : Compliance and Investigations Division.....	2
<i>CIP</i> : Case Investigative Plan .....	81
<i>CP</i> : 10-Point Compensable Disability Preference.....	62
<i>CPS</i> : 10-Point 30 Percent or More Compensable Disability Preference.....	62

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<sup>211</sup> This Appendix uses the following abbreviations: USERRA, VEOA, VP, and VETS. All other acronyms or defined terms are listed in their entirety each time they're used for the reader's convenience.



*CSI*: Chief Senior Investigator .....4

*CSIRC*: Department of Labor Computer Security Incident Response Capability .....83

*CTS*: Correspondence Tracking System .....20

*DD-214*: Department of Defense Form 214 “Certificate of Release or Discharge from Active Duty” .....39

*DD-215*: Department of Defense Form 215 “Correction to DD Form 214, Certificate of Release or Discharge from Active Duty” .....39

*DEU*: Delegated Examining Unit .....79

*DM*: Director’s Memorandum .....196

*DOD*: Department of Defense .....6

*DODI*: Department of Defense Instruction.....49

*DOJ*: United States Department of Justice .....3

*DOL*: United States Department of Labor .....1

*DRAVET*: Deputy Regional Administrator for Veterans’ Employment and Training .....5

*DVET*: (State) Director for Veterans’ Employment and Training.....5

*E-1010*: VETS Electronic USERRA/VEOA/VP Complaint Form 1010 .....19

*ESGR*: Employer Support of the Guard and Reserve .....6

*FOIA*: Freedom of Information Act.....30

*Form 1010*: VETS USERRA/VEOA/VP Complaint Form 1010.....4

*Form 1063*: VETS Form 1063 “Report of Contact/Attempted Contact” .....16

*FY*: Fiscal Year .....240

*HR*: Human Resources.....58

*IRAC*: Issue, Rule, Analysis, and Conclusion.....16

*ISO*: Information Security Officer .....83

*JAGC*: Judge Advocate General’s Corps.....15

<i>LSS</i> : Lean Six Sigma .....	30
<i>MOR</i> : Memorandum of Referral .....	4
<i>MP</i> : Merit Promotion.....	60
<i>MSP</i> : Merit System Principles.....	59
<i>MSPB</i> : Merit Systems Protection Board.....	3
<i>NGB-22</i> : National Guard Bureau Form 22 “Report of Separation and Record of Service” ...	39
<i>NO</i> : VETS National Office.....	1
<i>NVTI</i> : National Veterans’ Training Institute .....	18
<i>OIG</i> : Department of Labor’s Office of the Inspector General .....	66
<i>OIRA</i> : Office of Information and Regulatory Affairs.....	20
<i>OMB</i> : Office of Management and Budget.....	81
<i>OPA</i> : Department of Labor’s Office of Public Affairs.....	13
<i>OPM</i> : Office of Personnel Management .....	13
<i>OPM VET Guide</i> : Office of Personnel Management’s Vet Guide for HR Professionals .....	57
<i>OSC</i> : Office of Special Counsel .....	3
<i>OTH</i> : Other than Honorable Discharge .....	42
<i>PCS</i> : Permanent Change of Station .....	79
<i>PDF</i> : Portable Document Format.....	24
<i>PHS-1867</i> : Public Health Service Form 1867 “Statement of Service: Verification of Status of Commissioned Officers of the United States Public Health Service” .....	39
<i>PII</i> : Personally Identifiable Information.....	81
<i>PIV</i> : Personal Identity Verification .....	287
<i>PPP</i> : Prohibited Personnel Practices .....	3
<i>PTO</i> : Paid Time Off.....	55
<i>Q&amp;A</i> : Question and Answer .....	15

*QA*: Quality Assurance .....4

*QAR*: Quality Assurance Review.....85

*RAVET*: Regional Administrator for Veterans’ Employment and Training .....4

*RC*: Reserve Component.....6

*RI*: Regional Investigator .....5

*RIF*: Reduction in Force .....15

*RO*: Regional Office .....1

*ROI*: Report of Investigation .....4

*RSOL*: Regional Office of the Solicitor of Labor .....3

*SAA*: Special Appointing Authorities (formerly Special Hiring Authority (SHA)) .....57

*SCD*: Service Computation Date .....72

*SF-180*: Office of Personnel Management Standard Form 180 .....41

*SI*: Senior Investigator .....3

*SOL*: Office of the Solicitor of Labor .....3

*SSP*: 0-Point Sole Survivor Preference.....61

*TA*: Technical Assistance.....7

*TP*: 5-Point Preference.....61

*U.S.C.*: United States Code.....1

*USERRA*: Uniformed Services Employment and Reemployment Rights Act of 1994 .....1

*VA*: United States Department of Veterans Affairs .....62

*VCDC*: VETS Compliance Data Center .....8

*VCMS*: VETS Case Management System .....1

*VEOA*: Veterans Employment Opportunities Act of 1998 .....1

*VETS*: Veterans’ Employment and Training Service .....1

*VIPERS*: Veterans Investigative Preference and Employment Rights System.....240

*VNRT*: VETS National Review Team .....240

*VP*: Veterans’ Preference and Related Statutes .....1

*VRA*: Veterans’ Recruitment Appointment Authority .....57

*VRRA*: Veterans’ Reemployment Rights Act .....105

*XP*: 10-Point Disability and Derived Preferences .....62

## A.2 Glossary

*Action Plan:* A list of investigative tasks to complete, such as those designed to address any gaps in the facts and/or analysis; substantiate information obtained verbally with documentary evidence; conduct follow-up on information obtained from the employer with the claimant, or from the claimant with the employer; and/or corroborate information obtained from persons with relevant knowledge. This can be found in various VCMS pages, including subsections of the Issue Analysis page(s).

*Administrative Closure:* Closing code that's appropriate in the following circumstances: [active federal court proceeding \(USERRA\)](#), [active Merit Systems Protection Board \(MSPB\) proceeding \(USERRA\)](#), [active state court proceeding \(USERRA\)](#), [claimant requests not to pursue claim \(USERRA, VEOA, and VP\)](#), [claimant temporarily unavailable \(USERRA, VEOA, and VP\)](#), [lack of interest \(USERRA, VEOA, and VP\)](#), [prematurely filed claim \(VEOA and VP\)](#), and [pursuing through Employer Support of the Guard and Reserve \(ESGR\)](#).

*Agency (sometimes "we" or "our"):* United States Department of Labor (DOL) Veterans' Employment and Training Service (VETS), DOL VETS, or VETS. The listed terms and acronyms are used interchangeably. In this Manual, the capitalized Agency refers to VETS, whereas "agency" could mean any federal agency.

*Anonymity:* Quality or state of being anonymous.

*Armed Forces:* This includes the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard ([10 U.S.C. § 101\(a\)\(4\)](#)).

*Assignment:* Providing a complaint to an investigator, who then has responsibility for investigating that complaint. Assign claims alleging a potential USERRA violation to an investigator located in the state where the employer is located. Assign claims alleging a potential VEOA or VP violation to an investigator located in the state where the claimant resides.

*Attorney General (AG):* The Attorney General of the United States or any person designated by the AG to carry out a responsibility of the AG under USERRA; leads the United States Department of Justice.

*Authorized Carrier:*

Correspondence must be sent using the primary method of service unless it meets the criteria to be sent by the method of alternate service. Whether using the primary or alternate service method, all deadlines stated within this Manual apply (e.g., number of calendar days from case assignment to opening letter). Based on [Rule 5 of the Federal Rules of Civil Procedure](#), the **primary** method of service is certified U.S. mail requesting return receipt or equivalent service (e.g., FedEx, UPS) requesting delivery notification. Email may serve as an **alternate** method of service **only** if the investigator:

1. Asks whether the intended recipient is willing to consent to using email to communicate about the investigation. This inquiry can be made by telephone during the initial contact with the recipient.
  - a. If the recipient cannot be reached by telephone, the investigator must send the opening letter by the primary method of service and include the VCMS electronic communications consent template so that the recipient could consent to receive future communications by email by signing and returning the consent template to the investigator. If the recipient cannot be reached by telephone or mail, or when contact information for a claimant's telephone number or home address are missing, contact the NO Compliance team for further direction.
  - b. If consent to communicate by email is verbally granted, then the investigator confirms the email address, sends the opening letter and the VCMS electronic communications consent template to the recipient by email, and asks the recipient to return the signed consent template to the investigator by email.
2. Documents written confirmation of recipient's consent in VCMS (i.e., attach the returned, signed electronic communications consent template or other response email from recipient stating they agree to accept email correspondence),
3. Requests confirmation of receipt from recipient after each use of alternative service (i.e., you may use the "Request a Delivery Receipt" from the "Options" tab on the Outlook "New Email" toolbar and attach confirmation of the delivery receipt), and
4. Documents each confirmation in VCMS that recipient received the alternate service (i.e., you use the delivery-receipt function and attach the confirmation of receipt or attach the response email from recipient confirming they received the correspondence).
5. If no confirmation is received based on the request in Step 3, the correspondence must be sent again by the primary method of service.

Alternate service is only acceptable if these criteria are met. A silent claimant or employer may not consent to electronic communication. Without confirmation of alternate service (e.g., delivery receipt), correspondence must be sent by the primary service method (e.g., UPS). Each of the examples below require using the primary service method:

1. There's no written consent to service by email.
2. No delivery confirmation of alternate service by email was received and documented.
3. Settlement agreements signed by the claimant sent to the employer for original signatures and a fully signed agreement sent to the claimant.
4. Preclosing letters for lack of response and/or interest.

VETS will accept electronic signatures generated by Adobe Pro that are created and certified using a federal Common Access Card (CAC) or Personal Identify Verification (PIV) card. Those electronic documents must be uploaded to the VCMS case file.

*Benefit (also Benefit of Employment or Rights and Benefits):* The terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employer policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, or employee stock ownership plan; insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or the location of employment.



*Case:* An investigation, assigned to a VETS investigator, based on a claim(s). A case may involve multiple claims, potential violations, potential types of violations, and issues.

- “Case” is not interchangeable with any of the following key terms: “[claim](#),” “[potential violation](#),” “[type of potential violation](#),” “[issue](#),” “[violation](#),” or “[type of violation](#).” Each term has a separate, defined meaning under this Glossary.
- *Tip:* To verify whether you used the term properly, you should be able to replace “case” with “investigation” or “investigative” and the remaining sentence would still make sense.

*Case Quality Measures (CQM):* The set of weighted case evaluation elements for USERRA cases that are automatically calculated during and after investigation. CQMs are consolidated into an aggregate score calculated from a denominator that represents the maximum score available based on the scope of the investigation and a numerator that represents the score achieved based on the contents of a casefile.

*Case Resolution Conference:* A meeting conducted by the investigator with the parties and their representatives, if any, to attempt to reach a mutually agreeable resolution of a substantiated claim. USERRA promotes the resolution of claims without the need to resort to litigation, whenever possible.

*Category Rating (CATRAT):* In competitive examining, CATRAT places candidates in one of the pre-defined quality categories based on their score. For all positions except GS-9 and above professional or scientific positions, [10-Point Compensable Disability Preference \(CP\)](#) or [10-Point 30 Percent Compensable Disability Preference \(CPS\)](#) veterans are listed in the highest category. Within each category, VP eligibles are listed first, and have priority over non-VP eligibles. An agency may not pass over a VP eligible to select a non-VP eligible who falls lower on the list, even within the category from which the selection is made (unless an objection is sustained by the agency or OPM for qualifications, suitability, or medical or physical reasons).<sup>213</sup>

*Chronology (also chronology or Chronology of Facts):* The science of arranging facts in their order of occurrence in time. This can be found on VCMS Chronology of Facts page of the case file.

*Claim:* Means: (1) A complaint filed by a claimant with VETS that alleges a potential violation(s) of USERRA, VEOA, or VP. For example, a claimant may allege in their claim entitlement to employment rights or benefits, or reemployment rights or benefits, and that an employer has failed, refused, or is about to fail or refuse, to comply with USERRA. Such a complaint must be submitted on Form 1010, include the name and address of the employer against whom the complaint is filed, and contain a summary of the allegations that form the basis for the complaint. (2) A complaint submitted to another government agency or private organization with responsibility for processing unemployment, workers' compensation, or any insurance complaints.

- *Note:* A claim may involve multiple potential violations, types of potential violations, and issues.
- “Claim” isn’t interchangeable with any of the following key terms: “[case](#),” “[potential violation](#),” “[type of potential violation](#),” “[issue](#),” “[violation](#),” or “[type of violation](#).” Each term has a separate, defined meaning under this Glossary.
- *Tip:* To verify whether you used the term properly, you should be able to replace “claim” with “complaint” and the remaining sentence would still make sense.

*Claimant:* The person who submits the claim, interchangeable with complainant.

*Claim Resolved:* Closing code appropriate for use when the employer grants all or substantially all the claimant’s entitlements under USERRA. Closing code also appropriate for use when the claimant and employer agree to settle the claim for less than the claimant’s full entitlements under USERRA. This closing code replaces Claim Granted and Claim Settled.

*Closure:* An act of closing; the condition of being closed.

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<sup>213</sup> NVTI 9606 VEOA/VP Participant Guide, p 325 of PDF.



*Comparator(s)*: Comparators are individuals similarly situated to the claimant, but who don't have USERRA-protected status or activity. They're a subset of [witnesses](#), who help demonstrate whether the claimant suffered worse treatment than others under similar circumstances. An individual is similarly situated to the claimant if the material aspects of their work are sufficiently similar. Comparators need not be identical to the claimant in all respects, but their situations must be sufficiently alike to make a meaningful comparison. An example might be an employee in the same position as the claimant, but who was on a type of long-term leave other than uniformed service (e.g., birth-related leave). By gathering details of the comparator employee's experience, an investigator can uncover evidence about whether the claimant was treated the same or differently than other employees in a similar situation.

*Comparator Evidence*: Statements by or documents from [comparators](#). This evidence is used to evaluate potential discrimination violations (i.e., for the disparate treatment *Sheehan* factor) and potential reemployment violations (i.e., reasonable certainty standard for escalator positions). Often comparator evidence can be found by asking, if the [witness](#) is in the same situation in terms of seniority, rank, position, or experienced the same event as the claimant.

*Completed Cases (also Complete Case, Completed Investigations, and Complete Investigation)*:

Refers to cases in which VETS has fulfilled its statutory duty to investigate each complaint submitted and determine, as a result of each investigation, if the actions alleged in each complaint occurred, 38 U.S.C. § 4322 (d). For USERRA, cases closed with a closing code of "Claim Resolved," "Not Eligible," "Not Substantiated," and "Substantiated, Not Resolved" meet the definition of completed cases, while cases closed as "Administrative," "Duplicate," "Claim Reassigned," and "Merit Undetermined" do not meet the definition of a completed case. VEOA and VP completed cases or investigations, in addition to the USERRA closure codes that meet the definition of a completed case or investigation, include the "Untimely Filing" closure code in the definition of completed case/investigation.

*Compliance Assistance (CA, includes technical assistance (TA))*: Umbrella term referring to actions taken: (a) proactively, via outreach activities such as presentations, materials, and information provided to external entities by VETS about how best to comply with USERRA, VEOA, and VP; and (b) responsively, via TA provided to individuals with specific questions about how to comply with USERRA, VEOA, and VP. All such activities are referred to collectively as Compliance Assistance, consistent with the usage of that term throughout the Department.

*Confidentiality*: Applies to something that has the quality of being confidential, secret, or privileged.

*Corrective Action*: Identification and elimination of the causes of a problem or issue, thus preventing their recurrence. In this Manual, CA means Compliance Assistance, not corrective action.

*Credible Information*: Information disclosed or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained investigator to presume the fact(s) in question are true.



*Delayed Entry Program (DEP; also Delayed Enlistment Program or Future Soldiers Program):*

A program whereby individuals going into active duty in the United States Armed Forces enlist first in the DEP before they ship out to basic training, or “boot camp.” While those who join the DEP have signed an enlistment agreement to report on a certain date for training, they aren’t yet members of the United States Armed Forces until they enlist in the regular component of their selected branches on their ship dates.

*Department of Justice, United States (DOJ):* If VETS’ investigative efforts don’t resolve a claimant’s USERRA case against a State or private employer, the claimant may request that VETS refer the case to DOJ. If reasonably satisfied that the claimant is entitled to the rights or benefits sought, DOJ may serve as legal representation and commence an action on the claimant’s behalf under USERRA. The claimant has the right to request such representation after VETS completes its investigation but doesn’t have the right to DOJ representation automatically; rather, the claimant has the right to request DOJ consider serving as the claimant’s legal representation.

*Designated Reviewer (includes Other Reviewer Designated):* Individual(s) designated by the RAVET to review investigative casework and associated process/procedural documents.

*Determination:* A decision of whether the claimant’s allegations under USERRA, VEOA, or VP were substantiated. A decision about the validity of a claim should no longer be referred to as a finding of “merit” or “no merit.” Instead, use the terms “substantiated” and “not substantiated.”

*Discrimination:* A USERRA violation that denies someone the rights or benefits of employment based, at least in part, on a USERRA-protected status (veteran status, uniformed service obligation) of that person.

*Disparate:* Essentially different in kind; not being treated the same as others in a similar position.

*Form 1010 (also Electronic 1010, E-1010, or 1010):* The form, in writing, prescribed by the Secretary for the filing of a complaint under USERRA, VEOA, or VP; may be filed with VETS via [online submission form](#), email, mail, fax.

*e.g.: Exempli gratia (e.g.)* is a Latin phrase meaning “for example,” and is meant to provide one or more examples. For more information on how to use e.g. within VETS documents, refer to the [VETS Style Guide II.B.19](#) (“E.g. vs. i.e.”). Note that the link is to an internal VETS site and may not be accessible by all viewers of this document.

*Eligible, Eligibility:* The quality or state of being entitled to coverage.

*Employee:* Any person employed by an employer. The term also includes any person who is a citizen, or national or permanent resident alien of the United States who is employed in a workplace in a foreign country by an employer that’s an entity incorporated or organized in the United States, or that’s controlled by an entity organized in the United States. “Employee” includes the former employee of an employer.

*Employer:* Under USERRA, “(1) Except as provided in paragraphs (2) and (3) of this section, means any person, institution, organization, or other entity that pays salary or wages for work performed, or that has control over employment opportunities, including:

“(i) A person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities, except in the case that such entity has been delegated functions that are purely ministerial in nature, such as maintenance of personnel files or the preparation of forms for submission to a government agency;

“(ii) The Federal Government [including any federal executive agency, except that [intelligence community agencies](#) referenced in [5 U.S.C. § 2302\(a\)\(2\)\(c\)\(ii\)](#) are excluded];

“(iii) A State;

“(iv) Any successor in interest to a person, institution, organization, or other entity referred to in this definition; and,

“(v) A person, institution, organization, or other entity that has denied initial employment in violation of [38 U.S.C. § 4311](#), USERRA’s anti-discrimination and anti-retaliation provisions.

“(2) In the case of a National Guard technician employed under [32 U.S.C. § 709](#), the term ‘employer’ means the adjutant general of the State in which the technician is employed.

“(3) An employee pension benefit plan as described in section 3(2) of the Employee Retirement Income Security Act of 1974 (ERISA) ([29 U.S.C. § 1002\(2\)](#)) is considered an employer for an individual that it doesn’t actually employ only with respect to the obligation to provide pension benefits” ([38 U.S.C. § 4303\(4\)](#); [20 C.F.R. § 1002.5\(d\)](#)).

Under VEOA and VP, employer means federal executive agencies. (1) *Civil service examination:* [5 U.S.C. §§ 3304-3330](#), [5 C.F.R. Part 332](#), OPM Delegation Agreements with individual agencies, [OPM Delegated Examining Operations Handbook](#); (2) *Excepted service appointments, including VRAs:* [5 U.S.C. § 3320](#); [5 C.F.R. Part 302](#); (3) *Temporary and term employment:* [5 C.F.R. Parts 316](#) and [333](#); (4) *Overseas limited employment:* [5 C.F.R. Part 301](#); (5) *Career Transition Program:* [5 C.F.R. Part 330](#), [Subparts F](#) and [G](#).

*Employer Support of the Guard and Reserve (ESGR):* A Department of Defense (DOD) program established in 1972 to promote cooperation and understanding between Reserve Component Service members and their civilian employers and to assist in the resolution of conflicts arising from an employee’s military commitment.

*Employer Support of the Guard and Reserve (ESGR) Ombudsperson:* An ombudsperson (ombuds) might be a volunteer or a federal employee. To avoid conflicts of interest, VETS doesn't permit employees to serve as ESGR ombuds. Refer to [Relevant Ethics Opinion](#) for additional information. Ombuds are a neutral party designed to talk to employers and employees about how to follow the law and reach amicable resolution. If resolution can't be reached, that's often when someone files a complaint with VETS. For a complete list of the jointly owned compliance activities between ESGR and VETS, read the section [Provide Technical Assistance to DOD's ESGR](#).

*Escalator Position:* The job the employee would have attained if their continuous employment hadn't been interrupted due to uniformed service.



*Extension:* An increase in length of time; specifically, an additional period agreed to by the claimant.

*Federal Agency (also "the hiring agency" or "agency"):* Any agency under the executive branch (except that intelligence community agencies referenced in [5 U.S.C. § 2302\(a\)\(2\)\(c\)\(ii\)](#) are excluded) and the United States Postal Service (USPS).

*Form 1010 (also Electronic 1010, E-1010, or 1010):*

The form, in writing, prescribed by the Secretary for the filing of a complaint under USERRA, VEOA, or VP; may be filed with VETS via [online submission form](#), email, mail, fax.

*Freedom of Information Act (FOIA):*

A federal law mandating that all records created and kept by federal agencies in the executive branch of government must be open for public inspection and copying. The only exceptions are those records that fall into one of nine exempted categories listed in the statute. FOIA doesn't apply to records that are maintained by state and local governments, federal contractors, grantees, or private organizations or businesses.

*Health Plan:* An insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

*i.e.:* Id est (i.e.) is a Latin phrase meaning “that is” or “in other words.” I.e. is meant to provide clarification. For more information on how to use i.e. within VETS documents, refer to the [VETS Style Guide II.B.19](#) (“e.g. vs. i.e.”). Note that the link is to an internal VETS site and may not be accessible by all viewers of this document.

[REDACTED]

[REDACTED]

[REDACTED]

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*Independent Contractor:* USERRA doesn't cover independent contractors as employers; however, it provides a factor test to determine whether the claimant is an independent contractor: "(b) In deciding whether an individual is an independent contractor, the following factors need to be considered:

"(1) The extent of the employer's right to control the way the individual's work is to be performed;

"(2) The opportunity for profit or loss that depends upon the individual's managerial skill;

"(3) Any investment in equipment or materials required for the individual's tasks, or [their] employment of helpers;

"(4) Whether the service the individual performs requires a special skill;

"(5) The degree of permanence of the individual's working relationship; and,

"(6) Whether the service the individual performs is an integral part of the employer's business.

"(c) No single one of these factors is controlling, but all are relevant to determining whether an individual is an employee or an independent contractor" ([20 C.F.R. § 1002.44\(b\)-\(c\)](#)).

*Initial Contact:*

The first interaction or connection with another individual or entity.

*Intelligence Community Agencies:* This includes the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Office of the Director of National Intelligence (DNI), and the National Reconnaissance Office; and as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a personnel action ([5 U.S.C. § 2302\(C\)\(ii\)](#)).

*Investigation:* The planned, systematic collection and documentation of relevant and reliable evidence, the goal of which is to develop a legally defensible determination of the validity of the claim.

*Issue:* A problem to which a set of questions or logic must be applied to validate a type of potential violation. For example, a potential USERRA discrimination violation requires the claimant meet the threshold eligibility criteria for USERRA to apply. Eligibility is an issue with a set of criteria the investigator must be able to demonstrate exist for the claimant to be eligible for USERRA rights and protections. Another example of an issue might be the analysis required to walk through whether there was a violation of someone's VEOA or VP rights and protections within a Reduction in Force (RIF) action.

- *Note:* An issue may involve multiple potential violations, types of potential violations, violations, and types of violations.
- “Issue” isn’t interchangeable with any of the following key terms: “[case](#),” “[claim](#),” “[potential violation](#),” “[type of potential violation](#),” “[violation](#),” or “[type of violation](#).” Each term has a separate, defined meaning under this Glossary.

*Liquidated Damages:*

An amount equal to the amount of lost wages and benefits that may be awarded by a court if the court determines that the employer’s failure to comply with USERRA was willful.

*Lost Wages:*

The past wages and benefits an employee can receive retroactively.

*Memorandum of Referral (MOR):*

A thorough recitation of the relevant facts, in chronological order, and a detailed analysis applying those facts to the relevant law. Prepared when referring a case for consideration of representation and in anticipation of litigation by the Department of Justice (DOJ) or Office of Special Counsel (OSC).



*Merit System Principles (MSP):* The federal government’s rules of the road for proper and consistent hiring ([5 U.S.C. § 2301\(b\)](#)).

*Merit Systems Protection Board (MSPB):* An independent, quasi-judicial agency in the executive branch that serves as the guardian of federal Merit System Principles and hears appeals from federal executive agency decisions, including those involving USERRA, filed by federal employees.

*National Disaster Medical System (NDMS):* An agency within the Federal Emergency Management Agency, Department of Homeland Security, established by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, [Public Law 107-188](#). The NDMS provides medical-related assistance to respond to the needs of victims of public health emergencies. Participants in the NDMS are volunteers who serve as intermittent federal employees when activated. For purposes of USERRA coverage only, these persons are treated as members of the uniformed services when they’re activated to provide assistance in response to a public health emergency, or to be present for a short period of time when there’s a risk of a public health emergency, or when they’re participating in authorized training. See [42 U.S.C. § 300hh-11\(e\)](#).

*Negotiation:* The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions to resolve a matter.

*New and Material Evidence:* The bases for reopening a previously closed USERRA case. “New” evidence is that which hasn’t been previously considered or associated with the case. “Material” evidence is that which bears either directly or indirectly on the allegations made in the case, and which, either standing alone or in conjunction with evidence already of record, could serve to prove or disprove the allegations asserted in the case. Unless the evidence submitted on the original issues is both “new” and “material,” absent an erroneous closing, there’s no basis to reopen a previously closed case.

*Non-Preference Eligible (opposite of Preference Eligible):* An individual who may have served on active duty or in the Reserve Component but doesn’t meet the eligibility criteria for VP.

*Not Eligible:* Closing code appropriate when a case has already been opened, and VETS finds that the claimant doesn’t meet the eligibility requirements in the statute, or the claimed adverse act isn’t covered by the statute; the case should be discussed with the claimant and closed based on [not eligible](#).

*Not Substantiated:* Closing code appropriate when the claimant isn’t entitled to any relief for reasons other than a failure to meet the eligibility requirements under USERRA, VEOA, or VP.

*Notice:*

Any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service, or by an appropriate officer of the uniformed service in which the service is to be performed.

*Office of Personnel Management, United States (OPM):* OPM is an independent federal agency tasked with the oversight of civilian hiring. Within the federal government, OPM has responsibility for overseeing and updating VEOA and VP regulations. VETS partners with OPM on VETS' responsibility to investigate claims alleging VEOA and VP violations.

*Office of Special Counsel, United States (OSC):* An independent federal investigative and prosecutorial agency whose basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and USERRA. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from Prohibited Personnel Practices (PPPs), especially reprisal for whistleblowing.

If VETS' investigative efforts don't resolve a claimant's USERRA case against a federal agency employer, the claimant may request that VETS refer the case to OSC. If reasonably satisfied that the claimant is entitled to the rights or benefits sought, OSC may serve as legal representation and commence an action on claimant's behalf under USERRA before the MSPB. The claimant has the right to request such representation after VETS completes its investigation but doesn't have the right to OSC representation automatically; rather, the claimant has the right to request OSC *consider* serving as the claimant's legal representation.

*Office of the Solicitor, Department of Labor (DOL) (includes National Solicitor's Office (NSOL) and Regional Solicitor's Office (RSOL):* The Department's Office of the Solicitor (SOL), which VETS employees work with through the regional Solicitor's offices (RSOL) and the National Solicitor's Office (NSOL), provides legal advice about VETS investigations. Regional Solicitors are attorneys who work for SOL locally within the regions. They provide first-line legal advice to Senior Investigators (SI) and regional employees. They consult with NSOL, as necessary. NSOL is the Solicitor's Office located within the Department's headquarters. NSOL oversees legal advice provided to the Department's various agencies and consults with RSOL in providing day-to-day legal advice to ensure consistency and efficiently respond to questions of national policy.

*Pay, Like:* Compensation for work performed; need not be identical but must be substantially equal.

*Personally Identifiable Information (PII)*: As defined by the Office of Management and Budget (OMB) in [Memorandum M-17-12](#), is “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that’s linked or linkable to a specific individual. Because there are many different types of information that can be used to distinguish or trace an individual’s identity, the term PII is necessarily broad. . . It’s important to recognize that information that’s not PII can become PII whenever additional information becomes available—in any medium or from any source—that would make it possible to identify an individual.” DOL makes two additional distinctions about PII:

- Non-Sensitive PII: PII whose disclosure can’t reasonably be expected to result in personal harm. Examples include first/last name; email address; business address; business phone; and general education credentials that aren’t linked to or associated with any protected PII.
- Protected PII: PII whose disclosure could result in harm to the individual whose name or identity is linked to that information. Examples include, but aren’t limited to, social security number; credit card number; bank account number; residential address; residential or personal phone; biometric identifier (e.g., image, fingerprint, iris); date of birth; place of birth; mother’s maiden (or birth) name; criminal records; medical records; and financial records. The conjunction of one data element with one or more additional elements increases the level of sensitivity and/or propensity to cause harm in the event of compromise. See [DOL Manual Series \(DLMS\) 7-1100](#), Safeguarding Sensitive Data Including PII.

*Potential Violation*: The potential aspect of a statute or regulation that the employer might have violated. For example, USERRA discrimination or failure to apply VP.

- *Note*: A potential violation may involve multiple types of potential violations, violations, types of violations, and issues.
- “Potential Violation” isn’t interchangeable with any of the following key terms: “[case](#),” “[claim](#),” “[issue](#),” “[type of potential violation](#),” “[violation](#),” or “[type of violation](#).” Each term has a separate, defined meaning under this Glossary.

*Preclosing Report of Investigation (ROI)*: For USERRA cases, replaces the Second Open Case Review Quality Assurance Review (QAR), as well as the Closed Case Review QAR. After completing any resolution efforts (if appropriate), the investigator prepares the Preclosing ROI by revising and updating VCMS Case Summary, Chronology of Facts, Documents, Eligibility, Issue Analysis, Potential Violations, and Witnesses pages, as necessary. The investigator submits the Preclosing ROI with draft proposed closing letters attached to the designated reviewer. The designated reviewer evaluates the information the investigator submits for completeness and accuracy using the approval and comments options within the ROI.

*Preference Eligible (opposite of Non-Preference Eligible)*: A preference eligible is an individual who is entitled to VP as defined in [5 U.S.C. § 2108\(3\)](#). Being a preference eligible is also one of the eligibility conditions for VEOA. An important distinction between VEOA and VP is that

while all VEOA violations fall under VP, not all VP violations are also VEOA violations. A similar analogy might be that all thumbs (i.e., VEOA) are fingers (i.e., VP), but not all fingers are thumbs. This distinction is important because a preference eligible can file a claim alleging a VEOA or a VP violation if they meet the other required conditions. By statute, VP is a “lifetime entitlement.” A retired federal civil service employee who is otherwise eligible for VP continues to be eligible for the entitlement when applying for a federal civil service position under an open competitive announcement.

*Preliminary Report of Investigation (ROI):* For USERRA cases, replaces the Initial Case Investigative Plan (CIP) and First Open Case Review Quality Assurance Report (QAR). The investigator submits the Preliminary ROI after case assignment and initial contact with the claimant and employer. The investigator then updates VCMS Case Summary, Chronology of Facts, Eligibility, Issue Analysis, and Witnesses pages and then completes the Action Plans contained within any incomplete section of the VCMS case file, as needed. During this, investigators must identify the relevant documents and persons to be interviewed on the VCMS Issue Analysis, Potential Violations, and Witnesses pages, and note the issues, evidence sought, remedies, and statutory and regulatory provisions that apply in the case. The designated reviewer evaluates the information prepared for completeness and accuracy using the approval and comments options within the ROI.

*Prenotification Report of Investigation (ROI):* For USERRA cases, replaces the Updated Case Investigative Plan (CIP) and the Second Open Case Review Quality Assurance Review (QAR). The Prenotification ROI is considered complete after the designated reviewer approves each subsection within it. The investigator prepares this by revising and updating the VCMS Case Summary, Chronology of Facts, Documents, Eligibility, Issue Analysis, Potential Violations, and Witnesses pages, as necessary, upon completion of the [fact gathering](#) and [case analysis](#) phases of the investigation. The designated reviewer evaluates the information the investigator submits for completeness and accuracy using the approval and comments options within the ROI.

*Preponderance of Evidence Standard:* The party with the burden of proof provides a greater than 50 percent likelihood that the situation alleged occurred. For example, in USERRA, a claimant must prove by a preponderance of evidence that their military service was a motivating factor in the employer’s decision to take an adverse employment action against the claimant. Another example would be the employer proving by a preponderance of the evidence that they took such an action against the employee using one of the available statutory defenses ([20 C.F.R. § 1002.139](#)).

*Prima Facie Case:* The establishment of a legally required rebuttable presumption. A *prima facie* case is a cause of action or defense that’s sufficiently established by a party’s evidence to justify a finding in their favor, provided such evidence isn’t rebutted by the other party. For USERRA [discrimination](#) and [retaliation](#) violations, *prima facie* means that the claimant established they had protected status or engaged in protected activity, that they suffered an adverse employment action, and that their protected status or activity was a motivating factor for the adverse employment action.

*Privacy Act (PA)*: A federal law establishing a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of PII about individuals that's maintained in systems of records by federal agencies.

*Prohibited Personnel Practices (PPP)*: Employee-related activities banned in the federal workforce because they violate the government's merit system through some form of employment discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the Merit System Principles (MSPs) ([5 U.S.C. § 2302\(b\)](#)).

*Protected Class*: A characteristic of a person for which that person can't be treated lesser under the law. Individual status can and does create other protected classes, which are protected under that law.

*Protest*: The formal process used when a claimant expresses a disagreement, either verbally or in writing, regarding the handling of their claim, and they're unable to resolve the issues with the assigned investigator and/or that investigator's Director for Veterans' Employment and Training (DVET).

*Qualified (with respect to an employment position)*: Having the ability to perform the essential tasks of the position.

*Quality Assurance Review (QAR)*: A process intended to ensure regular and periodic review and oversight of case activity by appropriate levels of staff and management. Personnel involved in the review process include supervisors at the state and regional levels, senior investigators (SI), National Office (NO) staff, and the VETS National Review Team (VNRT).

*Reasonable Certainty Standard*: A high probability that the employee would have received the seniority or seniority-based right or benefit if they had been continuously employed. The employee doesn't have to establish that they would have received the benefit as an absolute certainty. The employer can't withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the employee from gaining the right or benefit ([20 C.F.R. § 1002.213](#)).

*Reasonable Efforts (in the case of actions required of an employer)*: Actions, including training provided by an employer, which don't place an undue hardship on the employer.

*Reduction in Force (RIF)*: A personnel action required due to lack of work or funds, changes resulting from reorganization, downward reclassification of a position, or the need to make room for an employee with reemployment or restoration rights; involves separating an employee from their present position but doesn't necessarily result in termination or downgrade.

*Reemployment*: The act or instance of being employed again with the previous employer.

*Referral:* The act of referring someone or something for consultation, review, or further action. Under USERRA, it's the act of transmitting the complaint at the claimant's request to the Department of Justice (DOJ) or the Office of Special Counsel (OSC), as appropriate.

*Regional Administrator for Veterans' Employment and Training (RAVET; also, RA):* Position with overall responsibility for managing and monitoring VETS' programs within a region. Staff assigned to the regional office (RO) assist the RAVET in fulfilling this responsibility.

*Relevant Information:* Any information or data that applies to the situation or problem that can help toward finding a solution.

*Reopen:* The act of opening again. A closed USERRA case may be reopened if it appears that the case was erroneously closed, or if "new and material" evidence (i.e., information) is submitted on the original allegations in the case.

*Report of Investigation (ROI):* An investigative, analytical, and assessment report designed to present a summary of the investigator's work for reviewers and evaluators of quality to use in all USERRA investigations by VETS. Outside the VETS Case Management System (VCMS), it takes the form of an Excel spreadsheet (the ROI Form for cases opened prior to April 1, 2020). The ROI and its corresponding case file tools serve as the backbone of the VCMS, which has incorporated elements of the ROI Form, called the ROI Process in this Manual.

*Resolution:* The action of solving a problem, dispute, or contentious matter.

*Retaliation (also Reprisal):* To deny someone the rights or benefits of employment based, at least in part, on engaging in USERRA-protected activity.

*Reverse Chronological Order:* Organizing documents or items by date stamp, with the oldest date on the bottom and the newest date on top.

*Review Process, Report of Investigation (ROI):* The regular and periodic review and oversight of USERRA case activity by appropriate levels of staff and management.

*Secretary of Labor (also the Secretary):* The Secretary of Labor or any person designated by the Secretary to carry out an activity under USERRA, VEOA, and VP, or their associated regulations, unless a different office is expressly indicated.

*Seniority:* Longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

*Service-Connected Disability:* An injury or illness, determined by the Department of Veterans Affairs (VA) or competent military authority, that was incurred or aggravated during active military service and is considered disabling.

*SharePoint*: A web-based, highly configurable, collaborative document management and storage system.

*Source Documents*: Documents, data, and records that contain facts and are used as the basis to analyze and corroborate information.

*Standard Occupational Classification System (SOCS) Code and Occupation*: A United States government system of classifying occupations. It's designed to cover all occupations in which work is performed for pay or profit, reflecting the current occupational structure in the United States.

*State*: Each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, Commonwealth of the Northern Mariana Islands (CNMI), and other territories of the United States (including the agencies and political subdivisions thereof); however, for purposes of enforcement of rights under [38 U.S.C. § 4323](#), a political subdivision of a State is a private employer.

*Status, Like*: The relative social, professional, or other standing of someone or something; need not be identical but must be substantially equal. Factors to consider regarding like status for reemployment positions under USERRA include opportunities for advancement, general working conditions, job location, shift assignment, rank, and responsibility.

*Subpoena*:

Statutorily authorized legal instrument that requires the attendance and testimony of witnesses and/or the production of documents relating to any matter under investigation. Commonly used forms include the subpoena *duces tecum* and subpoena *ad testificandum*.

*Subpoena Ad Testificandum*:

An order directing a named individual or corporation to appear at a particular place and time and give testimony.

*Subpoena Duces Tecum*: A command to a person or organization to appear at a specific time and place and produce the designated records.

*Substantiate*:

To demonstrate through collected evidence (documentary and testamentary) that an allegation occurred.

*Substantiated, Not Resolved:* Closing code is appropriate when the investigation has been completed, the investigator found that the allegations were substantiated, but resolution wasn't achieved.

*Successor in Interest (as an Employer under USERRA):* “In general, an employer is a successor in interest where there's a substantial continuity in operations, facilities, and workforce from the former employer. The determination whether an employer is a successor in interest must be made on a case-by-case basis using a multi-factor test that considers the following:

- (a) “Whether there has been a substantial continuity of business operations from the former to the current employer;
- (b) “Whether the current employer uses the same or similar facilities, machinery, equipment, and methods of production;
- (c) “Whether there has been a substantial continuity of employees;
- (d) “Whether there is a similarity of jobs and working conditions;
- (e) “Whether there is a similarity of supervisors and managers; and
- (f) “Whether there is a similarity of products or services” ([20 C.F.R. § 1002.35](#); see also [38 U.S.C. § 4303\(d\)](#)).

*Technical Assistance (TA):* Responsive assistance provided on request to potential claimants and their employers under USERRA; a method to broaden public awareness and understanding of the rights and obligations of service members, veterans, and their civilian employers under USERRA to increase voluntary compliance with the law.

*Type of Potential Violation:* The subset of a potential violation that might be in play, and these are listed on the Form 1010 as “issues.” At publication of this Manual, the Form 1010 lists the following potential types of violations: For claims alleging VEOA or VP violations, “hiring or reduction in force (RIF).” For claims alleging USERRA violations, “military obligations discrimination, reinstatement, initial hiring discrimination, discrimination as retaliation for any action, status, pay rate, seniority, other non-seniority benefits, pension, layoff, promotion, vacation, health benefits, special period protection discharge, reasonable accommodations/retraining for disabled, reasonable accommodation/retraining for non-qualified/non-disabled, and other.”

- *Note:* A type of potential violation may involve multiple issues.
- “Type of Potential Violation” isn't interchangeable with any of the following key terms: “[case](#),” “[claim](#),” “[issue](#),” “[potential violation](#),” “[violation](#),” or “[type of violation](#).” Each term has a separate, defined meaning under this Glossary.

*Type of Violation:* The subset of a violation in play, and these are listed on the Form 1010 as “issues.” Until a final determination has been made of a violation, any suspected type of violation is called a “type of potential violation.” At publication of this Manual, the Form 1010 lists the following potential types of violations: For claims alleging VEOA or VP violations, “hiring or reduction in force (RIF).” For claims alleging USERRA violations, “military



obligations discrimination, reinstatement, initial hiring discrimination, discrimination as retaliation for any action, status, pay rate, seniority, other non-seniority benefits, pension, layoff, promotion, vacation, health benefits, special period protection discharge, reasonable accommodations/retraining for disabled, reasonable accommodation/retraining for non-qualified/non-disabled, and other.”

- *Note:* A type of violation may involve multiple issues.
- “Type of Violation” isn’t interchangeable with any of the following key terms: “[case](#),” “[claim](#),” “[issue](#),” “[potential violation](#),” “[type of potential violation](#),” or “[violation](#).” Each term has a separate, defined meaning under this Glossary.

*Undue Hardship (in the case of actions taken by an [Employer](#)):* An action requiring significant difficulty or expense, when considering:

1. The nature and cost of the action necessary under USERRA and the regulations;
2. The overall financial resources of the facility or facilities involved in the provision of the action, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
3. The overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and
4. The type of operation or operations of the employer, including the composition, structure, and functions of the workforce of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

*Uniformed Service (also “service” and “service in the uniformed services”):* The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, full-time National Guard duty, State active duty for a period of 14 days or more, State active duty in response to a national emergency declared by the President under the National Emergencies Act ([50 U.S.C. § 1601 et seq.](#)), State active duty in response to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. § 5170](#)), a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty, or a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law ([10 U.S.C. § 12503](#) or [32 U.S.C. § 115](#)). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, [Pub. L. 107-188](#), provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed “service in the uniformed services” ([42 U.S.C. § 300hh-11\(e\)\(3\)](#)).

*Uniformed Services (as in “the Uniformed Services” and service in the Uniformed Services):*

The Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration; System members of the National Urban Search and Rescue Response System during a period of appointment into federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster-response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their federal mission is deemed “service in the uniformed services,” though such appointee isn’t a member of the “uniformed services” as defined by USERRA.

*Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA):* The purposes of USERRA are: to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service under honorable conditions; and to prohibit discrimination against persons because of their service in the uniformed services. It’s the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of USERRA ([38 U.S.C. §§ 4301-4335](#)).

*USERRA Quality Metric (also see Case Quality Measure, or CQM):*

The case rating generated by the VCMS Case Quality Measures, which is reported to the Department to demonstrate compliance with the Agency’s quality standard set forth in the Agency Management Plan (AMP).

*Veteran:*

A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable ([5 U.S.C. § 3304\(f\)\(1\)](#)).

*Veterans’ Employment and Training Service (VETS):*

A DOL sub-agency responsible for investigating USERRA, VEOA, and VP complaints made by veterans or others with protected status or activity under USERRA, or VEOA or veterans’ preference eligibility under VEOA and/or VP, respectively.

*VEOA (Veterans Employment Opportunities Act of 1998):*

The VEOA of 1998 as amended by Section 511 of the Veterans Millennium Health Care Act (Pub. Law 106-117) of November 30, 1999, provides that agencies must allow preference eligibles or eligible veterans to apply for positions announced under merit promotion procedures

when the agency is recruiting from outside its own workforce (“agency,” in this context, means the parent agency, e.g., Treasury, not the Internal Revenue Service; the Department of Defense, not Department of the Army). A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment. Veterans’ preference isn’t a factor in these appointments.

*VEOA Preference:*

VEOA doesn’t provide preference like VP provides; it provides access and opportunity to apply when outside the area of consideration. It’s separate from VP. It’s related to VP in that it involves an advantage in federal hiring for qualified veterans, but it has different eligibility requirements and a different analysis required than VP. Outside of determining eligibility and analyzing the potential violation(s), the investigative steps between VEOA and VP are almost the same.

*Veterans Preference (also VP, Vet Pref, and Vet Preference):*

The statutory right to special advantage in appointment or during reductions in force (RIF) based on meeting certain statutory criteria. Not all veterans are entitled to VP. VP isn’t applicable to the Senior Executive Service (SES).

*Veterans’ Reemployment Rights Act (VRRRA):*

The immediate predecessor statute to USERRA.

*VETS Case Management System (VCMS) (also see Appendix E):*

The current case management system of record for USERRA, VEOA, and VP investigations. Refer to [VCMS Agency User Guide](#) for additional system instructions.

*VETS Compliance Data Center (VCDC):*

Oversees the intake of claims alleging USERRA, VEOA, and VP violations; compliance data systems and actions required to produce monthly, quarterly, and annual reports to Agency stakeholders; and other ad hoc reports and analyses to support compliance operations nationwide and to ensure reliable operations.

*VETS Investigator:* Any VETS staff member authorized to provide technical assistance and investigate USERRA, VEOA, and VP complaints filed.

*Violation:*

Means that, following a VETS investigation, the investigator substantiated the allegations in the claim as violation(s) of USERRA, VEOA, or VP. In other words, a determination in the case has been made that the employer violated an aspect of the statute or regulations governing USERRA,

VEOA, or VP. Until a final determination has been made of a violation, any suspected violation is called a “potential violation.”

- *Note:* A violation may involve multiple claims, types of potential violations, issues, and types of violations.
- “Violation” isn’t interchangeable with any of the following key terms: “[case](#),” “[claim](#),” “[issue](#),” “[potential violation](#),” “[type of potential violation](#),” or “[type of violation](#).” Each term has a separate, defined meaning under this Glossary.

*Waiver:* Demonstrating the act or instance of waiving a right or claim.

*Waiver, Temporary:* Waivers, approved on a temporary basis for 12-month periods, from the initial qualification standards for newly hired investigators to conduct USERRA, VEOA, and VP investigations when overseen by a Level 3 or Level 4 Investigator or an SI prior to successful completion of NVTI 9605 and/or NVTI 9606. Additionally, for Level 2 through 4 Investigators who haven’t conducted the requisite number of USERRA, VEOA, and VP investigations and/or reviews to maintain their current training level, either initially or subsequently in the applicable fiscal years.

*Witness(es):* Someone with relevant (firsthand) knowledge of the claim or events concerning the investigation. Witnesses may include the employer, employer representatives, people interviewed, [comparators](#), and many others. Evidence from witnesses might include statements made by them, documents from them, or documents about them.

## Appendix B | USERRA, VEOA, and VP Tools Quick Reference Guide

This appendix provides quick links to various public-facing and internal tools for investigators to use and share out as they perform TA and investigative activities. We recommend you use the associated links to enhance research and verify necessary legal elements for violations, statute-based TA, and outreach activities.

### B.1 General Use Tools

These web-based resources are for investigator use. Career ONESTOP and USAJOBS are the recommended sources for any veteran claimant who requires assistance with career searches, education, training, resumes, interviews, salaries, benefits, state-employment assistance, and other relevant veteran sources. The tools below are grouped into public-facing resources and investigator resources.

#### Public Resource Investigator Tools:

- [Career ONESTOP](#)
- [DOL VETS](#)
- Feds Hire Vets – [Transitioning to Federal Employment, A Guide](#)
- [Form E-1010/1010](#)
- MSPB, [Veterans' Employment Redress Laws in Federal Civil Service](#)
- [NVTI](#)
- [USAJOBS](#)
- VEOA and VP, [Merit System Principles](#)
- VEOA and VP, [Prohibited Personnel Practices \(PPP\)](#); and
- Vets Hire Vets, [Special Hiring Authorities for Veterans](#).

#### Internal Investigator Tools:

- [VETS CID SharePoint Site](#)
- [Investigator/Reviewer Waiver Request Form](#)
- [CAAPP](#); and
- Case Management System, [VCMS](#) (Cases opened on and after April 1, 2020): Also stores templates and forms. [VCMS Agency User Guide](#).

### B.2 USERRA Statutory and Regulatory Tools

These web-based resources are for investigator use. We recommend you use the associated links to enhance research and verify necessary legal elements for violations, statute-based TA, and outreach activities.

- Statute: [38 U.S.C. §§ 4301-4335](#)
- Regulations (States, Local Governments, and Private Employers): [20 C.F.R. Part 1002](#)
- Regulations (Federal Executive Branch Employers): [5 C.F.R. Part 353](#)
- USERRA, [DOJ on USERRA](#)

- [USERRA, e-Laws Advisor](#)
- USERRA, [ESGR on USERRA](#)
- USERRA, [OSC on USERRA](#); and
- [VETS' USERRA Poster](#).

### B.3 VEOA and VP Statutory and Regulatory Tools

These web-based resources are for investigator use. We recommend you use the associated links to enhance research and verify necessary legal elements for violations, statute-based TA, and outreach activities.

- Statutes: 5 U.S.C. §§ 3330a-3330c:
  - [§3330a](#)
  - [§3330b](#), and
  - [§3330c](#)
- Veterans Benefits Improvement Act of 1994 ([Public Law 108-454](#))
- Regulations: [5 C.F.R. Part 211](#)
- [e-Laws Advisor](#); and
- [OPM Vet Guide](#).

## Appendix C | VETS' Scope of Authority

This appendix outlines the statutes, regulations, and, in some instances, case law precedent that impacts how to apply USERRA, VEOA, and VP. This appendix has been created for your professional development. It includes linkable citations to statutes and regulations, so you may read them at your own pace. We recommend you look to the statutory and regulatory language to answer your questions before you reach out to your supervisor. If, after reading, you still have questions, please contact your supervisor or SI to discuss it further. If your question relates to an active investigation, however, please contact your supervisor immediately.

### C.1 USERRA Statutory and Regulatory Explainer

*“To encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service under honorable conditions; and to prohibit discrimination against persons because of their service in the uniformed service.”* Title 38, United States Code.

The USERRA of 1994 replaced the previous Veterans' Reemployment Rights Act (VRRRA) provisions of Chapter 43, Title 38, United States Code. USERRA authorizes the Secretary of Labor (“the Secretary”), through VETS, to aid any person or entity regarding the employment and reemployment rights and benefits provided under the statute, including any federal employee or applicant who requests it.<sup>216</sup> USERRA ensures that eligible persons, including all members of the uniformed services, don't lose their jobs or employment benefits because of their military service.

USERRA states that the Secretary of Labor, through VETS, will aid any person with respect to employment and reemployment rights to which such person is entitled under Chapter 43, Title 38, United States Code. See [38 U.S.C. § 4322\(a\)](#) and [20 C.F.R. § 1002.288](#). In carrying out any investigation under USERRA, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to and the right to: (a) interview persons with information relevant to the investigation and (b) copy and receive any documents, of any person or employer that the Secretary considers relevant to the investigation, for the purposes of examination. See [38 U.S.C. § 4326\(a\)](#) and [20 C.F.R. § 1002.289](#).

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<sup>216</sup> See [38 U.S.C. § 4321](#), [5 C.F.R. § 353.210](#), and [20 C.F.R. §§ 1002.4](#) and [1002.277](#).

*C.1.1 USERRA Relevant Citations Explained*

<b>Issue</b>	<b>5 C.F.R. Part 353 (§ 353.XXX)</b>	<b>20 C.F.R. Part 1002 (§ 1002.XXX)</b>	<b>38 U.S.C. Chapter 43 (§ 43XX)</b>
<i>Discrimination as Retaliation (for any action)</i>	<a href="#">353.202</a>	<a href="#">1002.19-1002.23</a> <sup>217</sup>	<a href="#">4311</a>
<i>Discrimination, Initial Hiring</i>	<a href="#">353.202</a>	<a href="#">1002.18-1002.23</a>	<a href="#">4311</a>
<i>Discrimination, Military Obligations</i>	<a href="#">353.202</a>	<a href="#">1002.18-1002.23</a>	<a href="#">4311</a>
<i>Pay Rate</i>	<a href="#">353.107, 353.207</a>	<a href="#">1002.193</a>	<a href="#">4313, 4316</a>
<i>Promotion</i>	<a href="#">353.106, 353.207</a>	<a href="#">1002.18, 1002.191-1002.199</a>	<a href="#">4311, 4313</a>
<i>Reasonable Accommodation, or Retraining, for Non-Qualified or Non-Disabled</i>	<a href="#">353.207</a>	<a href="#">1002.198</a>	<a href="#">4313</a>
<i>Reasonable Accommodation, or Retraining, for Service-Incurred or Aggravated Disability</i>	<a href="#">353.207</a>	<a href="#">1002.225-1002.226</a>	<a href="#">4313</a>
<i>Reemployment, Health Benefits</i>	<a href="#">353.106</a>	<a href="#">1002.163-1002.171</a>	<a href="#">4317</a>
<i>Reemployment, Layoff</i>	<a href="#">353.106, 353.107</a>	<a href="#">1002.194</a>	<a href="#">4313, 4316</a>
<i>Reemployment, Other Non-Seniority Benefits</i>	<a href="#">353.106</a>	<a href="#">1002.150-1002.152</a>	<a href="#">4316</a>
<i>Reemployment, Pension</i>	<a href="#">353.107</a>	<a href="#">1002.259-1002.267</a>	<a href="#">4318</a>
<i>Reemployment, Seniority</i>	<a href="#">353.107</a>	<a href="#">1002.210-1002.213</a>	<a href="#">4316</a>
<i>Reemployment, Service Credit</i>	<a href="#">353.107</a>	<a href="#">1002.210-1002.213</a>	<a href="#">4313, 4316</a>
<i>Reemployment, Status</i>	<a href="#">353.106, 353.107</a>	<a href="#">1002.193</a>	<a href="#">4313, 4316</a>
<i>Reemployment, Vacation</i>	<a href="#">353.107, 353.208</a>	<a href="#">1002.153</a>	<a href="#">4316</a>
<i>Reemployment, Length of Service</i>	<a href="#">353.203</a>	<a href="#">1002.32</a>	<a href="#">4312</a>

<sup>217</sup> The link will take you to [20 C.F.R. § 1002.19](#). Select “Next” on the eCFR site to advance forward one section (e.g., 1002.19 to 1002.20). You may do the same for all other times this table links to multiple eCFR sections.



<b>Issue</b>	<b>5 C.F.R. Part 353 (§ 353.XXX)</b>	<b>20 C.F.R. Part 1002 (§ 1002.XXX)</b>	<b>38 U.S.C. Chapter 43 (§ 43XX)</b>
<i>Reemployment, Notice to Employer and Application for Reemployment</i>	<a href="#">353.204-353.205</a>	<a href="#">1002.85-1002.88</a>	<a href="#">4312</a>
<i>Reemployment, OPM Placement Assistance</i>	<a href="#">353.110</a>	<a href="#">1002.139</a>	<a href="#">4314</a>
<i>Reemployment, Personnel Actions During Employee's Absence</i>	<a href="#">353.106</a>	<a href="#">1002.149-1002.153</a>	<a href="#">4313, 4316</a>
<i>Reemployment, Reemployment Position</i>	<a href="#">353.207</a>	<a href="#">1002.191-1002.199</a>	<a href="#">4313</a>
<i>Retaliation, Investigation Participation</i>	<a href="#">353.202</a>	<a href="#">1002.18-1002.23</a>	<a href="#">4311</a>
<i>Retaliation, Military Obligations</i>	<a href="#">353.202</a>	<a href="#">1002.18-1002.23</a>	<a href="#">4311</a>
<i>Special Protected Period Discharge</i>	<a href="#">353.209</a>	<a href="#">1002.247-1002.248</a>	<a href="#">4316</a>

## C.2 VEOA and VP Statutory and Regulatory Explainer

The Secretary's responsibilities under the VEOA are codified at [5 U.S.C. § 3330a](#), which the Secretary delegated to VETS. A person who alleges a violation of VP rights by an agency must be a preference eligible (as defined in [5 U.S.C. § 2108\(3\)](#)) or a veteran (as described in [5 U.S.C. § 3304\(f\)\(1\)](#)). Such a person may file a complaint with VETS ([5 U.S.C. § 3330a\(a\)\(1\)](#)). Under the VEOA, VETS is responsible for:

- Providing technical assistance to potential complainants upon request ([5 U.S.C. § 3330a\(a\)\(3\)](#));
- Investigating complaints, pursuant to which VETS can issue administrative subpoenas ([5 U.S.C. § 3330a\(b\)](#)); and
- Making reasonable efforts to resolve substantiated complaints ([5 U.S.C. § 3330a\(c\)](#)).

In addition, under the provisions of the [MOU between VETS and OSC](#), VETS refers all substantiated cases to OSC for review as potential [PPPs](#).

### C.2.1 VEOA and VP Background

On October 31, 1998, the [VEOA](#) was enacted into law.<sup>218</sup> VEOA made a number of amendments to the U.S. Code (U.S.C.) for the purpose of improving VP rights and the enforcement of those

<sup>218</sup> The VEOA was passed under Public Law 105-339, which we directly linked to in the text above.

rights. VEOA Section 3 amended 5 U.S.C. to create a new redress mechanism for preference eligibles who allege that their rights under any VP-related statute or regulation have been violated. This includes provisions for administrative redress through DOL and appeal to the MSPB ([5 U.S.C. § 3330a](#)), and judicial redress through the U.S. District Courts ([5 U.S.C. 3330b](#)). Veterans Benefits Improvement Act of 2004 § 804<sup>219</sup> amended the administrative recourse provisions to cover veterans described in [5 U.S.C. § 3304\(f\)\(1\)](#). These state “veterans who have been separated from the armed forces under honorable conditions after three years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under MP procedures.” These veterans who allege that an agency violated that section may file a complaint with the Secretary. We encourage you to review the codified redress provisions for your own professional development: 5 U.S.C. §§ [3330a](#), [3330b](#), and [3330c](#), as amended.

### C.2.2 VEOA and VP Relevant Citations Explained

Office of Personnel Management (OPM) 5 C.F.R. Part 211, Interim Rule, December 29, 2014, implemented the following statutory changes pertaining to VP:

- *Veterans Opportunity to Work (VOW) to Hire Heroes Act of 2011*: Federal agencies must treat active-duty service members as veterans, disabled veterans, and preference eligibles when they submit a certification that they’re expected to be honorably discharged or released within 120 days after the date they submit their federal job application ([5 U.S.C. § 2108a](#)).
- *The Hubbard Act*: Veterans discharged or released from a period of active duty from the Armed Forces by reason of sole survivorship, granted after August 29, 2008, are eligible for VP ([5 U.S.C. § 2108\(3\)\(H\)](#)).
- *Daily Compilation of Presidential Documents No. 201000716*: Any individual serving on active duty for more than 180 days, any of which occurred between September 11, 2001, and ending on August 31, 2010 (the last day of Operation Iraqi Freedom), is entitled to VP, regardless of whether they were deployed to Iraq ([5 C.F.R. § 211.102\(a\)\(6\)](#)).
- *OPM Reconsideration of Excepted Service Examinations*: Under [5 U.S.C. § 3313](#), “[t]he names of preference eligibles shall be entered ahead of others having the same rating,” and ahead of non-preference eligibles if numerical scores aren’t assigned. By operation of [5 U.S.C. § 3320](#), [§2108a](#) applies to appointments in the excepted service ([5 C.F.R. § 211.102\(d\)\(3\)](#), but see [5 C.F.R. § 302.101\(c\)](#) for positions exempted from this requirement).

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<sup>219</sup> [Public Law 108-454](#).

Issue	5 C.F.R.
Absence and Leave	<a href="#">630</a>
Appointments: Making Veterans' Recruitment Appointment (VRA)	<a href="#">307</a>
Appointments: Statutory Bar to Appoint Persons Who Fail to Register Under Selective Service Law	<a href="#">300.701</a>
Category-Based Examining	<a href="#">337.301</a>
Competitive Service: Temporary Appointments in the Competitive Service	<a href="#">316.401</a>
Competitive Service: U.S. Citizenship Requirement for Competitive Service	<a href="#">338.101</a>
Conditions that Must Be Met to Convert a 30 Percent or More Disabled Veteran Temporary Employee to a Permanent Position	<a href="#">315.707</a>
Conditions that Must Be Met to Convert a VRA to Career-Conditional	<a href="#">315.705</a>
Employment: Career and Career-Conditional Employment	<a href="#">315</a>
Employment: Excepted Service	<a href="#">213</a>
Employment: General	<a href="#">300</a>
Employment: In the Excepted Service	<a href="#">302</a>
Employment: Temporary and Term	<a href="#">316</a>
Medical Qualification Determinations	<a href="#">339</a>
Objections to Eligibles on a Competitive Certificate	<a href="#">332.406</a>
Pay Under the General Schedule	<a href="#">531</a>
Positions Reserved for Preference Eligibles	<a href="#">330.401</a>
Probationary Periods	<a href="#">315.801</a>
Probationary Periods for New Supervisors or Managers	<a href="#">315.901</a>
Recruitment, Selection, and Placement: General	<a href="#">330</a>
Recruitment, Selection, and Placement: Promotion and Internal Placement	<a href="#">335</a>
Recruitment, Selection, and Placement: Through Competitive Examination	<a href="#">332</a>
Reduction in Force (RIF)	<a href="#">351</a>
Reinstatement Eligibility	<a href="#">315.401</a>
Restoration to Duty from Uniformed Service or Compensable Injury	<a href="#">353</a>
Veterans Employment Opportunity Act (VEOA) Appointments	<a href="#">315.611</a>
Veterans' Preference	<a href="#">211</a>

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**Pro Tip:** Remember, someone can be VEOA eligible only (i.e., meets the eligibility criteria for VEOA and doesn't meet the eligibility criteria for VP). However, someone who meets the eligibility criteria for VP will also be VEOA eligible.

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## Appendix D | Additional Policy Documents

### D.1 CID Policy Document Library

Policy documents created by the NO CID can be found in the [Policy and Guidance SharePoint folder](#). This folder often contains User Guides (e.g., VCMS), Director's Memoranda, MOUs, and Flashes for the Field.

### D.2 Relevant Ethics Opinion

Refer to the relevant ethics opinion more information about the importance of VETS staff not volunteering with ESGR.

## Appendix E | The VETS Case Management System (VCMS)

The VETS Case Management System (VCMS) is a digital solution that allows for the submission of claims filed by claimants alleging violations of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the laws and regulations relating to veterans' preference (VP) in federal employment, including the Veterans Employment Opportunities Act (VEOA), and the processing and investigation of those claims. VCMS is part of an ongoing initiative to modernize the processes and procedures used to investigate claims filed with VETS. VCMS is a cloud-based application built on Appian and hosted on the AWS GovCloud environment. VCMS adheres to Federal Risk and Authorization Management Program (FedRAMP) requirements. VCMS is a Moderate information system within DOL and complies with the DOL [Cybersecurity Policy Portfolio \(CPP\)](#), the Department of Labor Manual Series (DLMS), the Federal Information Security Modernization Act (FISMA) of 2014; NIST SP 800-53 Rev. 5, OMB Circular A-130, the eGovernment act of 2002, and the Privacy Act of 1974.

### E.1 Access Controls

VCMS is a Moderate information system and uses account controls that meet or exceed a Moderate Impact Security Baseline as defined in the [CPP](#). Account roles are designed to provide specific access to system information and processes based on the business need, and geographic jurisdiction of the end users. For example, an employee of a Regional Office can be assigned an account that allows them to perform a specific business function in cases that are in their regional jurisdiction. Account roles are stackable, meaning users have the ability to request multiple roles for each user account to customize the level of access required and restrict access to data and functionality based on the exact business need and regional jurisdiction of the user. These rules allow VETS to comply with CPP requirements for Separation of Duties, and the Principle of Least Privilege.

Separation of Duties requirements, as defined by DOL, are derived from NIST Special Publication 800-53. NIST SP 800-53 addresses the potential for abuse of authorized privileges and seeks to reduce the risk of malevolent activity without collusion. The main directive under this guidance for VETS purposes is that VETS must divide mission functions and information system support functions among different individuals and/or roles. VETS has implemented separation of duties based on the supervisory structure of VETS, and the monitoring and accountability of staff to supervisors within that structure.

The Principle of Least Privilege is applied to the design of the system and account management to control access to PII. VETS only allows individual users access to information and processes required by a user within their position based on an allowable verified business need. VETS duty is to protect, to the maximum extent possible, the PII of members of the public who have provided their information to VETS to complete an investigation.

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- 17.1.1.2 Open and Closed Case Reviews: QAR (VEOA and VP)
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- 17.1.2.2 Responsibilities of ROs (VEOA and VP)
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Appendix A | Important Terminology

A.1 Acronym and Abbreviation List

*AARs:*

*ADVET:*

*AMP:*

*ASP:*

*ASVET:*

*CA:*

*CAC:*

*CAP:*

*CATRAT:*

*CBA:*

*C.F.R.:*

*CHCO:*

*CID:*

*CIP:*

*CP:*

*CPS:*

*CSI:*

*CSIRC:*

*CTS:*

*DD-214:*

*DD-215:*

*DEU:*

*DM:*

*DOD:*

*DODI:*

*DOJ:*

*DOL:*

*DRAVET:*

*DVET:*

*E-1010:*

*ESGR:*

*FOIA:*

*Form 1010:*

*Form 1063:*

*FY:*

*HR:*

*IRAC:*

*ISO:*

*JAGC:*

*LSS:*

*MOR:*

*MP:*

*MSP:*

*MSPB:*

*NGB-22:*

*NO:*

*NVTI:*

*OIG:*

*OIRA:*

*OMB:*

*OPA:*

*OPM:*

*OPM VET Guide:*

*OSC:*

*OTH:*

*PCS:*

*PDF:*

*PHS-1867:*

*PII:*

*PIV:*

*PPP:*

*PTO:*

*Q&A:*

*QA:*

*QAR:*

*RAVET:*

*RC:*

*RI:*

*RIF:*

*RO:*

*ROI:*

*RSOL:*

*SAA:*

*SCD:*

*SF-180:*

*SI:*

*SOL:*

*SSP:*

*TA:*

*TP:*

*U.S.C.:*

*USERRA:*

*VA:*

*VCDC:*

*VCMS:*

*VEOA:*

*VETS:*

*VIPERS*

*VNRT:*

*VP:*

*VRA:*

*VRRRA:*

*XP:*

## A.2 Glossary

*Action Plan:*

*Administrative Closure:*

*Agency (sometimes “we” or “our”):*

*Anonymity:*

*Armed Forces:*

*Assignment:*

*Attorney General (AG):*

*Authorized Carrier:*

*Benefit (also Benefit of Employment or Rights and Benefits):*



  
*Case:*

*Case Quality Measures (CQM):*

*Case Resolution Conference:*

*Category Rating (CATRAT):*

*Chronology (also chronology or Chronology of Facts):*

*Claim:*

*Claimant:*

*Claim Resolved:*

*Closure:*

*Comparator(s):*

*Comparator Evidence:*

*Completed Cases (also Complete Case, Completed Investigations, and Complete Investigation):*

*Compliance Assistance (CA, includes technical assistance (TA)):*

*Confidentiality:*

*Corrective Action:*

*Credible Information:*

  
*Delayed Entry Program (DEP; also Delayed Enlistment Program or Future Soldiers Program):*

*Department of Justice, United States (DOJ):*

*Designated Reviewer (includes Other Reviewer Designated):*

*Determination:*

*Discrimination:*

*Disparate:*

*Form 1010 (also Electronic 1010, E-1010, or 1010):*

*e.g.:*

*Eligible, Eligibility:*

*Employee:*

*Any person employed by an employer. The term also includes any person who is a citizen, or national or permanent resident alien of the United States who is employed in a workplace in a foreign country by an employer that's an entity incorporated or organized in the United States, or that's controlled by an entity organized in the United States. "Employee" includes the former employee of an employer.*

*Employer:*

*Employer Support of the Guard and Reserve (ESGR):*

*Employer Support of the Guard and Reserve (ESGR) Ombudsperson:*

*Escalator Position:*

[REDACTED]

*Extension:*

*Federal Agency (also "the hiring agency" or "agency"):*

*Form 1010 (also Electronic 1010, E-1010, or 1010):*

*Freedom of Information Act (FOIA):*

*Health Plan:*

*i.e.: Id est (i.e.) is a Latin phrase meaning "that is" or "in other words." I.e. is meant to provide clarification. For more information on how to use i.e. within VETS documents, refer to the VETS Style Guide II.B.19 ("e.g. vs. i.e."). Note that the link is to an internal VETS site and may not be accessible by all viewers of this document.*

[REDACTED]

*Independent Contractor:*

*Initial Contact:*

*Intelligence Community Agencies:*

*Investigation:*

*Issue:*

*Liquidated Damages:*

*Lost Wages:*

*Memorandum of Referral (MOR):*

*Merit System Principles (MSP):*

*Merit Systems Protection Board (MSPB):*

*National Disaster Medical System (NDMS):*

*Negotiation:*

*New and Material Evidence:*

*Non-Preference Eligible (opposite of Preference Eligible):*  
*Not Eligible:*  
*Not Substantiated:*  
*Notice:*  
*Office of Personnel Management, United States (OPM):*  
*Office of Special Counsel, United States (OSC):*  
*Office of the Solicitor, Department of Labor (DOL) (includes National Solicitor's Office (NSOL) and Regional Solicitor's Office (RSOL):*  
*Pay, Like:*  
*Personally Identifiable Information (PII):*  
*Potential Violation:*  
*Preclosing Report of Investigation (ROI):*  
*Preference Eligible (opposite of Non-Preference Eligible):*  
*Preliminary Report of Investigation (ROI):*  
*Prenotification Report of Investigation (ROI):*  
*Preponderance of Evidence Standard:*  
*Prima Facie Case:*  
*Privacy Act (PA):*  
*Prohibited Personnel Practices (PPP):*  
*Protected Class:*  
*Protest:*  
*Qualified (with respect to an employment position):*  
*Quality Assurance Review (QAR):*  
*Reasonable Certainty Standard:*  
*Reasonable Efforts (in the case of actions required of an employer):*  
*Reduction in Force (RIF):*  
*Reemployment:*  
*Referral:*  
*Regional Administrator for Veterans' Employment and Training (RAVET; also, RA):*  
*Relevant Information:*  
*Reopen:*  
*Report of Investigation (ROI):*  
*Resolution:*

*Retaliation (also Reprisal):*  
*Reverse Chronological Order:*  
*Review Process, Report of Investigation (ROI):*  
*Secretary of Labor (also the Secretary):*  
*Seniority:*  
*Service-Connected Disability:*  
*SharePoint:*  
*Source Documents:*  
*Standard Occupational Classification System (SOCS) Code and Occupation:*  
*State:*  
*Status, Like:*  
*Subpoena:*  
*Subpoena Ad Testificandum:*  
*Subpoena Duces Tecum:*  
*Substantiate:*  
*Substantiated, Not Resolved:*  
*Successor in Interest (as an Employer under USERRA):*  
*Technical Assistance (TA):*  
*Type of Potential Violation:*  
*Type of Violation:*  
*Undue Hardship (in the case of actions taken by an Employer):*  
*Uniformed Service (also “service” and “service in the uniformed services”):*  
*Uniformed Services (as in “the Uniformed Services” and service in the Uniformed Services):*  
*Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA):*  
*USERRA Quality Metric (also see Case Quality Measure, or CQM):*  
*Veteran:*  
*Veterans’ Employment and Training Service (VETS):*  
*VEOA (Veterans Employment Opportunities Act of 1998):*  
*VEOA Preference:*  
*Veterans Preference (also VP, Vet Pref, and Vet Preference):*  
*Veterans’ Reemployment Rights Act (VRRRA):*  
*VETS Case Management System (VCMS) (also see Appendix E):*

*VETS Compliance Data Center (VCDC):*

*VETS Investigator:*

*Violation:*

*Waiver:*

*Waiver, Temporary:*

*Witness(es):*

Appendix B | USERRA, VEOA, and VP Tools Quick Reference Guide

B.1 General Use Tools

B.2 USERRA Statutory and Regulatory Tools

B.3 VEOA and VP Statutory and Regulatory Tools

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