

**U.S. DEPARTMENT OF LABOR**

**VETERANS' EMPLOYMENT & TRAINING  
SERVICE**



**VETS MANUAL SERIES**

**VETERANS' PREFERENCE  
OPERATIONS MANUAL**

**Last Update: 11/ 2015**

# CHANGE SUMMARY

- Entire document - The VP Operations Manual will be replaced in VMS for field access.
- Entire document - Updated individual page numbering to support changes throughout.
- Table of Contents - Updated page references within chapters and sections to reflect updated page numbering.
- Chapter 1, Section 1.4, Preference Eligible definition - Expanded explanation of “lifetime entitlement” of preference eligibility, summarizes agency application of preference, and briefly compares preference and access under the Veterans Employment Opportunities Act of 1998 (VEOA).
- Chapter 2, Section 2.16 - Added an explanation of the agency’s electronic claim submission process (E-1010).
- Chapter 3, Section 3.1 - Added procedures to centralize VETS’ receipt of all new VP claims not filed by the claimant via the online Electronic 1010 (E-1010) system. Exhibit 32 will be replaced in VMS with current E-1010 (<http://www.dol.gov/elaws/vets/vetpref/vets-1010.pdf>) for field access.
- Chapter 4, Section 4.5 - Added a summary of the Office of Personnel Management (OPM) Interim Rule, December 29, 2014, to implement statutory changes pertaining to veterans’ preference.
- Chapter 6, Section 6.17 - Added Merit Systems Protection Board (MSPB) decisions to be considered when analyzing claims under the VEOA.
- Chapter 9, Section 9.2 - Added information regarding Frequently Asked Questions on MSPB’s website, as well as an electronic link for filing an appeal to MSPB.
- Chapter 9, Section 9.2 - Added guidance regarding prematurely filed claims. Exhibits 41 and 42 (closing letter to claimant and employer, respectively) will be added to VMS for field access.
- Chapter 9, Section 9.3 - Added local case files retention information, as well as information regarding disposition of retained case files.
- Chapter 14, Section 14.5 - Exhibit 25 will be replaced in VMS with updated/revised QAR for field access.
- Chapter 14, Section 14.6, Review Standards
  - Case Opening - Added claimant contact to Case Opening review standards.
  - Alleged Violation/Complaint, Issues and Remedies, Determining Eligibility - Added timely filing to Determining Eligibility review standards.
  - Merit Systems Protection Board (MSPB) Appeal - Added Open Case Review to MSPB Appeal standards.
  - Case Closure - Added managerial review of claimant closing letter prior to release to Case Closure standards.

- Supersedes VMS Volume XII, VP Operations Manual dated 04/22/2010.

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Official

TERESA W GERTON  
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\_\_\_\_\_ (date of signature)

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# CHAPTER 1: INTRODUCTION

## 1.1 ENACTMENT OF THE VETERANS EMPLOYMENT OPPORTUNITIES ACT OF 1998 (VEOA)

On October 31, 1998, the VEOA ([Public Law 105-339](#)) was enacted into law. The Act made a number of amendments to the U.S. Code for the purpose of improving veterans' preference rights and the enforcement of those rights. Section 3 of the VEOA amended Title 5 of the U.S. Code to create a new redress mechanism for preference eligibles who allege that their rights under any statute or regulation relating to veterans' preference have been violated. This new mechanism includes provisions for administrative redress through the Department of Labor and appeal to the Merit Systems Protection Board (MSPB) ([5 U.S.C. 3330a](#)), and judicial redress through the U.S. district courts ([5 U.S.C. 3330b](#)). Section 804 of the Veterans Benefits Improvement Act of 2004 ([Public Law 108-454](#)) amended the administrative recourse provisions to cover veterans described in [5 U.S.C. 3304\(f\)\(1\)](#) ("veterans who have been separated from the armed forces under honorable conditions after 3 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 merit promotion procedures") who allege that an agency has violated that section to file a complaint with the Secretary of Labor. The codified redress provisions, [5 U.S.C. 3330a](#), [3330b](#), and [3330c](#), as amended, are available on the Internet by clicking on the links above.

## 1.2 PURPOSE OF MANUAL

This manual is intended to provide instruction to Veterans' Employment and Training Service (VETS) staff on investigative procedures and agency policies relating to complaints brought by preference eligibles, as defined in [5 U.S.C. 2108\(3\)](#), that allege their federal veterans' preference rights have been violated, and complaints brought by veterans, as described in [5 U.S.C. 3304\(f\)\(1\)](#), who allege that an agency has violated that section. 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 (DOL) or the United States. Statements which reflect current legal precedents do not necessarily indicate acquiescence with those precedents. Further, the manual is not used as a device for establishing interpretative policy. The Federal Register and the Code of Federal Regulations remain the official resources for regulatory information published by the DOL.

### 1.3 VETS RESPONSIBILITIES UNDER THE VEOA

The Secretary of Labor's responsibilities under the VEOA are codified at [5 U.S.C. 3330a](#) and those responsibilities have been delegated to the Veterans' Employment and Training Service (VETS) by the Secretary. A preference eligible, as defined in [5 U.S.C. 2108\(3\)](#), who alleges a violation of veterans' preference rights by an agency, or a veteran, as described in [5 U.S.C. 3304\(f\)\(1\)](#), who alleges that an agency has violated that section, 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 in conducting investigations [[5 U.S.C. 3330a\(b\)](#)]; and
- making reasonable efforts to resolve meritorious complaints [[5 U.S.C. 3330a\(c\)](#)].

In addition, under the provisions of the Memorandum of Understanding (MOU) between VETS and the Office of Special Counsel (OSC) ([Exhibit 37](#)), VETS refers all meritorious cases to OSC for review as potential Prohibited Personnel Practices (PPP).

### 1.4 KEY DEFINITIONS

**Veterans' 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 veterans' preference. Veterans' preference is not applicable to the Senior Executive Service (SES).

**Preference Eligible** – A preference eligible is an individual who is entitled to veterans' preference as defined in [5 U.S.C. 2108\(3\)](#). By statute, veterans' preference is a "lifetime entitlement." A retired Federal civil service employee who is otherwise eligible for veterans' preference continues to be eligible for the entitlement when applying for a Federal civil service position under an open competitive announcement.

## 👉 NOTE 👈

The Office of Personnel Management (OPM) requires agencies to establish their own policies on how they will handle applications, and to post these procedures (usually done within the vacancy announcement itself). This means that an agency should specify how it will handle a candidate with civil service status who submits a single application for a position open to "all sources." The individual could be considered under either agency Merit Promotion procedures or through an open competitive examination, or both. If the individual is considered under open competitive procedures, veterans' preference applies. Thus, it is extremely important that status candidates carefully read vacancy announcements and follow the instructions therein - particularly if it requires them to submit more than one application to be considered under multiple sources.

Veterans' preference is often confused with the access entitlement authorized in the Veterans' Employment Opportunities Act (VEOA) of 1998. OPM has provided guidance that the VEOA was intended to allow veterans who would otherwise be excluded from consideration because an agency was recruiting only from among "status" candidates, to apply for positions under agency Merit Promotion procedures as a "status" candidate.

Status candidates are those who are current federal civil service employees. Should the announcement state that the agency is recruiting from agency employees only, the VEOA access provision would not apply and VEOA eligible would not be considered.

**Non-Preference Eligible** - An individual who may have served on active duty or in the Reserve Forces but does not meet the eligibility criteria for veterans' preference.

**Federal Agency** - Any agency under the Executive Branch and the United States Postal Service.

**Veterans' Preference Complaint** - A formal, written allegation by a preference eligible or veteran that such individual's statutory or regulatory veterans' preference rights or right to compete for vacant positions under [5 U.S.C. 3304\(f\)\(1\)](#) were violated by a Federal agency.

**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 merits of the complaint.

**VETS Investigator** – Any VETS staff member authorized to provide technical assistance and investigate veterans’ preference complaints filed pursuant to [5 U.S.C. 3330a](#).

**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 his/her present position, but does not necessarily result in termination or downgrade.

**Retention Preference** – The relative standing of employees competing in a RIF. Veterans’ preference, tenure group, length of service, and performance appraisal determines their standing.

**Veterans’ Preference Information Management System (VPIMS)** – The computerized website used to enter case information and track case progress, which can be found at the following website:  
<https://portal.vets.dol.gov/Login.aspx>.

# CHAPTER 2: GENERAL GUIDELINES

## 2.1 SECRETARY OF LABOR'S RESPONSIBILITY UNDER THE VEOA

The Secretary of Labor, through the Veterans' Employment and Training Service, will provide technical assistance to a potential complainant, will investigate complaints alleging a violation of a veterans' preference or [5 U.S.C. 3304\(f\)\(1\)](#) and attempt to resolve meritorious complaints by making reasonable efforts to ensure that the agency specified in the complaint complies with the applicable provisions of veterans' preference statutes and regulations.

## 2.2 LEGAL AUTHORITY

The legal authority and identification of the responsibilities of the Secretary of Labor are found in Section 3 of the [VEOA](#) as codified at [5 U.S.C. 3330a](#).

## 2.3 VETERANS' PREFERENCE CASE

A veterans' preference case arises when a preference eligible or veteran alleges a Federal agency violated his/her rights under any Federal statute or regulation relating to veterans' preference or when a qualified veteran, as described in [5 U.S.C. 3304\(f\)\(1\)](#), is prohibited from competing for positions when an agency seeks applicants from outside its own workforce. All cases must be opened, investigated, processed, and closed in accordance with the instructions contained in this manual and/or subsequent memoranda and directives promulgated by VETS.

## 2.4 NEED FOR INFORMAL RESOLUTION

VETS has no legal authority to direct a Federal agency to take action to grant a complainant's entitlements. If the agency refuses to accord the complainant his/her veterans' preference entitlement(s), the only alternative is to inform the complainant of his/her MSPB appeal rights. VETS is limited to seeking voluntary compliance with applicable veterans' preference statutory and regulatory requirements; however, investigators should make every effort to ensure that statutory entitlements are accorded.

## 2.5 RECORD KEEPING FOR CASES

**File Maintenance.** VETS' Investigators must keep careful written records of all contacts and attempted contacts with all parties during all stages of complaint process. Required questionnaires and other official forms must be completely filled out. All letters and other documents gathered during the complaint process must be filed and safeguarded. The complainant's original documents should be copied and filed in the case file and the originals returned to the complainant. The following legal considerations apply regarding file

preparation and maintenance:

- Date stamp all incoming correspondence as well as all other documents related to the case. Preferably, the date stamp should appear on the lower right-hand corner or elsewhere on the front. If a date stamp cannot be placed on the front, stamp on the back of the document. In addition, all outgoing documents and Report of Contact/ Attempted Contact forms must be dated. As email correspondence normally includes a time and date of transmittal and/or receipt, it need not be date stamped unless the time/date information is missing from the document.
- Do not write on or highlight original documents for the file and do not use correction fluid to eliminate anything on case documents. In case of a mistake on VETS Form 1063 ([Exhibit 33](#)), cross out the mistake and initial the correction. Analysis of lengthy technical documents should be recorded on a VETS Form 1063 and placed in the file on top of the analyzed document.
- When completing VETS Form 1063, stick to the facts and do not editorialize. Typing is preferable. A written document is acceptable but the writing must be legible. Separate VETS Form 1063s should be used to document each contact/attempted contact unless made on the same day with the same individual. In that case, one VETS Form 1063 can be used to document multiple contacts/attempted contacts.
- Do not discard documents or information from the case file that is submitted by the complainant or other outside parties.
- Obtain a signed, first-person witness statement from all witnesses, when possible.
- If the agency refuses to put their position in writing following a telephone conversation, send a confirming letter to the agency detailing the discussion and provide the agency with an opportunity to respond.

**File Format.** Case file documents should be filed on the right side of the case file in reversed chronological order (latest dated document on top). The written complaint document ([VETS Form 1010](#), letter, fax, email, etc.) should be the first document filed on the bottom, right side of the file folder, even if other documents were received prior to that document(s), with supporting attachments filed on top of the complaint document. The following documents should be filed on the left side of the folder:

- Open/Closed Case Quality Assurance Review Form;
- memos to file;

- investigative notes;
- VETS' internal memos and informal materials not meant to be released as part of the official case file; and
- all communications between VETS and the Office of the Solicitor.

## 2.6 INVESTIGATIONS

Because VETS' determination regarding the merit of a complaint must be "based upon a preponderance of the evidence" [[5 U.S.C. 3330a\(c\)\(1\)\(A\)](#)] and because veterans' preference cases may be litigated by the complainant before the MSPB or in Federal court, VETS' investigators must become familiar with rules of evidence and techniques of investigation described in [Chapter 6](#) of this manual.

## 2.7 USE OF LETTERS

Letters should be used in the following situations:

Upon opening a case, an opening letter must be sent to the complainant detailing the investigation and complaint process and advising the complainant of his/her rights to submit the allegations to the MSPB ([Exhibit 1](#)). At a minimum, the opening letter must include the following:

- the date the complaint was filed.
- that the preference eligible or veteran may only appeal to the MSPB after the 60th calendar day from the date the complaint was filed; or within 15 calendar days after being notified by VETS, in writing, that the complaint cannot be resolved or is non-meritorious;
- that before an appeal can be filed with the MSPB, where VETS has not notified the complainant of its findings within 60 days, the preference eligible or veteran must provide written notification to VETS of his/her intention to file such an appeal; and
- that the preference eligible or veteran cannot pursue redress in any other forum while the complaint is with VETS.

An opening letter to the agency against which the complaint has been filed should be sent within 5 calendar days of opening a case ([Exhibit 17](#)). At a minimum, the opening letter should contain the items listed in [Chapter 5](#).

A Certified Mail-Return Receipt or equivalent (trackable delivery service) follow-up letter must be sent when requested response deadlines are not met.

A closing letter must be sent to the complainant advising him/her of the results

of the completed investigation. This letter will include the complainant's MSPB appeal rights information and must accompany any appeal to the MSPB filed by the complainant.

A closing letter must also be sent to the Federal agency, unless the agency was never contacted about the case (e.g., investigation prior to contacting the agency revealed that the complainant was not eligible to receive veterans' preference nor was a veteran, as described in [5 U.S.C. 3304\(f\)\(1\)](#), or the complainant withdraws his/her complaint immediately after initial contact with VETS).

## **2.8 CERTIFIED MAIL-RETURN RECEIPT OR EQUIVALENT (Trackable Delivery Service)**

The following correspondence will be sent Certified Mail-Return Receipt or equivalent (trackable delivery service):

- all second letters attempting to contact the preference eligible or veteran;
- closing letter to the preference eligible or veteran notifying him/her that the complaint cannot be resolved or lacks merit;
- any letter the investigator believes warrants special attention;
- all letters containing settlement checks; and
- all letters to the Federal agency confirming oral representations.

## **2.9 FREEDOM OF INFORMATION ACT (FOIA) AND PRIVACY ACT REQUESTS**

Whenever a written request for release of information is received under either the Freedom of Information Act or the Privacy Act, refer it to the Regional Office. The Regional Administrator (RAVET) is the Region's Disclosure Officer and the only person authorized to release information pursuant to such requests. The investigator or recipient of a FOIA or Privacy Act Request must not disclose any document(s) or comment about file content(s) to the person making the FOIA or the Privacy Act request, but instead must forward such requests to the RAVET. When requesting medical, military, employment, or other records maintained by a Federal agency and needed for complaint processing, investigators should have the complainant sign a Federal Privacy Act Release Form ([Exhibit 27](#)). A Medical Information Release Form ([Exhibit 28](#)) should be signed by the complainant when requesting records from physicians or hospitals.

## **2.10 ACCEPTANCE OF ELECTRONIC TAPES**

VETS' investigators may receive audio or video tape recordings as evidence. *The*

*RAVET should be contacted for further advice whenever an audio or video recording is received.* The RAVET should in turn contact the Regional Solicitor's office for further advice. The RAVET must determine whether a pre-existing audio or video tape may be used as evidence. If so, the tape should be placed with the case file in a secure location. The VETS investigator should document on a VETS Form 1063, the time, place, and circumstances of the taped conversation, the parties thereto and the identity of the person who provided the tape. No transcription is necessary if the investigator can reference where in the recording they are making reference(s) to.

## **2.11 TAPING BY INVESTIGATORS**

Investigators should not record conferences using either audio or video recording devices, and should discourage any of the participants from recording the conference, even if the other participants agree to being recorded. If a party to a conference insists on recording a conference, the VETS investigator should pre-arrange to receive a copy of the unedited recording as well as any transcripts prepared from the recording.

## **2.12 FUNDING FOR COMPLAINANT'S TRAVEL**

VETS will not pay travel or other expenses for a complainant.

## **2.13 COMMUNICATIONS CONCERNING CASES**

VETS investigators will not discuss investigations with individuals or representatives of organizations not involved in the case.

When discussing an investigation with the parties to the case, avoid making statements that could cause the parties to identify witnesses who are otherwise protected from disclosure.

Responses to inquiries from Members of Congress should provide, in general terms, the status of the investigation; specific details should not be provided. Investigators can prepare responses to Congressional inquiries but all such correspondence must be signed by the RAVET. The National Office must be notified immediately of all Congressional inquiries and will receive copies of all responses in a timely manner.

Do not discuss the merits of the case with the complainant, witnesses, or any staff member of the agency under investigation, except to obtain responses to clarify investigative questions, until all of the facts are gathered, the investigation is complete, and a merit determination has been made.

If contacted by the media, do not discuss any case, even those before the MSPB or in court. Explain it is VETS' policy not to disclose any information about the existence of any case. If necessary, refer the media to the Office of Public Affairs

(OPA). VETS has no authority to prevent either the complainant or the agency from media contact.

## **2.14 FAX DOCUMENTS**

Because the authenticity of a fax document may be questionable, any document or communication sent or received via fax must be followed with the original.

If the investigator sends a document via fax, the correspondence should be marked "Sent Via Fax" and the original should be marked "Sent Via U.S. Mail." The investigator must ensure that the fax receipt is attached to the document and included in the case file.

If the investigator receives a fax, that document should be placed in the case file along with the original when it is received. Both the fax and the original document(s) must be retained in the case file.

## **2.15 EMAIL**

When emails are incorporated into the investigation process, they are to be treated as the equivalent of letters sent on official letterhead, and must therefore be written in a professional and courteous tone. All official email correspondence will include a confidentiality note which states (in general):

**"This electronic transmission contains information that is confidential or legally privileged. The information is intended only for the use of the individual(s) or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of such information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone, or return email."**

## **2.16 ELECTRONIC SUBMISSION OF VETERANS' PREFERENCE CLAIMS**

In support of E-Government initiatives, VETS has developed an Internet-based system which allow VP claimants to initiate and officially submit a claim while logged into a VETS webpage, by completing and transmitting to VETS via the internet an electronic version of Form (E-1010).

A. The E-1010 data submitted online by the claimant will first go into an administrative database, the "VETS 1010 Form On-Line Submission System." The claimant and the DVET for the corresponding State (Claimant State) will immediately receive notification emails from "Electronic 1010 Submission" documenting receipt of the claim. Other VETS staffs who need to track all claims will also receive a notification email for each E-1010 claim. The responsible DVET (or DVET's designated reviewer) will log into the VETS 1010 Form On-Line

Submission system at, <https://portal.vets.dol.gov/Login.aspx>, within three days of E1010 receipt to review the claim.

B. The DVET (or DVET's designated reviewer) will review the E-1010 information for that claim and contact the claimant for any clarifications or additions, assign a VETS Investigator, and open a new case.

This online case opening action in the E-1010 system will connect with the IMS and will automatically transfer the basic claim data required to open a case from the VETS 1010 Form On-line Submission System into the VPIMS; and, will assign the official VP Case Number to that claim. The system will also automatically generate Case Opening and Investigator Assignment emails to the claimant, Investigator, and VETS staff tracking the claim. Thereafter the case will be processed by the Investigator as usual, in accordance with all established procedures (including all required IMS entries). For all cases opened using an E-1010 the Investigator shall print out, and put into the official hard copy case file record:

- Copies of emails received from "Electronic 1010 Submission" for that claim; and
- Copy of the E-1010 attached to one of those emails (which will be produced by the E-1010 system in Adobe Acrobat (PDF) format).

This E-1010 copy will remain in the case file record in lieu of a signed Form 1010. In every instance where established VP procedures discuss a signed Form 1010, the E-1010 shall be considered as equivalent to a signed Form 1010. When a case is opened using an E-1010, no hard copy signed 1010 is required.

C. After an E-1010 claim has been opened as a new case in the VPIMS, the Investigator shall enter the IMS "Update Case Data" function to change data as necessary to assure that the IMS data is both consistent with the E-1010 data and accurately reflects all other available information about the case, and/or add data as applicable, such as:

- Any E-1010 entries not automatically carried over into the IMS:
- Complete mail and e-mail addresses; and
- Other data not on the E-1010, etc.

D. Upon receipt of an E-1010 claim, the E-1010 system will automatically review:

- Claimant's Social Security Number (if reported on the E-1010); and,
- Date of claim receipt.

E. Any claim originally submitted by the claimant as VP which, in the VETS' DVET's or designated Reviewer's judgment, needs to be reclassified before opening a case (i.e., to change the claim from VP to USERRA or vice versa) should be changed in the E-1010 system during the review of that claim. If a VP claim is

reclassified to USERRA in this manner, the automatic screening actions described in paragraph C. above will then occur immediately in the E-1010 system.

F. All VETS staff responsible for USERRA and VP activities should review this manual and the E-1010 User Manual, and be prepared to assist claimants in using the E-1010 system. The E-1010 User Manual is a PowerPoint presentation. Limited excerpts from the User Manual are also available by clicking on the "Help" button while viewing E-1010 screens. VETS staff can also download the complete User Manual online by using links within the E-1010 "Help" buttons.

# CHAPTER 3: COMPLAINT PROCESSING

## 3.1 GENERAL PROCESS

The steps of complaint processing follow a progressive sequence of action and time requirements.

**Complaint Intake.** Complaints may come in various forms and should be processed as follows:

A. Upon receipt of a written complaint that includes a summary of the alleged preference rights violation(s) and specifies the agency against which the complaint is being filed, the ARLC will input these claims into the E-1010 system on behalf of the claimant on the day received by the ARLC, or on the next business day if received after business hours.

### NOTE

**A case must be opened immediately upon receipt of a written complaint. Opening should not be delayed until the receipt of a VETS Form 1010 or until you determine the complainant is a preference eligible.**

The complaint must be in writing, preferably on a USERRA/VP Form 1010 ([VETS Form 1010](#)), which can also be submitted electronically. If the investigator receives a fax, e-mail, or written complaint in the mail, then, on the day received, or on the next business day if originally received after business hours, that claim and any accompanying documents must be either:

- Faxed to the ARLC at (404) 562-2313; or
- Scanned and e-mailed to the ARLC group email address “zzVETS-ATL-RLC” in the ECN global listing, which is: [VETS-ATL-RLC@dol.gov](mailto:VETS-ATL-RLC@dol.gov).

A case must be opened if it contains the requisite summary of the allegations and identifies the agency against which the complaint is being filed. A signature is not required to open, investigate, and attempt to resolve VP cases. VETS’ policy does require the VETS investigator to send a VETS Form 1010 to the complainant and to solicit the complainant’s cooperation in completing, signing, dating, and returning the document. However, VETS Form 1010 submission cannot be required of the complainant. The investigator will acknowledge receipt of the complaint by letter to the complainant ([Exhibit 1](#)). If it is anticipated that release forms may be required from the complainant for either the Federal Privacy Act information or

the release of medical information, include those release forms when sending the VETS Form 1010.

B. Once the case file is opened, the first step is to determine whether the complaint has been filed within 60 **calendar** days from the time of the alleged violation, as required by [5 U.S.C. 3330a\(a\)\(2\)\(A\)](#).

If the complaint is not timely filed, the complainant should be notified in writing ([Exhibit 3](#)) of VETS' determination and intent to close the case pursuant to [5 U.S.C. 3330a\(a\)\(2\)\(A\)](#). The complainant will be given 10 calendar days to contact VETS and provide information explaining why his complaint was late. If the complainant does not respond to VETS' letter within the 10-day period, the complainant will be notified in writing ([Exhibit 5](#)) via Certified Mail-Return Receipt or equivalent that the complaint is being closed as untimely. The closing letter must advise the complainant of his/her MSPB appeal rights.

MSPB case law in this area indicates that a complainant cannot simply wait until he/she has knowledge of a potential veterans' preference violation to file his/her claim. In other words, the complainant must be diligent in filing the complaint from the time he/she becomes aware of his/her non-selection.

If the complainant provides information explaining the late filing, the investigator should carefully review the information to determine whether the late filing should be excused. In determining whether to waive the filing deadline, VETS' should consider whether: 1) the complainant was not timely notified by the agency that he/she was not selected for the position; 2) the complainant was away on military duty in a situation that prevented knowledge that his/her preference rights may have been violated; 3) the complainant was diligent in filing the complaint once he/she was notified or became aware of the alleged action; 4) the complainant suffered from a mental incapacity that may have prevented him/her from filing the complaint on time; 5) VETS or the agency provided the complainant with misleading information or where VETS mishandled the complaint; 6) the complaint was timely filed, but in the wrong forum; or 7) the complainant has in some exceptional way been prevented from exercising his/her rights. It is important to note that **waivers of the filing deadline should only be granted sparingly**.

If VETS determines that the statutory deadline to file the complaint should not be waived, the complainant will receive a closing letter via Certified Mail-Return Receipt or equivalent ([Exhibit 6](#)). The closing letter must advise the complainant of his/her MSPB appeal rights. If VETS determines that the statutory deadline to file the VEOA complaint should be waived, the complainant will be notified in writing via Certified Mail-Return Receipt or equivalent (trackable delivery service) ([Exhibit 4](#)).

C. If the complaint is timely filed or if a late filing is waived by VETS, the next step is to determine whether the complainant is a preference eligible as defined

in [5U.S.C. 2108\(3\)](#) or a veteran described in [5 U.S.C. 3304\(f\)\(1\)](#). If the complainant is not a preference eligible or a qualified veteran, or the complainant fails to provide necessary documentation of his/her status as a preference eligible or veteran, close the file, and notify the complainant in writing ([Exhibit 16](#)) via Certified Mail–Return Receipt or equivalent that the complaint is being closed as a “Not Eligible.” This closing letter must advise the complainant of his/her MSPB appeal rights.

D. Next, identify where the alleged violation occurred. Unlike USERRA complaints, the VETS office responsible for investigating the complaint is determined by the complainant’s location and not the hiring authority’s location.

 **NOTE** 

**If the case must be transferred, contact your immediate supervisor and have the transfer coordinated through the Regional Office via your Director for Veterans’ Employment & Training (DVET)**

**Initial Contact with Federal Agency.** The objectives of this contact are to inform the agency of the complaint, to explain VETS’ role in the process, and to solicit the agency’s position regarding the complainant’s allegations. (See [Chapter 5](#) for more information about initial contact with the agency.)

**Investigation.** Conduct an investigation to obtain the facts of the complaint and gather the documentation, witness statements, etc., necessary to make a legally defensible determination of the merits of the case.

**Resolution.** If the case is found to be meritorious, a resolution conference may be the most effective method to achieve resolution. At the investigator’s discretion, both the agency and the complainant may participate in the conference. If the resolution conference is unsuccessful, the complainant should be notified of the results in writing (Certified Mail-Return Receipt or equivalent) and advised of their MSPB appeal rights. All cases determined to be meritorious must be referred to the Office of Special Counsel for review as a potential prohibited personnel practice (PPP) using the procedures in [Chapter 10](#) of this manual.

**Merit Systems Protection Board.** Complainants can appeal their unresolved cases to the MSPB after 60 calendar days from filing a complaint with VETS or no later than 15 calendar days after the date on which the complainant receives written notification from VETS as stated earlier in this chapter. If the complainant decides to file an appeal with the MSPB after 60 days from filing a complaint with VETS, and has not received a notification from VETS, s/he must

notify VETS in writing of that selection.

### 3.2 PROCESSING STANDARDS

The VETS investigator must contact the Federal agency within 5 calendar days of receiving a written complaint.

If appropriate, respond to all incoming documents in the case within 5 calendar days of the date of receipt.

If a case is not resolved within 45 calendar days, the investigator should request advice and/or assistance through his/her immediate supervisor. If assignment of a mentor is necessary, it will be documented, in writing, to the RAVET and noted in the case file.

Make every attempt to complete the investigation within 60 calendar days of case opening; however, a quality investigation is more important than a timely one.

The complainant may file an appeal with the MSPB any time **after** 60 calendar days from the date the complaint was filed with VETS, and the complainant has not received notification from VETS, by notifying VETS in writing of his/her intention to do so. However, the complainant is not required to appeal to the MSPB after 60 days and can opt to have the investigator continue to process the complaint until a determination is made or resolution achieved.

 **NOTE** 

**The complainant cannot appeal the case to the MSPB before the 61st day, unless s/he has a written determination from VETS.**

If a complainant has filed a complaint with VETS and then wishes to pursue a resolution on his/her own (e.g., through a union), the investigator must notify the complainant that s/he must make a written request asking VETS to close the case. The investigator must also inform the complainant that if the complainant is unable to resolve the dispute through other means and wishes to preserve appeal rights with the MSPB, the complainant can re-file the complaint with VETS, only as long as it is still within 60 calendar days from the date of the alleged violation. After receipt of the complainant's request, the investigator must send the complainant a letter acknowledging receipt of the request and informing the complainant that the case has been closed. The letter informs the complainant of the time limitation to re-file the complaint in order to maintain appeal rights with the MSPB ([Exhibit 8](#)).

# CHAPTER 4: COMPLAINT INTAKE & CASE OPENING

## 4.1 REQUEST FOR ASSISTANCE

A potential complainant may request VETS assistance by mail, telephone, fax, electronically, or by personal visit to a VETS office.

**Telephone Requests or Personal Visits.** If the request for assistance comes by telephone, fax, electronically, or by personal visit:

- Determine if the individual is a preference eligible as defined in [5 U.S.C. 2108\(3\)](#) or a veteran as described in [5 U.S.C. 3304\(f\)\(1\)](#).
- Interview the complainant thoroughly and discuss the case in depth. The investigator should use the [VETS Form 1010](#) as a screening tool.
- Determine if the preference eligible has raised a possible violation. If so, determine the location of the complainant. If in another region or state, coordinate transfer of the case to the complainant-holding state through your RAVET.
- When contact is by telephone or fax, VETS investigators are encouraged to assist the complainant in completion of Sections I-IV of the VETS Form 1010. Mail or fax the VETS Form 1010 and ask the complainant to complete needed items and to return the form. The complainant must be given the alternative of submitting the complaint in narrative form, but the narrative must explain the nature of the complaint (the rule(s) and/or regulation(s) pertaining to VP or [5 U.S.C. 3304\(f\)\(1\)](#) that was/were violated) and specify the Federal agency against which the complaint is being made.
- Request a copy of documents verifying eligibility (i.e., DD-214, VA Disability Award Letter, etc.).
- The VETS Form 1063 ([Exhibit 33](#)) does not need to be filled out initially if all the necessary information is on a VETS Form 1010. If, however, the initial contact is by phone, use the VETS Form 1063 to record the complainant's statements. Also, use a VETS Form 1063 for all subsequent contacts.

**Mail, Fax, or E-Mail Requests.** If the investigator receives a written request for assistance in a form other than a VETS Form 1010, the investigator should make

every attempt to obtain a completed VETS Form 1010 that is dated, signed, and returned immediately along with other documents establishing eligibility or detailing the complaint and the remedies sought. However, the submission of a completed VETS Form 1010 cannot be required.

## **4.2 WHEN TO OPEN A CASE**

A case shall be opened immediately upon VETS' receipt of an electronic 1010, or immediately after VETS Lead Center's input into the E-1010 system of the claim information from a written complaint, preferably a signed and dated VETS Form 1010. However, if the written information does not provide enough data to establish eligibility or a possible violation, the complainant must be contacted in order to clarify the information or seek additional information.

If the information provided unequivocally establishes no eligibility or the evidence cannot support the allegation(s), then the case is to be opened and closed immediately. The complainant should be notified in writing immediately of the results by Certified Mail-Return Receipt or equivalent and informed of the right of appeal to the MSPB.

## **4.3 HOW TO OPEN A CASE AND CASE JURISDICTION**

Enter all required data into the [VPIMS](#). A case will be opened by the VETS office in the state where the complainant is located unless the complainant resides overseas. (In the case of a complainant residing overseas, the Veterans' Preference Lead will assign an investigator). This could be different from the hiring authority's location, the location of the applicant's submission, or the location of the job opening. If the case belongs to another VETS office in another state, immediately arrange with the RAVET, via the DVET, to transfer the case with all supporting case-related documentation.

## **4.4 DOCUMENTATION OF CONTACTS**

Each VETS contact/attempted contact with the complainant, Federal agency, and all other persons must be completely documented on a VETS Form 1063 and included in the case file.

## **4.5 ESTABLISHING ELIGIBILITY**

VETS Form 1010 is the preferred initial source document for a case, although it is not required to open a VEOA case.

A detailed explanation of the alleged violation should be provided on page three of the VETS Form 1010. The explanation should provide, at a minimum, the name of the Federal agency, phone number of the agency's point of contact, a summary of the alleged violation, and the Vacancy Announcement or the announcement number.

Obtain a copy of the complainant's Form DD-214, issued by the Department of Defense at the time of separation from active duty, if possible. This document will provide the investigator with valuable information to establish eligibility based on the individual's character of service, time of service, and the award of any campaign or expeditionary medal. With more recently separated service members, the character of service is contained on the Number 4 copy of the Form DD-214. If the Form DD-214 shows that the complainant does not meet the character of service eligibility criteria, open a case and advise the individual, in writing by Certified Mail-Return Receipt or equivalent, that s/he has no statutory rights to veterans' preference, and thus, no appeal rights to the MSPB. The investigator should then close out the case.

If the complainant is alleging eligibility for veterans preference based on either a) compensable Disability Preference (CP); b) 30% Compensable Disability Preference (CPS); or c) Disability Preference or Derived Preference (XP), ensure relevant eligibility documentation is obtained to support eligibility. The above terms are defined in the [Office of Personnel Management's \(OPM\) VetGuide](#), available on the OPM web site. If no supporting documentation is obtained to verify preference eligibility, open a case and advise the individual in writing that s/he has no statutory rights to veterans' preference, and thus, no appeal rights to the MSPB. The investigator should then close out the case.

### **Office of Personnel Management (OPM)**

#### **5 CFR, Part 211, Interim Rule, December 29, 2014**

To implement the following statutory changes pertaining to veterans' preference:

- [VOW \(Veterans Opportunity to Work\) to Hire Heroes Act of 2011](#) - Federal agencies are required to treat active duty service members as veterans, disabled veterans, and preference eligibles when they submit, at the time they apply for a Federal job, a certification that they are expected to be honorably discharged or released **within 120 days after the date of submission**. *5USC §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 veterans' preference. *5 USC § 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 veterans' preference, regardless of whether he or she was deployed to Iraq. *5 CFR §211.102(a)(6)*
- [OPM Reconsideration of Excepted Service Examinations](#)

Under 5 USC §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 are not assigned. By operation of 5 USC §3320, section 2108a **DOES** apply to appointments in the excepted service. 5 *CFR* §211.102(d)(3)

# CHAPTER 5: INITIAL CONTACT WITH FEDERAL AGENCY

## 5.1 INITIAL CONTACT WITH THE FEDERAL AGENCY

The initial contact with the Federal agency should be made within 5 calendar days after the case is opened. If the initial contact between the potential complainant and the VETS investigator was by telephone, then contact with the Federal agency should not be made until a written complaint, specifying the applicable Federal VP rule(s) and/or regulation(s) that was/were violated and the Federal agency against which the complaint is being filed, is received from the complainant. Sometimes, the most effective avenue for initial contact to the Federal agency may be a telephone call. If so, this conversation must be documented on a VETS Form 1063.

## 5.2 GOALS OF INITIAL CONTACT

The objectives of the initial contact are to explain to the Federal hiring authority the existence of the complaint, the role of VETS, and to obtain the agency's explanation of events and possibly seek voluntary compliance.

## 5.3 OPENING LETTER TO THE FEDERAL HIRING AUTHORITY

An opening letter is always sent to the Federal hiring authority, even when the initial contact is made by telephone ([Exhibit 17](#)). If the case is resolved during the initial telephone contact, send the agency a letter confirming what transpired. In this situation, the opening letter may also serve as the closing letter and must contain all required elements of an opening and closing letter.

**Tone.** Opening letters are intended to seek specific information and should not contain words or statements calculated to trigger adverse, angry, or hostile reactions. The letter should not contain language that would cause the agency to believe that the VETS investigator has already arrived at a conclusion as to the merits of the complaint.

**Contents.** Whether it is the initial contact with the agency or a confirmation of an opening telephone discussion, the opening letter should be tailored to the situation. The letter will contain, at a minimum:

- the legal citation from Title 5, U.S. Code, authorizing VETS to investigate alleged violations of veterans' preference ([5 U.S.C. 3330a](#));

- the name of the complainant and his/her apparent eligibility for veterans' preference or for the opportunity to compete under [5 U.S.C. 3304\(f\)\(1\)](#) based on the information provided on the VETS Form 1010 or other correspondence.
- the fact that the individual is seeking assistance under [5 U.S.C. 3330a](#) and the specifics of the complaint as described by the complainant. It is very important to include the Job Opportunity Announcement number involved in the complaint if the issue is hiring.
- if needed, a copy of the appropriate collective bargaining agreement, agency regulations, department regulations, and Federal personnel regulations relevant to the case;
- a request that the agency provide a written position statement, including relevant documentation by a specific date to the investigator; and,
- a notice to the agency of the opportunity to resolve the complaint through voluntary compliance or settlement if appropriate.

**Distribution.** The original letter is sent to the Federal agency. Copies are distributed as follows to:

- the complainant; and,
- the investigative file.

## 5.4 AGENCY'S RESPONSE

The agency's response to VETS' initial contact is very important and will, in most cases, determine the next investigative/processing step(s). The VETS investigator should provide a written paraphrasing of the information sent by the agency to the complainant.

### 👉 NOTE 👈

**Under NO circumstances are copies of the agency's response to be sent to the complainant by VETS.**

**Positive.** If the agency's response recognizes the validity of the complainant's allegations, resolution may be near and voluntary compliance should be attempted.

**Noncommittal or Negative.** If the agency's response is negative or noncommittal, continue the investigation to conclusion.

**Missing Information or Not Fully Clarified.** If the agency's initial response fails to convey all the necessary information, or if the information is unclear, seek clarification from the agency, either by telephone or in writing.

**No Response.** If the agency does not respond to telephone messages or VETS' opening letter or other correspondence in a timely manner (usually 10 calendar days after the response date cited in the letter), send a Certified Mail-Return Receipt or equivalent letter with a new response date. If the agency does not respond within 10 calendar days of the new response date, consult with the next highest office (DVET or RAVET) to determine the next course of action. Telephone contacts with the agency should also be attempted on a regular basis during this time.

## **5.5 CONTACT WITH COMPLAINANT**

Contact with the complainant should be made within 3 calendar days after receiving the agency's response to VETS' contact. The purpose of this contact is to relay the agency's position relative to issues raised in the complaint.

# CHAPTER 6: INVESTIGATION

## 6.1 OBJECTIVE OF INVESTIGATION

The basic/mandated reason for investigating a complaint under [5 U.S.C. 3330a](#) is to determine the facts necessary to evaluate the merits of the complaint, to proceed with these facts to resolve the issue(s), and to conclude the case in a satisfactory manner. The file documenting the investigation's findings should also provide sufficient factual information to support the merit determination in the event the complainant chooses to file for civil litigation. This requires a careful assembling and evaluation of provable facts and accurate and complete reports of contacts, including interviews.

The goal of the investigation is to obtain information that would allow the investigator to determine whether the complainant was entitled to veterans' preference and whether such preference was properly applied. Although information as to whether the complainant was qualified for the position is relevant to the investigation, the goal of the investigation is not to assess the complainant's qualifications relative to other applicants.

## 6.2 INVESTIGATIVE ETHICS

An intangible, but exceptionally important, part of being a VETS investigator is maintaining an objective and completely impartial attitude toward case management. Any appearance of favoritism or emotional involvement with a case may not only cause embarrassment to VETS, but also will destroy agency and complainant confidence. This would reduce VETS' effectiveness in negotiations and other dealings with the public. Some basic guidelines for investigator conduct are:

- Maintain absolute integrity and honesty with all parties in a case. Answer questions completely, while keeping confidential personal conclusions and the identity of information sources. If asked by anyone for the name of the person who provided certain information, politely refuse, explaining that VETS does not release information during an investigation to avoid placing any person in jeopardy.
- Conduct the investigation fairly and without bias. Avoid snap judgments, and do not give "updates" to either party concerning the current merits of the complaint. Doing so can be damaging if the final determination is at odds with the "update." Wait until all the evidence is gathered before announcing any conclusion, and even then, leave the door open for new evidence.
- Do not accept anything of value from either agencies or complainants.

The key here is to avoid any appearance of accepting favors or the appearance of a conflict of interest.

- Investigations may become highly charged with emotion. Avoid becoming emotionally involved with the case.
- If a relative of the assigned investigator in a case works for, or is otherwise closely associated with, either party in the case, arrange with the RAVET/DVET to have the case transferred to another investigator in order to avoid any possible claim of conflict of interest.
- Do not casually discuss or otherwise mention details of any open or closed case to anyone except those charged with veterans' preference responsibilities. Maintain confidentiality for both the agency and the complainant.
- If an investigator has any questions or doubts concerning a situation in which s/he is involved, or is about to be involved, that person should consult with his/her supervisor before continuing.

### **6.3 NEED FOR IMPARTIAL INVESTIGATION**

[5 U.S.C. 3330a](#) does not empower VETS to make findings or rulings that are binding on the agency or the complainant. Rather, the role of the VETS investigator is to assist the complainant through objective fact finding. In order to resolve cases, the VETS investigator must conduct a thorough and objective investigation.

### **6.4 INVESTIGATIVE STEPS**

To conduct a quality investigation, the VETS investigator must understand the Federal hiring process and then follow a systematic investigation. A schematic overview of the Federal hiring process is included in this manual ([Exhibit 38](#)). Preparation and establishing a good foundation are the keys to any investigation.

**Identify the Issues.** Upon receipt, the complaint must be thoroughly analyzed, and the VETS investigator must have a full understanding of the issues and the remedies sought.

**Determine the Applicable Sections of the Statute.** Once the issues and remedies are identified, it is necessary to determine those sections of the Federal statutes, regulations, and case law that may apply to the issues. If the investigator is unsure as to the applicable sections, contact the next highest office (DVET and/or RAVET) for guidance.

**Prepare Investigative Plan.** The need for a formal investigation will usually be

determined by the first or second agency contact. Before starting a formal investigation (on or off-site), develop a written investigative plan ([Exhibit 26](#)). The plan should identify the issues 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; the means by which that evidence is to be obtained (e.g., interview, records review, etc.); and all steps necessary to arrive at a determination on the merits of the complaint.

## **6.5 OBTAINING RECORDS AND INFORMATION**

Information can be obtained from the agency, complainant, unions, military organizations, and witnesses. Information and supporting documentation should be requested from all sources as early as possible during the investigation and the requested information and/or documentation should be specific and relevant to the issues of the complaint.

## **6.6 USE OF TELEPHONE**

The telephone provides a quick way to gather basic information, clarify points, verify information, obtain witnesses' names and addresses, relay offers and counter offers of settlement, explain administrative processing of cases, and schedule appointments. However, telephone contacts should not be used as the exclusive or even the primary method of investigation.

All significant information obtained over the telephone or otherwise obtained verbally, such as the position of the agency, must be documented on a typed and signed 1063, entered into the case notes of the IMS, and confirmed by follow-up letter. If there is reason to believe that the addressee might deny receipt of VETS' correspondence, attempt to misconstrue information provided by the VETS investigator, or change his/her position later, the correspondence should be sent by Certified Mail-Return Receipt or equivalent. The importance of agency disclosures to the VETS investigator cannot be overemphasized because incriminating statements by supervisors or managers can be used as evidence in court if properly noted and confirmed in writing by letter or witness statement.

## **6.7 UPDATING INVESTIGATIVE PLAN**

Investigations should be completed within 60 calendar days from the case opening date if practicable. However, it is more important to ensure that the case is processed in accordance with VETS' investigative procedures and quality assurance guidelines. After 45 calendar days from the case opening date, a mentor should be assigned, if deemed appropriate, and the investigative plan will be revised to include a timetable for completion of the investigation. In revising the investigative plan, take into account that the VETS investigation can continue beyond 60 days as long as:

- VETS determines that there is still the prospect of resolution of the complaint,
- the complainant desires that VETS continue the investigation, and
- additional information is needed.

## 6.8 ON-SITE INVESTIGATIONS

An on-site investigation will be necessary when relevant documents and records cannot otherwise be obtained or where witnesses need to be personally interviewed. The importance of an on-site investigation to resolve complex issues cannot be overemphasized. On-site visits should be scheduled and approved in advance, and the agency should be sent a letter confirming the visit ([Exhibit 18](#)).

## 6.9 AUXILIARY INVESTIGATIONS

As the case progresses, it may become necessary to interview witnesses or examine records in a distant city. If there is a VETS investigator in or near that city, that VETS investigator should be asked to assist, so that travel costs can be minimized. The VETS investigator requesting assistance should send a memorandum detailing the required information needed as well as a copy of the file, or pertinent parts thereof. Auxiliary investigations, crossing different regions, will be requested through the appropriate RAVET.

## 6.10 INTERVIEWS

During the investigation, interview all available persons who may have knowledge of relevant facts. Each witness should be interviewed separately and the interviews should be conducted in a neutral location whenever possible. At the conclusion of the interview, a signed statement attesting to what was said should be sought from each person who supplied relevant information (see Documenting Interviews below for more information). Individuals should understand that signing the statement is voluntary. The complainant should not have access to the records of other employees and may not be present when a witness is being interviewed.

**Objectives of Interviewing.** The objective of an interview is to develop credible information relevant to the investigation. It is also used to verify information taken from records, or that is obtained from other individuals involved in the investigation. Additionally, it may be used to develop leads to new case information. Particular objectives will vary with the facts or circumstances of each case. To prepare for interviews, thoroughly analyze all available background information, evidence, and any other material. Determine the facts or issues that need to be resolved through each interview. Then, develop a list of questions for each person to be interviewed. While conducting the interview, observe the body language of the witness, visual cues, speech cadence, and phraseology carefully to

determine when relevant and logical follow up questions are indicated.

**Documenting Interviews.** The contents of each interview will be documented on a Witness Statement Form ([Exhibit 29](#)). Signed statements should be requested from each witness who provides relevant evidence. After writing the statement, have the witness read it and note any objections to the wording. If there are corrections to the statement, draw a single line through the part to be changed and have the witness print the change (if needed) above it. Have the witness also initial each change. When finished, complete the attestation at the bottom of the form. The witness will be asked to initial at the end of the last line of the last paragraph on each page and sign on the last page after the declaration statement. After the witness signs and dates the form, the VETS investigator signs just below the witness' signature as a witness to the signing. If a witness refuses to sign the form, the investigator should write "Refused to sign" where the witness would have signed, insert the date, and then sign the document. A separate VETS Form 1063 should be prepared detailing the reason(s) the witness refused to sign the statement.

## **6.11 EXAMINATION OF RECORDS**

All basic records necessary to substantiate material facts should be examined and exact copies or a transcription of those records should be obtained. Depending on the issues in the case, the review and analysis of pertinent records may include, but is not limited to, the following records:

- Vacancy announcements;
- Federal employment applications;
- Personnel files of other employees;
- Seniority lists;
- Organization charts; and
- Complainant's personnel file.

Do not mark or write on the original records in any way. Copies of all such records will be placed in the investigative file and a [VETS Form 1063](#) will be prepared summarizing the results of the on-site visit to include a summary of the source of each document obtained.

## **6.12 AUTHORITY TO OBTAIN RECORDS**

The VETS investigator can usually obtain whatever records are needed simply by requesting them. However, [5 U.S.C. 3330a\(b\)\(2\)](#) provides that the Secretary's

duly authorized representatives (VETS investigators) will, at all reasonable times, have reasonable access to, for purposes of examination, the right to copy and receive any documents of any person or agency that the Secretary considers relevant to the investigation.

## 6.13 SUBPOENA POWER

In carrying out any investigation, the Secretary may require, by subpoena, the attendance and testimony of witnesses and the production of documents relating to any matter under investigation [[5 U.S.C. 3330a\(b\)\(3\)](#)].

### NOTE

**All investigators are advised that requesting a subpoena against a Federal executive agency should only be attempted as a last resort, exhausting all other possible methods of gaining the information, including seeking SOL assistance to contact agency counsel.**

In cases where the VETS investigator has failed to gain access to Federal agency personnel or records and has exhausted all means of obtaining such information, the investigator shall consult with the next highest office (DVET and/or RAVET) for guidance in conjunction with your Regional Solicitor.

**Delegation of Authority to Issue Subpoenas.** RAVETs have authority to sign and issue subpoenas to compel the production of documents and the testimony of witnesses for the purpose of any investigation provided for in [5 U.S.C. 3330a](#).

**Enforcement.** [5 U.S.C. 3330a\(b\)\(4\)](#) authorizes Federal court action to enforce subpoenas if they are not honored.

### Types of Subpoenas.

- **Subpoena Duces Tecum.** A subpoena duces tecum is a command to a person or organization to appear, at a specific time and place, to produce the designated documents or records.
- **Subpoena Ad Testificandum.** A subpoena ad testificandum is an order directing a named individual or organization to appear at a designated time and place to give oral testimony.

**Subpoena Request (VETS Form).** RAVETs have authority to issue subpoenas duces tecum and ad testificandum upon receipt of a properly completed VETS Subpoena Request Form ([Exhibit 34](#)). Each subpoena issued must be justified by a separate request. Instructions for properly completing a VETS Subpoena

Request Form are as follows:

- **Case Name and File Number.** Enter the case name and the file number designated by the office with primary investigative jurisdiction.
- **Subpoena Subject.** Enter the full name and address of the individual or Federal agency for which the subpoena is to be served. Mark the appropriate boxes in the upper right part of the form to indicate the nature of the subject, the subject's relationship to the VETS investigation, and whether compliance with the subpoena is anticipated.
- **Delivery Data.** Indicate in the box to whom and where the completed subpoena is to be served.
- **Proposed Date of Service.** Enter the proposed date that the subpoena is to be served to ensure prompt processing of the request.
- **Identification of Records.** Provide a specific, detailed description of the records or documents sought. A reasonable request, which is sufficiently specific, will diminish the likelihood of a successful challenge to the subpoena on the grounds that the record request is indefinite, too broad, unduly burdensome, or not relevant.
- **Justification for Issuance.** Specify whether a formal VETS request for records has been made and denied, or whether denial is anticipated. Include a statement describing the purpose of the investigation along with a brief explanation as to how the subpoenaed records are necessary to further the investigation.

**Subpoena Approval.** Upon receipt of a completed VETS Subpoena Request Form, the RAVET must review the request to determine whether alternative means are available to obtain the required information without issuing a subpoena and to ensure that all necessary information is contained in the form. After the RAVET's approval, the VETS Subpoena Request Form will be forwarded to the Regional Solicitor and a copy retained at the Regional Office. Following the Regional Solicitor's review and approval, the VETS Subpoena Request Form should be returned to the RAVET for preparation of the subpoena and transmittal of the subpoena to the VETS investigator.

**Subpoena Log.** RAVETs are accountable for every subpoena issued and will maintain a Subpoena Log indicating the sequential number of the subpoena, the type of subpoena, the case number, the issue date, and any appropriate remarks. A completed VETS Subpoena Request Form must be on file for each subpoena issued. Prepared but unused subpoenas should be destroyed and marked

“unused and destroyed” in the Subpoena Log.

**Right to Financial Privacy Act-Covered Records.** If a subpoena is deemed necessary to secure records from a financial institution, consult with the RAVET.

**Completion of Subpoena.** All items on the subpoena must be properly completed. The VETS investigator, to whom production is requested, should be named, followed by the words “an officer.” The subpoenaed party should be given a reasonable time, generally about 14 calendar days, to assemble the records for production. In certain situations, more or less time should be allowed based on the particular case facts.

**Signing of Subpoenas.** Only RAVETs and certain designated officials in the National Office are authorized to sign VETS subpoenas. When a subpoena is signed by an acting VETS official, the word “Acting” must be inserted in all appropriate places on the subpoena. Both the original subpoena and the duplicate copy must contain original signatures.

**Service of Subpoenas.** Any authorized employee of VETS can serve subpoenas.

#### **Party Served.**

- **Individual.** If the presence of a particular witness is essential, the subpoena must be served on that person [[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 that it is 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-Return Receipt or equivalent. If this form of service appears necessary, the investigator must first consult with the Regional Solicitor’s Office to assure that such service meets the local jurisdiction’s subpoena service requirements. The courts have generally held that individuals age 16 and over are of a suitable age to receive service. Identifying information about the person being served, such as name and title, should be obtained and recorded.
- **Federal Agency.** If applicable, service on a Federal 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 agency’s General Counsel. Otherwise, when a subpoena is used to request the presence of a particular person in an agency as a witness (i.e., [Subpoena Ad Testificandum](#)), service should be made by serving the person named in the subpoena. When service is made on an agency for production of documents (i.e., [Subpoena Duces Tecum](#)), 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 is the agency from which the records are “demanded,” rather than an individual agency official. Generally, control of agency records will lie with the division heads, area directors, and the like. In all cases, service should be at the agency’s usual place of operation or wherever the agency is currently operating. Identifying information about the person being served, such as name and title, should be obtained and recorded.

### **Subpoena Enforcement.**

- **Failure to Respond.** RAVETs should promptly refer subpoena enforcement matters to the Regional Solicitor. RAVETs should confer with the Regional Solicitor in preparing an affidavit regarding the specifics involved in a refusal to produce requested records or to give oral testimony. RAVETs will also provide the Regional Solicitor with all necessary assistance during subpoena enforcement proceedings.
- **Enforcement Action.** In the event a subpoena is not complied with, the Regional Solicitor may request that the Attorney General seek an order, from the United States District Court having jurisdiction in the matter, compelling the appearance of a witness or the production of documents. The refusal to obey a court order may be punished as contempt of court.

## **6.14 EVIDENCE**

Relevant evidence includes any statement, document, or object that is admissible in a court of law tending to prove or disprove a fact in question. Since VETS must investigate and document cases as though they might go to Federal Court and the MSPB, the files must contain relevant evidence.

Best evidence is the original document itself. In general, the law requires production of the original document if possible. A duplicate is admissible if the original was lost or destroyed, not obtainable, in the possession of the opposing party, or not closely related to a controlling issue. An issue can be made regarding the admissibility of duplicates if there is a genuine question raised as to the authenticity of the original or in circumstances where it would be unfair to admit the duplicate instead of the original. Consequently, wherever possible, VETS investigators should review original documents, rather than copies of documents.

## **6.15 DETERMINATION LETTER TO AGENCY**

Upon completion of an investigation, where evidence shows that the case has merit, inform the agency that the case has merit ([Exhibit 19](#)). If such notification is made by phone, follow up with a letter. This letter will set forth an evaluation of

the merit of the complaint based upon the established facts. The evaluation will be phrased in terms, such as "...based upon the facts, as determined during the investigation and the application of the law to the facts, it has been determined that the evidence supports claimant's allegation(s) and the complainant is entitled to..." It is not necessary to go into a lengthy discussion of the facts in this letter. Also, provide a statement that informs the agency exactly of what action is necessary to comply with the law and/or to resolve the complaint. Additionally, the agency must be informed that the complainant has the right to appeal directly to the MSPB.

**NOTE**

**Meritorious complaints must be referred to OSC  
in accordance with the VETS/OSC MOU.  
(See [Chapter 10](#)).**

## **6.16 DETERMINATION THAT EVIDENCE DOES NOT SUPPORT ALLEGATION(S)**

When it is determined that a complaint has no merit, the complainant should be notified of that determination. The letter to the complainant will set forth an evaluation of the complaint based upon the facts determined. The evaluation will be phrased in terms such as "...based upon the facts, as determined during the investigation and the application of the law to the facts, it has been determined that the complaint is not meritorious." It is not necessary to go into a lengthy discussion of the facts in this letter. The letter should also inform the complainant of his/her appeal rights to the MSPB ([Exhibit 9](#)).

## **6.17 INVESTIGATIVE GUIDANCE**

The MSPB decisions cited below should be considered in analyzing any claim under the VEOA. These decisions should be relied upon in determining whether an agency has violated the veterans' preference rights of a claimant. If VETS determines that a violation occurred, VETS will advise the agency that it must determine the qualifications of the claimant for the position recruited, and if the claimant is qualified, to reconstruct the selection process consistent with the law.

A. *Dean v. Department of Agriculture*: The claimant was not selected for a position to which he applied because the agency made a non-competitive appointment of a non-preference eligible through the Outstanding Scholar Program, even though the claimant was a qualified, preference eligible candidate under veterans' preference. The Outstanding Scholar Program authorizes the use of a non-competitive selection process where there is under-representation of blacks and Hispanics in competitive positions. The agency claimed that they did

not need to adhere to veterans' preference requirements when they used this program. The claimant filed a claim with VETS and VETS determined the case to be without merit. The claimant then filed an appeal with the MSPB. The MSPB held that it had jurisdiction to review the claim and order a remedy because it found that section 5 U.S.C.3304(b) is a statute "relating to veterans' preference ....," as required by the VEOA. Pursuant to 5 U.S.C. 3304(b), an individual can only be appointed in the competitive service if he has passed an examination or is specifically excepted from examination under 5 U.S.C. 3302. The MSPB concluded that the agency's selection of an applicant from the Outstanding Scholars Program did not comport with, and therefore violated, the claimant's rights under Section 3304(b). In reaching its conclusion, the MSPB determined that the Outstanding Scholar Program cannot be used to avoid the competitive examination process when a preference eligible may be available for appointment. The MSPB then held the appropriate remedy was for the agency to reconstruct the hiring process in accordance with 3304(b), entitling the claimant to compete for the position in a selection process consistent with law.

B. *Walker v. Department of the Army*: The claimant, a qualified preference eligible disabled veteran, was not considered for a merit promotion position because the agency failed to properly process his application for the position. The claimant filed a claim with VETS, but VETS closed the case due to a non-response from the agency. The claimant filed an appeal with the MSPB. An administrative judge (AJ) held that the MSPB had jurisdiction to review the claim and order a remedy because it found that section 5 U.S.C. 3304(f) is a statute "relating to veterans' preference ....," as required by the VEOA. Pursuant to 5 U.S.C. 3304(f), veterans meeting its eligibility requirements are entitled to compete for any vacancy opened to applicants outside an announcing agency's workforce under its merit promotion procedures. The AJ concluded that the agency's failure to process the claimant's application and its failure to include him among the list of candidates referred to selecting officials for consideration violated his right to compete for the vacant position as a preference eligible under section 3304(f). The agency appealed the AJ decision, but the MSPB upheld the AJ's decision. Following the *Dean* decision, the MSPB required the agency to reconstruct the selection process in accordance with the preference eligible provisions it violated, 5 U.S.C. 3304(f).

C. *Hesse v. Department of the Army*: The claimant applied for a security guard position, which, under 5 U.S.C. 3310, requires hiring a preference eligible if one is available. The claimant was tentatively selected, but the Army later said he was not a preference eligible because he claimed to be eligible as a result of a service-connected disability incurred during Active Duty for Training. Hesse filed a complaint with VETS, which concurred with the agency's finding that the claimant was not a preference eligible and determined that the case had no merit. This determination was based on guidance from OPM, which stated that in order for a disabled veteran to qualify as a preference eligible under 5 U.S.C. 2108, the service-connected disability must be based on an injury sustained while on active duty as defined in 38 U.S.C. 101(21). The claimant filed an appeal with the MSPB and an

AJ also agreed that the claimant was not a preference eligible. The claimant appealed the AJ decision to the MSPB, which disagreed with OPM's interpretation and held that "active duty," as defined in 5 U.S.C. 2108, may consist entirely of service for training purposes. The MSPB ordered the agency to reconstruct the selection process, pursuant to MSPB's interpretation of 5 U.S.C. 2108. The MSPB decision has resulted in OPM modifying its guidance to agencies to reflect that those sustaining an injury while on Active Duty for Training may be qualified for veterans' preference in hiring. The MSPB decision did not address whether those injured while on Inactive Duty for Training were also entitled to veterans' preference under 5 U.S.C. 2108.

D. *Jolley v. Department of Homeland Security*: The claimant was a Federal employee of the Department of Housing and Urban Development who applied under merit promotion procedures for a position with the Department of Homeland Security (DHS) as a VEOA candidate. DHS did not consider him because it claimed that VEOA is for initial appointments in the Federal workforce and, because the claimant was already a Federal employee in another agency, he was not within the area of consideration specified on the announcement. The claimant filed a claim with VETS and VETS determined that the case had no merit. This determination was based on guidance from OPM, which stated that a current Federal employee is not eligible to apply for a position utilizing the VEOA appointing authority. The claimant filed an appeal with the MSPB and an AJ also agreed that the case had no merit. The claimant filed a petition for review with the MSPB. The MSPB determined that under the plain language of 5 U.S.C. 3304(t)(1), all covered individuals, including current Federal employees, must be permitted to compete when applications will be accepted from persons outside the hiring agency's workforce. The MSPB ordered the agency to determine whether the claimant was qualified for the position, and if qualified, to reconstruct the hiring process based on its interpretation of 5 U.S.C. 3304(t)(1).

E. *Styslinger v. Department of the Army*: The claimant was a Federal employee of the Department of Energy who applied under merit promotion procedures for a position with the Department of the Army as a VEOA candidate. The claimant is also a retired Major who did not have a service-connected disability. The agency did not consider his application because it determined that as a current Federal employee, he was not eligible to apply as a VEOA candidate. The claimant filed a complaint with VETS and VETS determined that the case had no merit. This determination was based on guidance from OPM, which stated that a current Federal employee is not eligible to apply for a position utilizing the VEOA appointing authority. The claimant filed an appeal with the MSPB and an AJ also agreed that the case had no merit, but dismissed the case for lack of jurisdiction because as a retired Major without a service-connected disability, the claimant was determined not to be a preference eligible. The claimant filed a petition for review with the MSPB. The MSPB determined that based on the *Jolley* decision, the agency could not rely on the claimant's status as a current Federal employee to deny him an opportunity to compete for the position under the VEOA. The MSPB also noted

that the Veterans Benefits Improvement Act of 2004 amended the VEOA to allow a non-preference eligible described in 5 U.S.C. 3304(f)(1) the right to file an appeal with the MSPB. Therefore, the MSPB determined that although the claimant was not a "preference eligible," as a retired Major, he is considered a "veteran" under 5 U.S.C. 3304(f)(1), and was entitled to file an appeal with the MSPB. The MSPB ordered the agency to determine if the claimant was qualified for the position, and if so, to reconstruct the selection process for that position.

# CHAPTER 7: CASE RESOLUTION CONFERENCES

## 7.1 DEFINITION OF CASE RESOLUTION CONFERENCES

Case Resolution Conferences are meetings conducted by the investigator. The usual attendees include the investigator and the representative from the Federal agency. The complainant may also attend at the discretion of the investigator. The purpose of the Case Resolution Conference is to attempt to reach a mutually agreeable resolution of a meritorious case. VETS encourages case resolution conferences when appropriate. Conferences may be conducted at any stage of the case when the investigator believes it may help the parties to reach an agreement.

A resolution conference should be attempted when an investigation has been completed, a meritorious finding has been determined, and letters and telephone calls are unable to resolve the case.

If a resolution conference is requested by the agency prior to the completion of the investigation, such conference should be held. However, it should be clearly explained to the agency, and the complainant if in attendance, that the investigation is not yet completed, and any findings that are discussed are preliminary at best.

### NOTE

**Although the complainant is free to settle his complaint for less than what he/she is entitled to under the law, the MSPB has determined that the appropriate remedy for a violation of veterans' preference is for the agency to reconstruct the hiring process in compliance with the violated veterans' preference provision, and to afford the complainant the right to compete for the position. The MSPB has determined that priority consideration is not an appropriate remedy for a violation of veterans' preference**

## 7.2 CONFIRMATION LETTER(S)

After the Case Resolution Conference has been scheduled, the investigator will send a confirming letter to the appropriate party(ies) confirming the date, time, and the location of the conference. The purpose of the conference may also be stated in the letter.

### **7.3           ADVICE TO THE COMPLAINANT BEFORE THE CONFERENCE**

If the complainant is invited to the conference, the investigator should meet with him/her prior to the conference to discuss the strengths and weaknesses of the case.

The investigator should advise the complainant not to bring up matters that are not directly related to the case because this conference is not the proper forum for unrelated issues.

Investigator should advise the complainant that s/he should not feel compelled or pressured to accept or sign any settlement offered during the conference. If the remedies offered are not equivalent to the full remedies required by law, advise the complainant that he or she has the right to refuse the offer.

The complainant should be told that the refusal does not guarantee that further government action will better benefit the complainant and that it is possible that any further appeal may result in a similar or lesser resolution.

The complainant should be told that if s/he elects to accept such an offer, s/he may be waiving additional rights under the law, which will be fully explained.

### **7.4           GENERAL CONFERENCE HINTS**

At the conference, maintain a relaxed, friendly, business-like tone. Never lose your temper. Be especially cautious with persons who may be trying to anger you.

### **7.5           OPENING THE CONFERENCE**

Open the conference by identifying yourself and showing your credentials. If there are more than two parties in attendance, list the participants by name and relationship to the case. Review and use the conference opening statement found in [Exhibit 39](#), as it sets the tone for the conference and clarifies the purpose, goal(s), and conduct of the conference. The investigator may tailor [Exhibit 39](#) to the particular conference. Then explain that the conference has been convened to review the facts and seek resolution of the complaint.

### **7.6           CONTROL OF THE CONFERENCE**

Maintain control of the conference by having all discussions funneled through the investigator. Do not permit the parties to argue about extraneous matters. If the discussion gets sidetracked, redirect it by reminding the parties of the purposes of the conference. Avoid using inflammatory words such as “unlawful,” “illegal,” “discriminatory,” and “violation” during the conference. If emotions flare, recess the conference for a cooling-off period. If meaningful discussion seems impossible, adjourn the meeting, but only if it is clear that

nothing is being accomplished by continuing, and the situation is being damaged rather than helped.

## **7.7 CONFERENCE NOTES**

Take comprehensive notes during the conference. These notes will serve as the basis for a summary report of the conference that becomes part of the case file.

## **7.8 CONFERENCE RESULTING IN RESOLUTION**

When the conference results in an agreed upon resolution by both parties, either in whole or in part, the VETS investigator will review the details of the resolution with all present so there is no misunderstanding. The investigator will also inform those present that a settlement agreement document will be prepared for review and signature by both parties. It will stipulate the terms of the agreement and, following review and signature, copies will be provided to each party ([Exhibit 40](#)).

The information agreed to by the parties in the Settlement Outline ([Exhibit 40](#)) will be utilized to formulate the final Settlement Agreement and Release Form ([Exhibit 30](#)) that will be signed by the parties. After all signatures have been obtained and all parties have a signed copy of the Settlement Agreement and Release Form, the case will be closed as either Claim Granted, if all statutory entitlements have been provided to the claimant, or Claim Settled, if the claimant agrees to accept less than full statutory entitlements. (See [Chapter 9](#))

## **7.9 REFUSAL BY THE AGENCY TO GRANT OR SETTLE COMPLAINT.**

If the complaint cannot be resolved, explain that the complainant has a right to appeal his/her case directly to the MSPB. If the investigation is not yet complete, explain that the investigation will resume (Refer to [7](#) of this chapter). Inform the agency that [5 U.S.C. 3330c](#) provides that, if the MSPB or the Federal District Court determines an agency has violated a right described in [3330a](#), lost wages and benefits may be awarded, and that liquidated damages for willful violations as well as attorney fees and other litigation costs may also be awarded.

## **7.10 REQUESTS FOR ADDITIONAL TIME**

If the agency or the complainant requests additional time to consider their respective positions, the investigator should allow either party 5 calendar days to accomplish this. At the conclusion of 5 days, the investigator should confirm both parties' positions and proceed appropriately.

## **7.11 CONFERENCE CLOSING**

Once all parties have had an opportunity to discuss fully their respective positions, and if the complaint remains unresolved, the investigator should

inform the parties that the conference is at an end.

## **7.12 CONFERENCE REPORT**

As soon as possible after returning to the office, prepare a summary of the conference based on the notes. The report should be on VETS Form 1063 and will include the case number; name(s) of the party(ies); address(es) of the party(ies); date, time, and place of the conference; and a list of participant(s) by name, title, address, and telephone number. The report will also contain the items below as appropriate:

- All identified contested issues.
- Position of each of the parties and their supporting reason(s) for each issue.
- Any offer(s) of settlement, proposal(s), and counter proposal(s).
- Any outstanding issue(s).
- For any resolved issue(s), a detailed outline of the agreement(s). ([Exhibit 40](#))
- Listing of all documents obtained, and listing must include the source of each document.

Case notes should be entered into the [VPIMS](#), summarizing the conference that includes all the information included in this section.

The conference report, and all other related documents secured during the conference, will become exhibits in the case file. No shortcuts should be taken in developing this report.

## **7.13 FAILURE TO PROVIDE POSITION**

If more than 5 calendar days pass after the action in [7.10](#) of this chapter, and the party requesting the extension fails to provide his/her position, inform the other party of the non-response. The investigator should also explain to the other party what options are available. These options are:

- If the resolution conference was conducted prior to completion of the investigation and in accordance with [7.1](#) of this chapter, the investigation should be completed. Additional conferences can be attempted in the future.
- If the resolution conference was conducted after completion of the

investigation and in accordance with [7.1](#) of this chapter, a closing letter should be sent to the complainant notifying him/her of the results of the investigation and of his/her MSPB appeal rights.

# CHAPTER 8: REDUCTION IN FORCE

## 8.1 PROCEDURES

When a VETS investigator learns that a RIF is anticipated or planned by a Federal agency, s/he will notify his/her state DVET. That DVET will consult with his/her region's RAVET to determine if there will be a need for providing technical assistance to the agency human resources staff.

## 8.2 TECHNICAL ASSISTANCE

The RAVET for the region in which the RIF occurs will coordinate with the DVET with jurisdiction of the area in which the RIF occurs to ensure that:

- VETS staff contact the principal(s) involved with the RIF and offer technical assistance (TA).
- Technical assistance is provided to the Federal agency. The technical assistance includes a briefing to the agency human resources staff, explaining VETS' investigative authority and responsibilities under the VEOA for alleged veterans' preference violations.
- The RAVET/DVET for the region/area in which the RIF occurred will estimate the number of preference eligibles that may be affected by the RIF and assess whether complaints are anticipated, through review of the agency's RIF announcement. As soon as it becomes apparent that the number of complaints will exceed eight (8), the RAVET for the region in which the RIF occurred will notify the Chief, Investigation and Compliance Division of VETS. Eight or more complaints would suggest/is clear evidence of a trend.
- In consultation with the Deputy Director for Compliance and Investigations, the Chief Senior Investigator, and the Veterans' Preference Lead, the RAVET and DVET for the jurisdiction in which the RIF occurred will determine if additional resources from outside their region are needed.
- If it is determined that additional resources are not necessary, VETS investigator(s) for that region will process the complaints in accordance with normal investigative procedures.
- If it is determined that more resources are needed, the RAVET for the jurisdiction in which the RIF occurred will contact the Chief Senior Investigator and the Deputy for Field Operations.

- VETS requests cooperation from the claimant and agency involved.

### 8.3 RIF COMPLAINTS PROCESSING

In processing RIF-related complaints, the VETS investigator(s) should follow VETS' procedures and guidance promulgated during training and in previously distributed communications, resource documents, and manuals.

The VETS investigator(s) should initially determine if the preference eligibles affected by the RIF have union representation. If so, the VETS investigator(s) should contact and develop a working relationship with union officials.

The VETS investigator(s) should 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.

All parties involved should participate in the complaint intake, investigation, and resolution process to the extent legally possible, consistent with limits on communications set out in [Section 2.13](#).

#### **NOTE**

**VETS takes the view that open and candid communications between the affected preference eligibles and the agencies and VETS' investigator(s) will decrease the likelihood of errors during the RIF process.**

### 8.4 INVESTIGATION

When the VETS investigator(s) receives a complaint from a preference eligible concerning an alleged violation of veterans' preference that occurred in a RIF, the investigative procedures are the same as for a violation of veterans' preference in an employment action. The VETS investigator(s) cannot properly handle this kind of complaint without knowing RIF procedures. The VETS investigator(s) should refer to Title 5, Code of Federal Regulations, Part 351 — Reduction in Force ([5 CFR 351](#)) during the investigation. Becoming knowledgeable of RIF procedures is necessary for completion of a thorough investigation.

The VETS investigator(s) should obtain as much information as possible about the reason(s) for the RIF and how the process works in order to facilitate the investigative process. Understanding the RIF process and procedures is extremely important during complaint intake or when complainants are

counseled regarding merit, or the lack of merit, of their allegation(s).

VETS investigator(s) are directed to seek the assistance of relevant VETS staff, such as his/her DVET, Veterans' Preference mentors, or his/her Regional Office staff, when uncertain concerning a course of action or advice to be given.

If the VETS investigator(s) receives multiple requests for assistance in a particular RIF, it may be necessary to provide additional support. In that event, the investigator should contact his/her regional office through his/her DVET for guidance.

# CHAPTER 9: CASE CLOSING

## 9.1 PURPOSE

This section describes closing procedures to be used in different circumstances.

## 9.2 CASE CLOSURE – REASONS AND CODES

**Administrative Closure (AC).** A case should be closed administratively under any of the following circumstances:

- **Lack of Interest.** Administrative closure is appropriate when the complainant clearly displays a lack of interest or is obviously uncooperative. Examples include failure to reply to VETS investigator's letters, failure to give the VETS investigator a change of address, failure to supply information that could be easily obtained, and failure to attend scheduled meetings and conferences.
  - Document the lack of cooperation or interest on VETS Form 1063.
  - Send the complainant a letter advising that closure of the case has become necessary because the investigation cannot continue without his/her cooperation. The letter should be sent Certified Mail-Return Receipt or equivalent (see [Exhibit 7](#)).
  - Give the complainant 10 calendar days to respond. If, at the end of this period, the complainant fails to respond, the receipt is not returned to VETS investigator, or the letter is undeliverable, close the case administratively, and send the complainant a closing letter (See [Exhibit 10](#)).
- **Continued Unauthorized Contact by Third Party with Agency.** Although a complainant is entitled under the law to be represented either by VETS or by a third party, s/he may not be simultaneously represented by both parties if the representation interferes with the investigation. If the complainant insists on being represented by a third party in a veterans' preference complaint, and that representation interferes with the investigation, the complainant will be informed that VETS will no longer handle the case and the case will be administratively closed ([Exhibit 11](#)). However, the complainant may use the services of a third party to provide technical assistance or guidance to the complainant, provided the third party does not hamper VETS' investigation.
- **Prematurely Filed.** Administrative closure without providing MSPB appeal rights is appropriate when the complainant clearly filed a

VEOA claim on a vacancy announcement for which the selection process was still underway.

Examples include:

- Filing a VEOA claim prior to creation of a certification list;
- Filing a VEOA claim after the certification list has been created, but prior to the selection of an applicant from the list for the job at issue;
- If complaints are received before a final selection is made, but after the act of the alleged violation such as denying consideration on a merit promotion announcement, the complaint would be investigated as a denial of consideration under the VEOA as the claimant has identified a specific allegation regarding denial of preference rights under 5 USC § 3304(f)(1). If the investigation disclosed that the claimant was erroneously denied consideration, and the investigator could not resolve the issue with the agency, it would be considered as a 'merit, not resolved' case and the claimant would be provided with MSPB appeal rights. If it was determined during the investigation that the claimant was appropriately denied consideration, it would be closed with no merit and MSPB appeal rights would be provided.
- When agencies are hiring under continuous open announcements, and as openings occur, a certificate is prepared of qualified candidates and sent forward to the agency. This would be like any other vacancy announcement; if the claimant files a complaint and the investigation discloses that a certificate has been issued that the claimant is in the proper position on the certificate but that no selection has yet been made, it is a prematurely filed complaint. If, on the other hand, it is determined that a certificate was issued on which the claimant should have appeared, but did not, the claimant is identifying a specific allegation regarding denial of preference rights requiring investigation. If the issue cannot be resolved, the claimant must be provided with MSPB appeal rights.
- If a claimant who was notified that s/he was not referred to the selecting official because s/he was not considered to be in the best qualified category, and the certificate was prepared properly under the category ranking process, the closing letter should provide MSPB appeal rights. If the question involves a claimant who is removed from the certificate after three considerations, then again, the closing letter should provide MSPB appeal rights.
- If a pass-over request was filed, the complaint would be

considered as prematurely filed until final action has been taken on the pass-over request since regulations require the agency to maintain a position open in case the pass-over request was denied. Such procedures would apply to both 'merit promotion' and 'open and competitive' announcements since VETS also investigates denial of consideration for those eligible to apply under merit promotion procedures that are VEOA eligible. In either case the investigator should contact the agency to determine the results of the recruitment.

If VETS investigator finds that the complaint has been prematurely filed, the case should be discussed with the complainant and closed as Administrative. Send the complainant a letter (Closing letter to complainant due to premature filing of claim, Exhibit 41) advising that closure of the case has become necessary because the complaint was made prematurely. The letter should be sent Certified Mail-Return Receipt or equivalent. Send the employer a letter (Closing letter to agency due to premature filing of claim, Exhibit 42) advising that closure of the case has become necessary because the complaint was made prematurely.

**Claim Granted (CG).** When the agency agrees to grant all, or substantially all, of the complainant's entitlements, but not in writing, close the case as Complaint Granted ([Exhibit 22](#)).

A Settlement Agreement and Release Form should be completed and signed by the complainant and the agency whenever possible ([Exhibit 30](#)).

If there is no written acknowledgment (e.g., Settlement Agreement and Release Form) that the complainant is fully satisfied with the resolution of the case, the complainant should be sent a closing letter that sets out the relief obtained by VETS and a statement that if he/she is not fully satisfied with the resolution of his/her case, the complainant may appeal the alleged violation to the MSPB within 15 calendar days from the date of receipt of the closing letter ([Exhibit 12](#)).

If the agency agrees to reconstruct the hiring process, and to afford the complainant his/her right to compete for the relevant position in compliance with the applicable veterans' preference provision, the case should be closed based on the agency's agreement to reconstruct the process.

If the agency's agreement is not in writing, the closing letter to the complainant must advise the complainant that if the agency fails to reconstruct the process, he/she may file a complaint with VETS within

60 calendar days from the date of receipt of the closing letter. The letter must also inform the complainant that if he/she believes the reconstructed process violated his/her veterans' preference rights, he/she may file a complaint with VETS within 60 calendar days from the time of the alleged violation in the reconstructed process ([Exhibit 13](#)). Finally, the letter must also provide appeal rights to the MSPB if the complainant is not fully satisfied with the resolution obtained by VETS.

When the resolution involves payment to the complainant of any monies (such as payment for lost wages), and it is not possible to immediately obtain full payment of all the amounts agreed upon, make necessary arrangements to have a check, for the balance, made payable to the complainant and forwarded to the VETS investigator's office for transmittal to the complainant. With agreement by the parties to the dispute (i.e., complainant and agency or their counsel) the check may be sent/presented directly to the complainant. However, verification of such payment (e.g., copy of the check) should be obtained by the VETS investigator(s).

 **NOTE** 

**VETS staff will not accept checks made out to VETS or VETS staff. Cash will not be accepted.**

Send the complainant the agency's check by Certified Mail-Return Receipt or equivalent.

After verifying the satisfaction of all of the other elements of the agreement, notify the complainant that the case is being closed, enclosing a copy of the signed release.

**Claim Settled (CS).** When the complainant and the agency agree to settle the complaint for less than the complainant's full entitlements under the law, close the case as Complaint Settled.

A Settlement Agreement and Release Form should be completed and signed by the complainant and the agency whenever possible ([Exhibit 30](#)).

If there is no written acknowledgment (e.g., Settlement Agreement and Release Form) that the complainant is fully satisfied with the resolution of the case, the complainant should be sent a closing letter that sets out the relief obtained by VETS and a statement that if he/she is not fully satisfied with the resolution of his/her case, the complainant may

appeal the alleged violation to the MSPB within 15 calendar days from the date of receipt of the closing letter ([Exhibit 12](#)).

**Claim Withdrawn (CW).** A case should be closed as Complaint Withdrawn when the complainant informs VETS' investigator, in writing, of his/her desire to withdraw the complaint.

 **NOTE** 

**If the complainant tries to withdraw the complaint after VETS investigator determines that the complainant is not eligible or the complaint is not meritorious, the case should be closed as Not Eligible or No Merit, whichever is appropriate, and the complainant informed of his/her right to appeal to the MSPB.**

Send the complainant a brief letter confirming the request and advise him/her that the case is being closed ([Exhibit 14](#)).

Send a separate closing letter to the agency ([Exhibit 20](#)).

**Not Eligible (NE).** If a case has already been opened, and VETS investigator finds that the complainant does not meet the eligibility requirements in the statute, the case should be discussed with the complainant and closed as Not Eligible. The complainant should be informed of this closure and of his/her right to appeal to the MSPB in writing by Certified Mail-Return Receipt or equivalent ([Exhibit 16](#)).

**Untimely Filing (UF).** If VETS investigator finds that the complainant filed his complaint after 60 calendar days from the time of the alleged violation, the case should be closed as Untimely Filing (See [Chapter 3](#) for discussion of possible exceptions.). The complainant should be informed of this closure and of his/her right to appeal to the MSPB in writing by Certified Mail-Return Receipt or equivalent ([Exhibit 3](#)).

**No Merit (NM).** It may be found that the complainant is not entitled to any relief for reason(s) other than failure to meet eligibility requirements (i.e. veterans' preference points were applied or selection was made from an internal certificate and veterans' preference did not apply).

Explain the findings in writing to the complainant ([Exhibit 9](#)), and explain the right to appeal to the MSPB by Certified Mail-Return Receipt or equivalent.

Notify the agency that the case was closed, with a letter similar to [Exhibit 21](#).

**Duplicate Claim (DC).** If the investigator finds that the complainant filed more than one complaint against the same agency involving the same vacancy announcement, the case will be closed as a Duplicate Claim. Closures as “Duplicate Claim” require two steps in the [VPIMS](#):

- Before closing the case, add the following note (along with any other notes that might be relevant) to the Investigator’s “Case Notes” section, using either the “Open a New Case”, “Update Case Data” or “Update Case Notes” functions:

**“This case is a duplicate of [fill in case number of the previously opened case].”**

- After completing the step above, use the “Close a Case” function to enter the “Duplicate Claim” close code.

**Merit, Not Resolved (MNR).** If a case has been investigated and determined to have merit, but the investigator is unable to obtain a satisfactory resolution, the case should be closed with this closing code. The complainant is to be advised by letter of the results of the investigation and of his/her appeal rights to the MSPB using [Certified Mail-Return Receipt or equivalent](#).

The letter should indicate that the complaint had merit, but VETS investigator was unable to resolve the complaint ([Exhibit 9](#)).

Notify the agency that the case was closed, with a letter similar to [Exhibit 21](#), explaining that the complainant was advised of his/her appeal rights to the MSPB.

**Merit Undetermined (MU).** If an investigation has not been completed within 60-days and no merit determination can be made based upon the evidence obtained, the complainant has the option of appealing the case directly to the MSPB on the 61<sup>st</sup> day by notifying the investigator in writing of his/her desire to appeal directly to the MSPB. Should the complainant elect this option, the case will be closed as “Merit Undetermined.”

A case closing letter similar to [Exhibit 15](#) will be sent to the complainant confirming his/her desire to appeal directly to the MSPB based on his/her written request. This letter will be sent to the complainant via Certified Mail-Return Receipt or equivalent.

Notify the agency that the case was closed, with a letter similar to [Exhibit 23](#), explaining that the complainant exercised his/her right to

appeal directly to the MSPB since the investigation was not completed within 60 days of VETS' receipt of the complaint.

There is an MSPB internet site that provides information on MSPB frequently asked questions regarding appeals. This internet site, <https://e-appeal.mspb.gov/faq.aspx>, provides information to claimants to assist them in the filing of their appeal with MSPB.

MSPB has also added the capability for claimants to file their appeal electronically. This MSPB site, <https://e-appeal.mspb.gov>, provides instructions to claimants who desire to utilize the option to file their appeal electronically.

### **9.3 MAINTENANCE OF CLOSED CASE FILES**

Each Region must have a written plan for maintaining closed case files until the files are eligible for retirement to the Federal Records Center. The plan should specify where the closed cases are to be kept and how they are to be filed. The plan should indicate who is responsible for retiring the files and contain the region's records retirement procedures. This plan must comply with the VETS Record Retention Plan. All investigative case files should be transferred to the Federal Records Center two years after closure for proper disposition. Case files are destroyed when ten years old.

# CHAPTER 10: OFFICE OF SPECIAL COUNSEL

## 10.1 PURPOSE

This section describes procedures to be followed in referring meritorious veterans' preference cases to the Office of Special Counsel (OSC). These procedures are governed by the Memorandum of Understanding between DOL and OSC ([Exhibit 37](#)).

## 10.2 PROCEDURE IN MERITORIOUS CASES

Any complaint under VEOA that is determined to be meritorious by VETS will be referred to OSC for review as a potential prohibited personnel practice pursuant to the MOU between VETS and OSC. The referral will be made whether or not the case is resolved through VETS' efforts.

First, the VETS investigator will send the case file to his/her RAVET through his/her DVET, identifying the case as one that has been determined to be meritorious.

Next, the RAVET will refer the case to OSC, along with a copy of the case file, by means of a letter containing the following information:

- A statement that the matter is being referred to OSC for possible disciplinary action.
- A description of the case identifying the complainant, the agency, and the issue(s).
- A summary of the merits of the case.
- A description of the status of the case, e.g., complainant has been made whole; complainant has decided not to pursue the case; or complainant has decided to appeal to the Merit Systems Protection Board.
- A statement of any discriminatory or flagrant behavior by the agency that was revealed by the investigation.
- The letter from the RAVET to OSC should be brief and simple, and follow a consultation with the Regional Solicitor of Labor.

### **10.3 PROCEDURE FOR NOTIFYING OSC OF MSPB APPEALS**

VETS will notify OSC whenever a person who has filed a veterans' preference complaint informs VETS that s/he intends to appeal the alleged violation with the MSPB. This notification will be made through the RAVET in whose region the case was handled without regard to whether the case has been determined to be meritorious.

# CHAPTER 11: PROTEST PROCEDURES

## 11.1 PURPOSE

This chapter describes procedures to be followed when a complainant expresses disagreement with the handling of his/her complaint by a VETS investigator, and the disagreement is disrupting the investigation.

## 11.2 WHEN TO IMPLEMENT PROTEST PROCEDURES

Action must be taken by the VETS investigator, within 3 calendar days, whenever a complainant complains about the handling of his/her complaint.

## 11.3 PROCEDURES TO BE FOLLOWED WHEN A PROTEST IS FILED

If a complainant complains about the handling of his/her complaint and s/he is not able to resolve the issue(s) with the VETS investigator or the VETS investigator's immediate supervisor, the complaint will be referred to the Regional Office via the DVET for review.

If it is established that further investigation is needed, the case file should be either returned to the original VETS investigator or transferred to another VETS investigator as deemed appropriate by the RAVET, and specific written instructions regarding further procedures should accompany the file to that VETS investigator.

The Regional Office should notify the complainant by letter that his/her complaint has been returned to the original VETS investigator or has been transferred to another VETS investigator for further investigation. The letter should:

- identify the VETS investigator; and,
- inform the complainant that the new VETS investigator will make contact.

If the Regional Office review determines no basis for the complainant's protest, the Regional Office must:

- notify the complainant by letter of such decision; and,
- advise the complainant that upon closure of his/her case, s/he has an option to file an appeal with the MSPB within 15 calendar days of

receipt of the case closing letter.

If the protest is filed with the National Office, the protest will be referred to the appropriate Regional Office for response.

#### **11.4 TIME FRAMES FOR REVIEW**

When an open case file is to be reviewed by the DVET, Regional Office, and/or National Office staffs based on a protest, the following criteria are applicable:

- A copy of the case file should be forwarded to the appropriate DVET, Regional Office or National Office staff member;
- The original case file will be maintained by the VETS investigator to allow continuation of investigative action, if appropriate;
- Copies of any subsequent action taken on the case should immediately be forwarded to the appropriate review office for inclusion in their review;
- The reviewing office will expeditiously review, analyze, and make recommendations; and
- If during the review process, the VETS investigation reaches 60 calendar days duration, the VETS investigator will send the complainant a letter advising of his/her right to appeal to the MSPB.

# CHAPTER 12: TECHNICAL ASSISTANCE

## 12.1 PURPOSE OF TECHNICAL ASSISTANCE

Technical assistance seeks to broaden public awareness and understanding of veterans' preference in an effort to increase compliance with the law.

## 12.2 TECHNICAL ASSISTANCE TO INDIVIDUALS OR FEDERAL AGENCIES

General responses to inquiries not related to a specific veterans' preference case are considered technical assistance. There are two general categories:

- **Application of Veterans' Preference:** Responses to a request for information concerning the application of veterans' preference to certain situations, such as open and competitive vacancy announcements, certain hiring authorities, etc. Such responses need to be recorded on a VETS Form 1063 and filed according to local procedures. Other documentation, such as typed or handwritten memoranda to the file, or copies of letters of confirmation, may also be used; and
- **General Inquiries:** Requests for information concerning veterans' preference present an opportunity to establish good rapport. They can be answered orally or by a leaflet or other printed materials. Answers should be prompt, courteous, and correct.

Guidelines for answering inquiries follow:

- If in doubt about an answer to any inquiry, consult other state or regional "experts" and/or mentors. Do not answer if uncertain of the correct response;
- Make it clear that a response to a mail or telephone inquiry is not an official or legal position. If a legal opinion is requested, contact the Regional Solicitor's Office;
- Do not issue written opinions if veterans' preference promotional literature answers the inquirer's questions; and

If an inquiry does not relate to veterans' preference, it should be promptly referred to the appropriate agency.

## 12.3 TECHNICAL ASSISTANCE TO GROUPS AND ORGANIZATIONS

**Initiating Contacts.** To help increase public awareness of and compliance with veterans' preference laws and regulations, VETS investigators should initiate contacts with groups likely to be interested in or involved in veterans' preference matters. Such organizations include Federal Human Resources Personnel, National Council of Field Labor Locals, Regional Executive Committee, local Reserve and National Guard units, veterans' organizations, Employer Support of the Guard and Reserve committees, Judge Advocate General (JAG) offices, personnel associations, recruiter associations, and other groups.

To make initial contact:

- find out who heads such groups,
- telephone or send out letters of introduction and promotional materials,
- explain what veterans' preference does,
- invite the group(s) to ask questions and refer possible problems to VETS,
- and offer to make group presentations.

**Presentations.** Presentations are an efficient way to introduce veterans' preference laws and regulations to groups. The purpose of a presentation is to explain Federal veterans' preference laws and regulations, how to file complaints, and how complaints are processed.

Following are techniques that may be used in making presentations:

- Ask the sponsoring organization for a written invitation or confirmation that will describe exactly where and when the presentation will be held. Such documentation will support travel and absence from the office.
- Determine the size of the audience and plan for handouts accordingly.
- Schedule adequate time for a presentation and a question-and-answer session. Ask the contact person about any specific questions the group may have.
- During the presentation, use questions to spark interest.

**Documenting Presentations.** Presentations to groups should be documented on

a Report of Technical Assistance ([Exhibit 31](#)).

# CHAPTER 13: STAFF ROLES

## 13.1 STAFF ROLES

In general, VETS staffs play the following roles in veterans' preference program activities:

**Management Services Assistants and Veterans' Program Assistants.** These individuals provide administrative support to the RAVETs and DVETs, respectively. They may be the first point of contact when a potential complainant calls for information. Their role is to provide basic information about rights and eligibility requirements, and to assist individuals in filing complaints. However, they do not investigate cases.

**Veterans' Program Specialists.** Veterans Program Specialists investigate veterans' preference complaints, provide technical assistance, and perform related activities such as assisting with other VETS' programs within a State.

**Directors and Assistant Directors for Veterans' Employment and Training.** Directors of Veterans' Employment and Training have responsibility for managing the VETS' programs within a State. DVET responsibilities include oversight, reporting, and providing technical assistance on veterans' preference. ADVETs investigate complaints and provide technical assistance. Where there are no Assistant Directors for Veterans' Employment and Training (ADVETs) assigned, DVETs will also investigate veterans' preference complaints.

**Regional Office Staff.** RAVETs have overall responsibility for managing and monitoring of VETS' programs. Staff assigned to the Regional Offices assists the RAVETs in fulfilling this responsibility. Among their duties, Regional Office staff must ensure that veterans' preference procedures are followed by all regional investigative staffs, coordinate efforts with and request opinions from the Office of the Solicitor, and provide guidance to DVETs, ADVETs, Veterans' Program Specialists (VPSs), etc. Certain Regional Office staff may also be assigned veterans' preference cases.

**Mentors.** Mentors are experienced investigators assigned, as needed, to assist less experienced investigative staff in the investigation of difficult cases. This assistance may include simple guidance and direction or actual hands-on investigative assistance, as necessary.

**Deputy Director, Investigation and Compliance Division.** The Division oversees veterans' preference (VP) investigations, including developing and recommending policies designed to carry out investigation and compliance activities. It also coordinates investigations with other Federal agencies, including

the Office of the Solicitor of Labor, Office of Special Counsel, Merit Systems Protection Board, and Office of Personnel Management

**National Office Staff.** National Office staff provides overall guidance and establishes policies and procedures for veterans' preference implementation and enforcement.

## **13.2 REGIONAL PROTOCOLS**

Field staff members should use the expertise within their State and Region whenever case processing questions arise. If State or Regional staff cannot answer the field staff members' questions, the field staff will contact the veterans' preference lead for guidance and/or a mentor. All requests for Solicitors' opinions will be forwarded to the Regional Solicitor's Office.

# CHAPTER 14: QUALITY ASSURANCE REVIEW

## 14.1 DEFINITION

The Quality Assurance Review 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 for use in assessing and improving individual and overall effectiveness, efficiency, timeliness, and service.

## 14.2 PURPOSE

The review 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 -improvement. The review process provides timely information necessary for effective management of cases and identification of staff training needs.

## 14.3 TYPES OF REVIEWS.

Both open and closed cases are reviewed. Open cases are initially reviewed by the VETS investigator with limited management oversight. If a case remains open beyond a specified period of time (see [14.8](#) of this chapter), a rigorous process of management reviews is required. Closed cases are randomly reviewed on an annual basis.

**14.3.a Open Case Reviews.** The purpose of the open case review is to ensure that investigative actions are planned and result in sufficient information to make an appropriate case determination. A primary focus is to ensure the planned actions are timely and appropriate, and will resolve the case.

**14.3.b Closed Case Reviews.** The purpose of a closed case review is to evaluate case activities. The review examines the complaint and issues. It looks at the quality, effectiveness, and timeliness of the investigation. This includes examining the VETS investigator's actions and the resolution of the case. The review is a means to identify training needs, offer recommendations for staff improvement, and enable systemic deficiencies to be elevated to the National Office for their awareness and potential resolution.

## **14.4 THE OPEN CASE STATUS REPORT.**

The report is an assessment of the case by the VETS investigator. The report is documented on the Veterans' Preference Open Case Status Report form ([Exhibit 24](#)). The report is prepared on a regular basis as prescribed in Levels of Review (See [14.8](#) of this chapter).

The report is based on the standards relating to the conduct of an open case investigation described in the Quality Assurance Review. The report verifies that the issues of the case have been determined, the complainant has provided appropriate documentation, the Federal agency has been contacted, and appropriate/timely entries have been recorded in the Veterans' Preference Information Management System ([VPIMS](#)). In the report, the investigator states the status of the case, identifies barriers to resolution and the steps to overcome the barriers, and indicates the expected date of closure.

The report format is flexible. The VETS investigator is encouraged to adapt the questions to the unique aspects of the case at hand. The VETS investigator is encouraged to include in the report observations on personal training and equipment needs that will improve his/her ability to conduct case investigations.

## **14.5 THE QUALITY ASSURANCE REVIEW**

The review examines primary aspects of a veterans' preference case. Standards are provided for each area:

- Case Opening
- Alleged Violation/Complaint, Issues and Remedies, Determining Eligibility
- Documentation
- Investigation
- MSPB Appeal
- Case Closure
- Corrective Action
- Effective Case Handling
- Training Needs

The review is documented on the "Veterans' Preference Open/Closed Case Quality Assurance Review Form" ([Exhibit 25](#)). Review Standards are described in the next section. Frequency and performance of open and closed case reviews are described in Levels of Review (see [Section 14.8](#)).

## **14.6 REVIEW STANDARDS.**

**Case Opening.** Within 5 calendar days of receipt of a signed VETS Form 1010 or written complaint (original, email, or fax) from a person alleging a Federal agency is in violation of veterans' preference:

- Was the case opened, including [VPIMS](#) entry?
- Was the claimant contacted?
- Was the Federal agency contacted?
- Was the information received from the complainant sufficient?
- Did the VETS 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?

### **Alleged Violation/Complaint, Issues and Remedies, Determining Eligibility.**

- Does the violation(s) or complaint(s) alleged by the complainant relate to any statute or regulation pertaining to Federal veterans' preference?
- Was the complaint filed within 60 days of the alleged violation?
- Are the remedies due under veterans' preference and the remedies requested by the complainant identified in the case file?
- Did the VETS investigator analyze the complaint and properly determine eligibility for veteran's preference?
- Did the VETS investigator contact the Federal agency within the prescribed time limits?
- Did the VETS investigator follow appropriate procedures for contacting the Federal agency?

**Documentation including VPIMS.** Telephone or in-person contact(s) with

interested parties (including proceedings at conferences) should be documented on VETS Form 1063 or the appropriate memorandum and recorded in the VPIMS.

Documents should be in reversed chronological order by date received, with the newest on top, except that the complaint intake document should be placed on the bottom right-hand side of the file with appropriate documents on top, no matter when it is received.

A written investigative plan must be prepared prior to proceeding with the investigation.

- This plan, at a minimum, should identify the issues in the complaint, any evidence needed to make a factual determination, and the means by which evidence is to be obtained.
- At the appropriate time, the plan should be revised to identify potential obstacles to resolution and the means for gathering additional evidence, if necessary.
- The initial case investigative plan, as well as any follow-up, must be annotated in the [VPIMS](#).

### **Investigation.**

- Were the relevant issues explored?
- Was relevant information and documentation obtained during on-site investigations?
- Were all investigative leads followed and documented, including all relevant information and documentation obtained in addition to on-site investigations?
- Was the progress of the investigation noted?
- Did the VETS investigator respond to the Federal agency's questions on VETS' policy and procedure and on veterans' preference legal issues?
- Was a mentor assigned if the case was open longer than 45 days?
- Was the merit of the case determined and were the parties informed?
- Were the VETS investigator's activities reported and updated in the VPIMS?

### **Merit Systems Protection Board (MSPB) Appeal.**

- If case was not resolved, did the VETS investigator inform the complainant, in a letter sent Certified Mail–Return Receipt requested, of his/her right to appeal the case to the MSPB and the timetable for such an appeal?
- Were appropriate entries made in the veterans' preference file and [VPIMS](#)?
- Was an open case review completed by the investigator's supervisor upon receipt of the initial agency position statement?

### **Case Closure.** Did the VETS investigator –

- Close the case when appropriate?
- Address all issues relevant to closing the case?
- Prepare a closing letter based on procedures?
- Have the claimant closing letter approved by management prior to release to the claimant.
- Notify the complainant and any other appropriate parties (e.g., the Federal agency, and any or all of the other parties who received correspondence copies earlier)?
- Report case closing in VPIMS?
- Forward meritorious cases to the Regional Office for summarization and submission to the Office of Special Counsel for review of possible prohibited personnel practice?

**Corrective Action.** At all levels, the reviewing officials must ensure that problem areas are identified early in the case processing, and that they are addressed in writing to the VETS investigator handling the case. Efforts must also be made to ensure that these corrective actions are taken.

**Effective Case Handling.** Effective case handling is ensured when actions that lead to a case determination are planned and completed, the case file is fully documented, and accurate information is reported in the VPIMS in a timely manner. Effective case handling is also ensured when appropriate and timely actions are taken to resolve individual cases. Finally, the complainant should have had all of his/her concerns adequately addressed.

## **Training and Material Needs.**

- What training is required to improve VETS investigator performance?
- What material or equipment is needed to provide the VETS investigator adequate means to conduct investigations, to maintain a case file, to provide direct input into the VPIMS, to access information and resources, to perform research in support of the case, and to perform analysis of the case?

## **14.7 THE QUALITY ASSURANCE REVIEW PROCESS**

The process includes both staff self-assessment as well as management review of case activity. The process is 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 staff performing case investigation, supervisors at the State, Region, and National offices, and support staff, including the veterans' preference mentors. The VETS investigator, DVET, and RAVET all have primary roles.

The RAVET is ultimately responsible as the reviewing official. The RAVET can designate other reviewer(s) but must ensure reviews are performed within the parameters described, and that constructive and corrective feedback is provided to VETS investigators.

Management and support staff reviewers will utilize the VETS Open Case Status Report Form ([Exhibit 24](#)).

The National Office, with the support of the veterans' preference mentor team, provides the quality assurance role through the [VPIMS](#) and the Quality Assurance Review. They periodically monitor the regional quality assurance review process to verify each region is exercising appropriate and timely managerial oversight. The National Office also provides feedback to the region, commending effective performance and making suggestions or providing assistance when appropriate.

## **14.8 LEVELS OF REVIEW.**

**State.** The State level of review is as follows:

- The VETS investigator will perform self-assessments by completing a VETS Open Case Status Report Form for each open case after the case is open for 30 days. It is also completed every 30 days thereafter while the case remains open. The original report is to be placed on the left side of the case file with a copy submitted to the VETS investigator's supervisor.
- The VETS investigator's supervisor will review the report along with

information available on the VPIMS for timeliness and appropriateness. The supervisor may request a copy of the case file at any time if s/he feels additional information is needed from the VETS investigator in order to conduct a more thorough review.

- After a case is open 45 calendar days, the supervisor will conduct a review utilizing the VETS Open / Closed Case Quality Assurance Review Form and advise the Regional Office if the case is anticipated to remain open beyond 60 calendar days.
- The DVET will ensure that a general review of all closed cases is conducted, with 25% receiving a Quality Assurance Review each quarter. The Veterans' Preference Open/Closed Case Quality Assurance Review Form will be used to document findings for the 25% of the cases reviewed. The review form will be placed on the left side of the case file and remain with the file.

 **NOTE** 

**If the DVET is the VETS investigator, the DVET will perform self-assessments as described above for the VETS investigator. The DVET's supervisor will similarly perform reviews as described for the supervisor.**

**Region.** At least annually, a designated management reviewer will physically review no less than 15% of open cases and no less than 25% of closed cases.

- The review will include examination of data from the [VPIMS](#).
- Findings will be documented on the Veterans' Preference Open/Closed Case Quality Assurance Review Form.
- Written feedback will be provided to each DVET for his/her cases.

The review percentages, 15% of open cases and 25% of closed cases, are to be considered "floor" levels. Regions are encouraged to set higher sampling percentages.

**Veterans' Preference Field Coordinator.** The Veterans' Preference Field Coordinator will select a nationwide random sample of 10% of closed cases or twenty closed cases, whichever is more, for annual review.

- The coordinator will request a copy of the cases from the appropriate Regional Offices.

- With the assistance of the mentor team, the coordinator will review the cases and related data in the [VPIMS](#).
- The findings will be documented on the VETS Open/Closed Case Quality Assurance Review Form for each case reviewed.
- The results of the individual case reviews, as prepared on the VETS Open/Closed Case Quality Assurance Review Form, will be summarized and included in an annual Quality Assurance Review Report prepared by the Veterans' Preference Field Coordinator and sent to the Chief, Investigation and Compliance Division.

**National Office.** The Chief, Investigation and Compliance Division will review the VETS Open/Closed Case Quality Assurance Review Form and direct the Veterans' Preference Field Coordinator to prepare reports and memorandum for the review to the Chief, Operations and Programs.

**Time Periods Allowed for Review Completion.**

- **Open Case Review.** The reviewing office will complete a review of the VETS Open Case Status Report (30-day report) and the case data in the VPIMS within 10 calendar days following receipt of the VETS Open/Closed Case Quality Assurance Review report from the VETS investigator.

The DVET will notify the Regional Office within 5 calendar days following receipt of the VETS Open Case Status Report (60-day report) from the VETS investigator when a case has been open 60 calendar days.

- **Closed Case Review – 30 Calendar Days.** The reviewing official will have 30 calendar days following receipt of the case file to complete the review.