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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 provision 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; alternatively, please see Exhibit 1, List of Resources.

1.2 PURPOSE OF MANUAL

The purpose of this manual is to provide VETS' investigators with uniform guidance for processing 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. This manual is intended for internal use by VETS' personnel involved in the processing and investigation of veterans' preference complaints and is not to be distributed externally.

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 4), 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).

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 defendable 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 insure that statutory entitlements are accorded.

2.5 RECORD KEEPING FOR CASES

2.5.a 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 the VETS Form 1063. In case of a mistake on VETS Form 1063, 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.

2.5.b **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 5). 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 6). At a minimum, the opening letter should contain the items listed in Chapter 5.

A Certified Mail-Return Receipt 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

The following correspondence will be sent Certified Mail-Return Receipt:

- all second letters attempting to contact the preference eligible or veteran;
- all "10-Day Letters" (Final Notice Letters) to the Federal agency for lack of a response or cooperation;
- 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 THE PRIVACY ACT REQUEST

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 8). A Medical Information Release Form (Exhibit 9), 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 transcribed and placed 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.

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. Recording tends to restrict a free flow of information. If a party to a conference insists on recording a conference, the VETS investigator should 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 RAVET. 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."**

CHAPTER 3: COMPLAINT PROCESSING

3.1 GENERAL PROCESS.

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

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

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, open a case file and obtain a case file number from VPIMS.

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, 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 5). 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.

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 32) 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 33) via Certified Mail-Return Receipt 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 indicate 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 (Exhibit 34). 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 (Exhibit 35).

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 5 U.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 31) via Certified Mail–Return Receipt that the complaint is being closed as a "Not Eligible." This closing letter must advise the complainant of his/her MSPB appeal rights.

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)

3.1.b **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.)

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

3.1.d **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) 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.

3.1.e **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 under 3.1.a.4 or 3.1.a.5 of 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 anytime 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 10).

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.

4.1.a 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. (Exhibit 11).
- 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 12) 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.

4.1.b 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 should be opened immediately upon receipt of 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 no merit, 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 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 RAVET, Philadelphia Region, 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, 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 a 10-point preference based on either:
  - compensable Disability Preference (CP);
  - 30% Compensable Disability Preference (CPS); or
  - 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.

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 6). 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.

5.3.a **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.

5.3.b **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.

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

- the complainant and
- 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 summary 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.

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

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

5.4.c **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.

5.4.d **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 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 merit/no merit evaluation 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 13). Preparation and establishing a good foundation are the keys to any investigation.

6.4.a **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.

6.4.b **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.

6.4.c **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 14). 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. 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 15).

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 6.10.b 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.

6.10.a 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 assist in identifying truthfulness as well as to determine when relevant and logical follow up questions are indicated.

6.10.b Documenting Interviews. The contents of each interview will be documented on a Witness Statement Form (Exhibit 16). 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
- 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.

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.

6.13.a 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.

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

6.13.c 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.

6.13.d 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 17). 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.

6.13.e **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.

6.13.f **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.

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

6.13.h **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, usually 10 to 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.

6.13.i 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.

6.13.j 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. 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.

6.13.k 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 we must investigate and document cases as though they might go to Federal Court, 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 18). 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 complaint is meritorious 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 NO MERIT DETERMINATION

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 19).

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.

7.1.a 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.

7.1.b 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

7.3.a 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.

7.3.b 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.

7.3.c 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.

7.3.c.1 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.

7.3.c.2 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 then two parties in attendance, list the participants by name and relationship to the case. Review and use the conference opening statement found in Exhibit 20, as it sets the tone for the conference and clarifies the purpose, goal(s), and conduct of the conference. The investigator may tailor Exhibit 20 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 21).

The information agreed to by the parties in the Settlement Outline (Exhibit 21) will be utilized to formulate the final Settlement Agreement and Release Form (Exhibit 26) 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 7.1.b 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 REQUEST 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 21)
- 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 7.12.a through 7.12.f.

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.b 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.a 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:

8.2.a VETS staff contact the principal(s) involved with the RIF and offer technical assistance (TA).

8.2.b 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.

8.2.c 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. As soon as it becomes apparent that the number of complaints will exceed eight, the RAVET for the region in which the RIF occurred will notify the Chief, Investigation and Compliance Division of VETS.

8.2.d In consultation with the Chief, Operations and Programs of VETS, the Chief, Investigation and Compliance Division, and the Philadelphia Region RAVET, the RAVET and DVET for the jurisdiction in which the RIF occurred will determine if additional resources from outside their region are needed.

8.2.e 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.

8.2.g VETS requests cooperation from all parties involved.

8.3 RIF COMPLAINTS PROCESSING

8.3.a 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.

8.3.b 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.

8.3.c 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.

8.3.d 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 2.13.d of Chapter 2.

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 procedures to investigate 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 with RIF procedures is necessary for completion of a thorough investigation.

8.4.a 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).

8.4.b 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.

8.4.c If the VETS investigator(s) receive multiple requests for assistance in a particular RIF, it may be necessary to request assistance. 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

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

9.2.a.1 Lack of Interest. Administrative closure is appropriate when the complainant clearly displays lack of interest or is obviously uncooperative. Examples include failure to reply to VETS investigator's letters, failure to give 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 (see Exhibit 37).
- 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 22).

9.2.a.2 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 23). 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.

9.2.b **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 25).

9.2.b.1 **Release Form.** A Settlement Agreement and Release Form should be completed and signed by the complainant and the agency whenever possible (Exhibit 26).

9.2.b.2 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 27).

9.2.b.3 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 28). Finally, the letter must also provide appeal rights to the MSPB if the complainant is not fully satisfied with the resolution obtained by VETS.

9.2.b.4 **VETS Receipt of Check.** 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.

9.2.b.5 Send check to complainant by Certified Mail-Return Receipt. Send the complainant the agency's check and, 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.

9.2.c 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.

9.2.c.1 Release Form. A Settlement Agreement and Release Form should be completed and signed by the complainant and the agency whenever possible (Exhibit 26).

9.2.c.2 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 27).

9.2.d 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 (refer to 9.2.e) or No Merit (refer to 9.2.g), whichever is appropriate, and inform the complainant of his/her right to appeal to the MSPB.

9.2.d.1 Send the complainant a brief letter confirming the request and advise him/her that the case is being closed (Exhibit 29).

9.2.d.2 Send a separate closing letter to the agency (Exhibit 30).

9.2.e **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 (Exhibit 31).

9.2.f **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 3.2.a of 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 (Exhibit 32).

9.2.g **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 19), and explain the right to appeal to the MSPB by Certified Mail-Return Receipt.
- Notify the agency that the case was closed, with a letter similar to Exhibit 24.

9.2.h **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:

9.2.h.1 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].

9.2.h.2 After completing the step above, use the "Close a Case" function to enter the "Duplicate Claim" close code.

9.2.i **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.

9.2.i.1 The letter should indicate that the complaint had merit, but VETS investigator was unable to resolve the complaint (Exhibit 19).

9.2.i.2 Notify the agency that the case was closed, with a letter similar to Exhibit 24, explaining that the complainant was advised of his/her appeal rights to the MSPB.

9.2.j **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 61st 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."

9.2.j.1 A case closing letter similar to Exhibit 38 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.

9.2.j.2 Notify the agency that the case was closed, with a letter similar to Exhibit 39, 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.

9.3 MAINTENANCE OF CLOSED CASE FILES

9.3.a Each Region must have a written plan for maintaining closed case files until the files are eligible for retirement to the Federal Records Center.

9.3.b The plan should specify where the closed cases are to be kept and how they are to be filed.

9.3.c The plan should indicate who is responsible for retiring the files and contain the region's records retirement procedures.

9.3.d This plan must comply with the VETS Record Retention Plan.

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 4).

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.

10.2.a 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.

10.2.b The RAVET will refer the case to OSC 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.

10.2.c The RAVET will send a copy of the case file to OSC.

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 VETS investigator will be in 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 staff 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.
- 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.

12.2.a Two General Categories.

12.2.a.1 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.

12.2.a.2 General Inquiries: Requests for information concerning veterans' preference can be answered orally or by a leaflet or other printed materials. Answers should be prompt, courteous, and correct. View this as an opportunity to establish good rapport.

12.2.b Answer Inquiries. Guidelines for answering inquiries follow:

- If you are in doubt about an answer to any inquiry, consult your other state or regional "experts" and/or mentors. Do not answer when you are not sure 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.
- It is beneficial for VETS investigators to cooperate with other agencies. 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

12.3.a Initiating Contacts. To help increase public awareness of and compliance with veterans' preference, 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.

12.3.a.1 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.

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

12.3.b.1 Techniques for Making Effective Presentations. 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 so that you know how many handouts to bring.
- Schedule adequate time for a presentation and a question-and-answer session. Ask your contact person about any specific questions the group may have.
- During the presentation, use questions to spark interest.

12.3.b.2 Documenting Presentations. Presentations to groups should be documented on a Report of Technical Assistance (Exhibit 36).

CHAPTER 13: STAFF ROLES

13.1 STAFF ROLES

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

13.1.a 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.

13.1.b 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.

13.1.c 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. Where there are no Assistant Directors for Veterans' Employment and Training (ADVETs) assigned, DVETs will also investigate veterans' preference complaints. ADVETs investigate complaints and provide technical assistance.

13.1.d 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 staff, 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.

13.1.e 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.

13.1.f Chief, Investigation and Compliance Division. The Division oversees veterans' preference (VP) investigations, including developing and recommending policies designed to carry our 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

13.1.g 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 coordinator of the veterans' preference program (currently RAVET, Philadelphia Region) 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.

14.4.a 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 2).

The report is prepared on a regular basis as prescribed in Levels of Review (see 14.8 of this chapter).

14.4.b 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.

14.4.c 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 3). Review Standards are described in 14.6 of this chapter. Frequency and performance of open and closed case reviews are described in Levels of Review (see 14.8 of this chapter).

14.6 REVIEW STANDARDS.

14.6.a Case Opening.

14.6.a.1 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 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?

14.6.b 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?
- 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?

14.6.c Documentation; including VPIMS

14.6.c.1 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.

14.6.c.2 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.

14.6.c.3 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.

14.6.d 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?

14.6.e 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?

14.6.f 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?
- 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?

14.6.g **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.

14.6.h **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.

14.6.i **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.

14.7.a 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.

14.7.b Management and support staff reviewers will utilize the VETS Open Case Status Report Form (Exhibit 2).

14.7.c 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.

14.8.a State

14.8.a.1 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.

14.8.a.2 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.

14.8.a.3 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.

14.8.a.4 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.

14.8.b Region.

14.8.b.1 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.

14.8.b.2 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.

14.8.c **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.

14.8.c.1 The coordinator will request a copy of the cases from the appropriate Regional Offices.

14.8.c.2 With the assistance of the mentor team, the coordinator will review the cases and related data in the VPIMS.

14.8.c.3 The findings will be documented on the VETS Open/Closed Case Quality Assurance Review Form for each case reviewed.

14.8.c.4 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.

14.8.d **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.

14.8.f **Time Periods Allowed for Review Completion**

14.8.f.1 **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.

14.8.f.2 **Closed Case Review — 30 Calendar Days.** The reviewing official will have 30 calendar days following receipt of the case file to complete the review.

EXHIBITS

EXHIBIT 1 LIST OF RESOURCES

The following URLs were used to hyperlink key words and phrases in this Manual. The list is provided in case a hardcopy of the Manual is received without access to the electronic version. There are many places on the Internet that this information can be found; the list below only includes one.

VEOA Public Law 105-339
http://www.opm.gov/veterans/pl105339.pdf

5 U.S.C. 3330a
http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=184943

5 U.S.C. 3330b
http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=184944

5 U.S.C. 3330c
http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=184945

Veterans Benefits Improvement Act of 2004 (Public Law 108-454)
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_statutes2_at_large&docid=4p118stats-7.pdf

5 U.S.C. 3304(f)(1)
http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=184914

5 U.S.C. 2108(3)
http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=184873

5 CFR 351
http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfr351_01.html

EXHIBIT 2: VETERANS' PREFERENCE OPEN CASE STATUS REPORT FORM

Veteran's Employment and Training Service
U.S. Department of Labor

VETERANS' PREFERENCE OPEN CASE STATUS REPORT FORM

COMPLAINANT: _____ DATE OPENED: _____

CASE NO: _____ DATE OF REPORT: _____

VETS INVESTIGATOR: _____

1. A. Does the VETS Form 1010 identify the issue(s)? Yes____ No____
   B. What is / are the issue(s)? _____
2. Was the VETS Form 1010 accompanied by appropriate military documentation? Yes____ No____
3. A. Has Federal agency been contacted? Yes____ No____
   B. Date of contact: _____
4. Was the case opening and other appropriate data entered into VPIMS on a timely basis? Yes____ No____
5. What is the current status of this case? _____
6. What are the barriers to the resolution of this case? _____
7. What steps will be taken to overcome these barriers? _____
8. What is the expected date of closure? _____
9. What training and material needs do you need as an Investigator? _____

EXHIBIT 3: VETS OPEN/CLOSED CASE QUALITY ASSURANCE REVIEW FORM

Veteran's Employment and Training Service
U.S. Department of Labor

OPEN/CLOSED CASE QUALITY ASSURANCE REVIEW FORM

Complainant: _____ **Date Opened:** _____

Case No: _____ **Date Received:** _____

State: _____ **Reviewer:** _____

VETS Inv: _____ **Closing Codes:** _____

Opening Issue(s): _____

IF AN ITEM IS NOT APPLICABLE, PUT "N/A." IF AN ITEM IS NOT YET APPLICABLE OR READY FOR CONSIDERATION, MARK "PENDING." COMMENTS MUST BE ENTERED FOR ANY "NO" ENTRY. USE ADDITIONAL SHEETS, IF NEEDED.

CRITERIA	YES	NO	PENDING	COMMENTS
1. CASE OPENING				
a. Was case opened within 5 days?				
b. Relevant Federal agency contacted within 5 days?				
c. Timely opening letter based on VETS' policy?				
d. Sufficiency of data to determine eligibility?				
e. If not VP, is there a USERRA issue?				

Reference Chapter 14 for completion of this form.

OPEN/CLOSED
CASE QUALITY ASSURANCE REVIEW FORM

CRITERIA	YES	NO	PENDING	COMMENTS
2. DOCUMENTATION				
a. Alleged violation/complaint issues documented?				
b. Remedies desired and remedies due documented?				
c. Complaint analyzed and eligibility determined?				
d. Required documentation in Case file in chronological order, i.e., 1010, 1063, fax, letter, etc.?				
e. Investigative Plan developed/revised as needed AND entered into the IMS?				
3. INVESTIGATION				
a. All relevant issues explored?				
b. Obtained relevant information and documentation during on-site investigation, i.e., Certification List and Vacancy Announcement?				
c. Determine if OPM approved agency's reason to medically disqualify or pass over a preference eligible on a certificate in place of a non-preference eligible?				
d. Were all investigative leads followed or documented, including all relevant information/ documentation obtained, in addition to an on-site investigation?				
e. Progress of investigation noted in case file and entered into IMS in a timely manner?				
f. Responded to Federal agency questions/legal issues?				
g. Case merit determined and parties informed?				
h. Was protest filed and procedure followed?				

CASE NO: _____ PAGE 2 OF _____

OPEN / CLOSED
CASE QUALITY ASSURANCE REVIEW FORM

CRITERIA	YES	NO	PENDING	COMMENTS
4. MSPB APPEAL NOTIFICATION				
a. Complainant informed of rights, options and timetables?				
b. Determination sent via certified mail, with appropriate MSPB Appeal Rights/Information?				
5. CASE CLOSURE				
a. All issues addressed and appropriate parties notified?				
b. Case activity entered into IMS in a timely manner?				
c. Case closed within 60 calendar days of opening?				
d. Closing letter based on VETS' policies?				

Granted / Settled Award Amount: $ _____

Additional comments/explanations relevant to case outcomes. Overall, did the VETS' investigator control the process of the case investigation and ensure compliance with VETS' Policy and Handbook Procedures? Do you recommend any corrective action? (Please attach additional sheets, if needed)

_____

_____

_____

_____

_____

_____

_____

_____

_____

CASE NO: _____ PAGE 3 OF _____

OPEN/CLOSED
CASE QUALITY ASSURANCE REVIEW FORM

Effective Case Handling: **Yes** _____ **No** _____ **Inconclusive** _____

Effective case processing is ensuring that actions which lead to results are both planned and completed. It is also ensuring that appropriate and timely action is taken to resolve individual cases. Complainant should have expressed agreement with the findings of the investigation, or had all of his/her concerns adequately addressed.

If No or Inconclusive, why?

_____

_____

_____

_____

Training needs?

_____

_____

_____

_____

_____

_____

_____

_____

CASE NO: _____ **PAGE 4 OF** _____

OPEN/CLOSED
CASE QUALITY ASSURANCE REVIEW FORM

ADDITIONAL COMMENTS SHEET

USE THIS ADDITIONAL COMMENTS SHEET FOR MORE SPACE TO PROVIDE COMMENTS TO ANY QUESTIONS WITH A "NO" ENTRY. DUPLICATE THIS SHEET, AS NECESSARY, TO PROVIDE COMPLETE COMMENTS.

ITEM #	COMMENTS

CASE NO: _____ PAGE 5 OF _____

EXHIBIT 4: VETS/OSC MEMORANDUM OF UNDERSTANDING (MOU)

A Memorandum of Understanding between VETS and OSC was signed in December 2000. The information relevant to the VP case processing of complaints considered to be meritorious is included below.

Section II of the MOU deals with VETS and OSC activities under the VEOA. Subsection A.2 of Section II covers referral of VEOA complaints from VETS to OSC and says:

> *"…any claim under VEOA that is determined to be meritorious as a result of VETS' investigation will be referred to OSC for review as a potential prohibited personnel practice for disciplinary action purposes. It is understood that the referral will be made whether or not the case is resolved through VETS' efforts and that such referral is not subject to request or approval by the complainant. Such referral will be made by the investigator through his or her Regional Administrator (RA) using procedures to be developed by VETS in consultation with OSC.*
>
> *The document to be forwarded to OSC in the referral process will consist of a copy of the case file and a letter from the RA containing a brief analysis of the case. The RA's analysis will be prepared in consultation with the Regional Solicitor for Labor and will summarize the merits of the claim under veterans' preference. Requests by OSC for further information, documentation, or other assistance regarding a referred case will be made to the RA involved.*
>
> *Notwithstanding the provisions of the preceding paragraph, the parties agree that OSC may further investigate alleged violations of 5 U.S.C. 2302(b)(11) pursuant to its authority under 5 U.S.C. 1214. After making a decision as to whether disciplinary action will be taken, OSC will notify the RA."*

Subsection B.2 of Section II covers notification to OSC of a complainant's intent to file an appeal with the MSPB and says:

> *"VETS will notify OSC whenever a person who has filed a preference claim informs VETS that he or she intends to file an appeal of the alleged violation with the Merit Systems Protection Board. This notification will be made through the RA in whose region the case was handled without regard as to whether the case has been determined to be meritorious."*

EXHIBIT 5: OPENING LETTER TO COMPLAINANT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
1100 North Eutaw Street, Room 205
Baltimore, MD 21201

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This is to acknowledge your VEOA complaint was filed with VETS on **date**. Please be advised that 5 U.S.C. 3330a(e)(2) provides that you may not pursue redress for an alleged violation of veterans' preference under this statute at the same time you pursue redress for such alleged violation under any other law, rule, or regulation.

The Veterans' Employment and Training Service (VETS) will gather information surrounding the circumstances of your complaint. We will then make a determination as to the merit of your complaint, and if we determine your complaint has merit, will make every effort to resolve it with the Federal agency concerned.

If a resolution cannot be obtained by VETS within 60 days of the date your complaint was filed, you may elect to appeal the alleged VP violation to the Merit Systems Protection Board (MSPB) for resolution. If you decide to avail yourself of this option, and you have not received a notification from VETS, you must notify VETS in writing of that choice. If you elect this option, VETS ceases all investigative action and will close your case.

If within 60 days, VETS notifies you that your complaint is without merit or that it cannot be resolved, your case will be closed and you will be provided with information on your appeal rights with the MSPB. You will have 15 calendar days from the date of receipt of that notification to file your appeal with the MSPB.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 6: OPENING LETTER TO AGENCY

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
OBES Building, 145 Front St.
Columbus, Ohio 43216

Month Day, Year

Agency Point of Contact
Title
Agency Name
Agency Address

RE: **Complainant's Name**
Case Number

Dear **Agency POC**:

This Veteran's Employment and Training Service (VETS) is responsible for seeking compliance with Federal statutes and regulations relating to veterans' preference. Complainant has contacted this office in order to ascertain his rights relative to his veterans' preference entitlement. VETS authority to investigate and seek resolution of the complaint is contained in 5 U.S.C. 3330a.

Mr./Ms. Complainant's Last Name alleges he applied for Vacancy Announcement **01-01-5, Supply Clerk, GS-2005-7 with the agency. According to Complainant, he made a timely application for the subject position, was found qualified and referred for an interview. He was interviewed for the subject position on February 28, 2001, but received a letter from the agency dated April 1, 2001 notifying him that he had not been selected for the subject position.** Complainant believes that he is very well qualified for the subject position and, as a **ten**-point preference eligible, questions whether he received his veterans' preference entitlement.

Please review **Mr./Ms. Complainant's Full Name**'s application history for Vacancy Announcement **01-01-5** with the agency and provide this office with a written statement of the agency position regarding **Mr./Ms. Complainant's Last Name**'s application, veterans' preference and the selection process. Please include a copy of the employment certificate(s) used to fill Vacancy Announcement **01-01-5** and any related documentation. An expeditious response to this inquiry for information by **Month Day, Year** is greatly appreciated since a back wage complaint may also apply if **Mr./Ms. Complainant's Last Name**'s complaint is determined to be meritorious.

Sincerely,

Investigator's Name
Investigator's Title
cc: **Complainant's Name**

NOTE

This letter should be adapted to the particular issues of the case.

EXHIBIT 7: OPENING AND CLOSING LETTER

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Sent Certified Mail – Return Receipt

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Name**:

During our meeting of **Month Day**, I informed you that I did not think you were entitled to veterans' preference. However, I opened a case on your behalf and promised to review the documentation that you provided. I have completed my review of your documentation and have determined that you are not entitled to veterans' preference. **This determination was based on the fact that the military service you performed in 1968 and 1969 was for training in the United States Army Reserves. I could not find any evidence that you performed regular active duty; earned a Campaign Badge or Expeditionary Medal; evidence of a service-connected disability; or other eligibility criteria reflecting preference eligibility. Your military service in the Army Reserves does not entitle you to veterans' preference.**

As a result of the above, we have closed our file on your complaint referenced above, effective this date.

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB office address]

A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html.

If you have any questions concerning the appeal process, you may call the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers About Appeals" at, http://www.mspb.gov/.

I am sorry that a more favorable decision could not be reached in your case. Thank you for contacting the Veterans' Employment and Training Service for assistance. **[NOTE: Investigators are requested to check the websites listed in the above paragraph prior to sending the letter as website addresses may change.]**

Sincerely,

Investigator's Name
Investigator's Title

Enclosures: MSPB appeal forms

EXHIBIT 8: FEDERAL PRIVACY ACT RELEASE FORM

FEDERAL PRIVACY ACT RELEASE FORM

To Whom It May Concern:

I, Name of Complainant, hereby authorize release to the Veterans' Employment and Training Service, U.S. Department of Labor, information concerning (Check item(s) that apply):

_____ Employment Records (Specify) _____

_____ Military Records (Specific Description) _____

_____ Medical Records (Specific Description) _____

_____ Other (Specify) _____

I am aware of the Privacy Act of 1974, 5 U.S.C. 552a, and hereby authorize the release from my file of the information specified above.

A photocopy of the authorization will bestow the same rights to the bearer as the original.

_____
Signature of Complainant

_____
SSN

_____
Address

_____
Date

_____
Case Number

EXHIBIT 9: MEDICAL INFORMATION RELEASE FORM

MEDICAL INFORMATION RELEASE FORM

To Whom It May Concern:

I, ____Name of Complainant_____, authorize any physician, hospital, clinic or other health-related person or facility to release any medical or other health-related information (including mental health) to the United States Department of Labor, Veterans' Employment and Training Service, which are deemed necessary for the purpose of pursuing my complaint under 5 U.S.C. 3330a. This release applies only to that complaint, the designation of which appears below.

_____
Signature of Complainant

_____
SSN

_____
Address

_____
Date

_____
Case Number

EXHIBIT 10: CLOSING LETTER TO COMPLAINANT REQUESTING WITHDRAWAL TO SEEK RESOLUTION THROUGH SEPARATE REDRESS AVENUE

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This correspondence is in response to your letter dated **Month Day, Year**, in which you requested that your Veterans' Preference complaint be withdrawn. Please be advised that your case was closed effective **Month Day, Year**.

If you are unable to resolve your complaint through your Union and still wish to seek resolution through our Agency (Veterans' Employment and Training Service), you must file a new complaint by **Month Day, Year**. This will protect your right to file an appeal with the Merit Systems Protection Board (MSPB) in the event we are not able to resolve your complaint.

If you have any questions concerning the above information, you may contact me at **(123) 456-7890**.

Sincerely,

Investigator's Name
Investigator's Title

NOTE

This letter should be adapted to the particular issues of the case.

EXHIBIT 11: VETERANS' PREFERENCE ELIGIBILITY FORM (VETS FORM 1010)

OMB NO. 1293-0002 (EXP 07/31/2010)
VETS/USERRA/VP Form 1010 (REV 2/99)

ELIGIBILITY DATA FORM: For claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and/or claims under the Veterans' Preference (VP) provisions of the Veterans Employment Opportunities Act of 1998

U.S. Department of Labor, Veterans' Employment and Training Service

PLEASE TYPE OR PRINT

Section I: Complainant Information

1. Name: _____
   Last Name First Name M.I.
2. Address: _____
   Street City State ZIP
3. Social Security No: _____ 4. Home Phone: _____ 5. Work Phone: _____
6. E-Mail Address: _____

Section II: Uniformed Service Information

7. Serve(d) In: O Army O Navy O Marine Corps O Air Force O Coast Guard O National Guard O Reserve
   O Public Health Service O Other (Explain in "Comments") O None (Retaliation Claim – Explain in "Comments")
8. If Reserve/National Guard:
   (A) Name of Unit: _____
   (B) Unit Address: _____
   (C) Unit Phone: _____
9. Dates of Service (If applicable): (a) From: _____ To: _____
   OR (b) Date of Examination/Rejection for Service: _____
10. Type of Discharge or Separation: O Honorable Conditions O Entry Level O Uncharacterized O Medical
    O Other than Honorable Conditions O Other (Explain in "Comments") O Not Applicable

Section III: Employer Information

11. Employer or Prospective Employer's Name: _____
12. Address: _____
    Street City County State ZIP
13. Principal Employer Contact (PEC):
    (a) PEC Name/Title: _____ (b) PEC Phone: _____
14. Employment Dates (If applicable): From: _____ To: _____
15. Since beginning work with this employer, has your cumulative uniformed service exceeded 5 years? O Yes O No
    If **YES**, explain in Comments box at end of this claim form.
16. Name of Union(s) That Represent You: _____

n IV: Claim Information

If Claim Concerns Veterans' Preference in Federal Employment

18. Preference Issue (Check One): O Hiring O Reduction-in-Force (RIF)

m Concerns Employment Discrimination under USERRA

19. Employment Discrimination Issue(s): O Hiring O Reemployment O Promotion O Termination O Benefits of Employment

m Concerns Hiring, Promotion, RIF or Termination

20. Title of Position Held or Applied For: _____

21. Pay Rate: _____

22. Date of Application Employment/Promotion: _____

20a. Vacancy Announcement No.: _____

20b. Date Vacancy Opened: _____ 20c. Date Vacancy Closed: _____

If Claim Concerns Reemployment Following Service

23. Was Prior Notice of Service Provided to Employer? O Yes O No (If "No," Explain in Comments)

24. (a) Who Provided Notice of Service to Employer? O Self O Other (name): _____

(b) Was the Notice of Service: O Written O Oral O Both

(c) Date Notice of Service was given to Employer: _____

25. Name/Title of Person to Whom Notice of Service was Provided: _____

26. Date Applied for Reemployment: _____ **OR** Date Returned to Work: _____

27. Reemployment Application Made To: Name: _____ Title: _____

28. Reemployed or Reinstated? O Yes (date): _____ O No

(a) If **YES**, what position? _____ at what pay rate? _____

(b) If **NO**, Date denied: _____ Reason given: _____

(c) Who denied (name): _____

PUNISHMENT FOR UNLAWFUL STATEMENTS
The information provided in this complaint will be utilized by the U.S. Department of Labor, Veterans' Employment and Training Service (VETS) to initiate an investigation of alleged violations of the Uniformed Service Employment and Reemployment Rights Act (USERRA) and/or the Veterans' Preference (VP) provisions of the Veterans Employment Opportunities Act of 1998 (VEOA). Potential complainants should keep in mind that it is unlawful to "knowingly and willfully" make any "materially false, fictitious, or fraudulent statements or representation" to a federal agency. Violations can be punished under Section 2 of the False Statements Accountability Act of 1996 by a fine and/or imprisonment of not more than 5 years. 18 U.S.C. § 1001.

I certify that the above information is true and correct to the best of my knowledge and belief. I authorize the U.S. Department of Labor to contact my employer or any other person for information concerning this claim. Pursuant to 5 U.S.C., Section 552(b) of the Privacy Act, I consent to the release of the above information and any records necessary for the investigation and prosecution of my claim.

SIGNATURE: _____ **DATE:** _____

Persons are not required to response to the collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Veterans' Employment and Training Service, Room-S1316, 200 Constitution Avenue, N.W., Washington, DC 20210.

NOTIFICATION OF USERRA COMPLAINANT'S RIGHTS
For claims arising under USERRA, a person has a right to commence an action for relief directly against the employer in the appropriate federal district court (in the case of a complaint against a State or private employer), pursuant to 38 U.S.C. § 4323(a)(2), or the Merit Systems Protection Board (in case of a complaint against a Federal executive agency or the Office of Personnel Management), pursuant to 38 U.S.C. § 4324(b).

PRIVACY ACT STATEMENT
The primary use of this information is by staff of the Veterans' Employment and Training Service in investigating cases under USERRA or laws/regulations relating to veterans' preference in Federal employment. Disclosure of this information may be made to: a Federal, state or local agency for appropriate reasons; in connection with litigation; and to an individual or contractor performing a Federal function. Furnishing the information on this form, including your Social Security Number, is voluntary. However, failure to provide this information may jeopardize the Department of Labor's ability to provide assistance on your claim.

Continue in Comments box &/or use additional sheet(s) to explain items if needed – Sign and date form (above)

OMB NO. 1293-0002 (EXP 07/31/2010)
VETS/USERRA/VP Form 1010 (REV 2/99) – Page 2

Explain your claim in detail – List all remedies you seek

Use additional sheet(s) if needed – Initial & date each page at bottom

Comments: _____

INITIALS: _____ **DATE:** _____

EXHIBIT 12: REPORT OF CONTACT/ATTEMPTED CONTACT FORM (VETS FORM 1063)

REPORT OF CONTACT / ATTEMPTED CONTACT
VETS FORM 1063

Case Name: _____

Case Number: _____

Report of:

____ Telephone Interview
____ Attempted Telephone Contact
____ Personal Interview
____ Other (please specify) _____

____ Mediation / Conciliation Conference
____ Records Check
____ Closing Conference

_____
_____
_____
_____
_____

Date / Time Conducted: _____

Name(s): _____
Last First MI

Phone Number: _____

Address: _____
Street City State
Zip

Comments: _____
_____
_____

_____ _____
Preparer's Signature **Date**

Page _____ **of** _____ **Pages** **Exhibit No.:** _____

Attach VETS Form 1063 Additional Sheet as needed.

REPORT OF CONTACT / ATTEMPTED CONTACT
VETS FORM 1063 ADDITIONAL SHEET

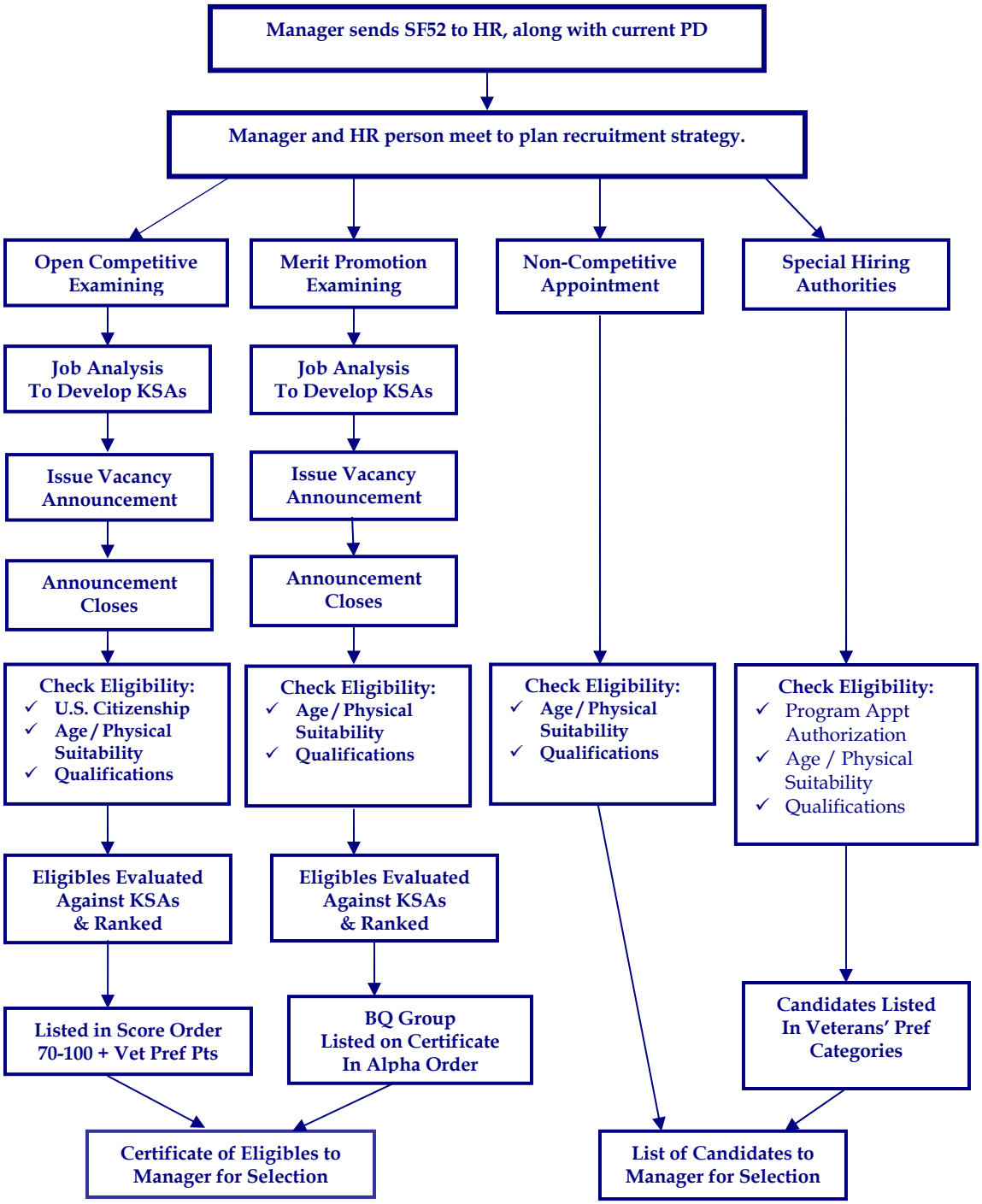
Comments: _____

Page _____ **of** _____ **Pages** **Exhibit No.:** _____

Attach additional sheets as needed.

EXHIBIT 13: OVERVIEW OF FEDERAL HIRING PROCESS

How the Federal Government Fills Existing Jobs



Source: *National Veteran's Training Institute*

EXHIBIT 14: CASE INVESTIGATIVE PLAN

CASE INVESTIGATIVE PLAN
VETERANS' PREFERENCE

Check One: Initial CIP _____ Follow-UP CIP _____

Section I: General Information

1. Case Number _____
2. Complainant _____
3. Type of Military Service _____
5. Complainant's Allegation _____
6. Remedies Due (if meritorious) _____
7. Applicable Statutory Section(s) _____

Section II: Employer Information

8. Employer _____
9. Nature of Prior Contact with Employer (if applicable) _____
10. Contact for Employer _____
11. Employer's Counsel _____
12. Employer's Position _____
13. Basis for Employer's Position _____

SECTION III: Disputed Legal Issue(s) and Action Plan(s) (Hire or RIF)

14a. Issue _____

_____

_____

14b. Action Plan (include date) _____

_____

_____

SECTION IV: Fact Gathering

15. Evidence needed to make factual determination _____

_____

_____

16. Means by which evidence is to be obtained (interview, records review, etc.) _____

_____

_____

17. Steps necessary to arrive at a determination on the merits of the complaint

_____

_____

SECTION V: Disputed Fact(s) and Action Plan(s) (Include all evidence, e.g., witnesses, documents, etc.)

_____

_____

_____

18a. Issue _____

_____

_____

18b. Action Plan (include date) _____

_____

_____

18c. Purpose _____

_____

_____

19a. Issue _____

_____

_____

19b. Action Plan (include date)

_____

_____

19c. Purpose _____

_____

_____

20a. Issue _____

_____

_____

20b. Action Plan (include date) _____

_____

_____

20c. Purpose

_____

_____

SECTION VI: General Comments

_____

_____

_____

_____

_____

_____

EXHIBIT 15: LETTER TO FEDERAL AGENCY TO CONFIRM ON-SITE VISIT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Agency POC
Agency POC Title
Agency Name
Agency Address

RE: **Complainant's Name**
Case Number

Dear **Mr./Ms. Agency POC's Last Name**:

This is to confirm our phone conversation of **Month Day, Year**, regarding my visit to your office scheduled for **Time am/pm**, **Month Day, Year**, to review the records and documents we discussed, as well as to interview the staff members identified to you.

We thank you for your cooperation in this matter.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 16: WITNESS STATEMENT FORM

Veteran's Employment and Training Service
U.S. Department of Labor

WITNESS STATEMENT

I, _____ , _____ ,
(Full Name) (Address and Phone Number)
make the following voluntary statement to _____
(Investigator's Full Name
who has identified himself/herself to me as an investigator for the Veterans' Employment and Training Service, U.S. Department of Labor, and who has advised me that he/she is conducting an investigation pursuant to 5 U.S.C. 3330a. I understand that my statement and identity will be kept confidential to the maximum extent possible under existing law.

Statement

[Please read instructions on the back of this form before continuing. Use Witness Statement Additional Sheets as needed.]

Attestation

I have read (or have had read to me) the foregoing statement of _____ page(s). Each page has been numbered, and I have initialed each correction. I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that this statement is true and correct to the best of my knowledge.

/s/ _____ Date: _____

Witnessed: _____ Date: _____

Page 1 of _____ Exhibit _____

Instructions for receiving and certifying a witness statement:

1. The first paragraph should contain background information regarding the witness that will establish the witness' relationship to the complainant or case. This might include the place of the witness' employment, type of position held, and possible association with the complainant.

2. The subsequent paragraphs should begin to address the issue(s) in dispute and should be organized either chronologically or topically and must be, to the extent possible, in the words of the witness. Also, the paragraphs should reflect the source of all information and must be clearly identified. It should be clear from the signed statement whether or not the witness has first-hand knowledge of the information the complainant is alleging. If the information comes from a source other than what the witness saw and/or heard, the source must be identified.

3. All additions and deletions in the body of the signed statement must be made and initialed by the interviewee.

4. All pages must be numbered. The interviewee must place his/her initials next to the last word in the last line of the last paragraph on each page.

5. Do not leave any space between paragraphs.

Page 2 of _____ Exhibit No.: _____

Veteran's Employment and Training Service
U.S. Department of Labor

WITNESS STATEMENT ADDITIONAL SHEET

Witness Statement continued: _____

Page _____ **of** _____ **Exhibit No.:** _____

Attach additional sheets as needed.

EXHIBIT 17: VETS SUBPOENA REQUEST FORM

Veteran's Employment and Training Service
U.S. Department of Labor

SUBPOENA REQUEST FORM

Case Name: _____ **File No:** _____

Subpoena Subject (Name & Address)

_____

_____

_____

Deliver Subpoena to: (Name & Address)

_____

_____

_____

- ☐ Natural Person
- ☐ Corporation
- ☐ Labor Organization
- ☐ Unincorporated Business Association
- ☐ Potential Defendant
- ☐ Not Involved In Investigation
- ☐ Subpoena requested by subject
- ☐ No resistance anticipated

Proposed Date of Service:

Identification of Records

Justification for Insurance

Action

	Initial	Date	Hour
Requested			
DD Authorization (as appropriate)			
Approved RAVET			
Approved RSOL			
Signed			
Return			
To Litigation			

VETS _____

EXHIBIT 18: FINDINGS LETTER TO AGENCY DUE TO DETERMINATION OF MERITORIOUS COMPLAINT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Ms. Agency's POC Full Name
Agency's POC's Title
Federal Agency's Name
Federal Agency's Address

Re: Complainant's Name
Complainant's Case Number

Dear Mr. / Ms. Agency's POC Last Name:

As previously explained in my initial letter dated Month Day, Year, this agency is responsible for seeking compliance with Title 5, U.S. Code. Complainant's Name has contacted this office in order to ascertain his/her rights under Title 5, U.S. Code relative to veterans' preference entitlement.

Your undated letter received on Month Day, Year, advised that Complainant's Name's application for Claims Adjudicator was not considered as the position had been advertised under both delegated examining unit (DEU) and merit promotion (MP) and therefore the merit promotion announcement was not open to candidates eligible under the VEOA. The area of consideration for your merit promotion announcement reflects that applications are being accepted from outside your agency workforce. The Veterans' Employment Opportunities Act of 1998 (VEOA) as well as 5 CFR 335.106 requires agencies accepting applications from outside their workforce under merit promotion procedures to accept and consider applications from VEOA eligibles. Neither the VEOA statute nor OPM regulations preclude eligible veterans from applying under both the DEU and MP announcements when the agency is accepting applications from outside its workforce. Therefore, based on the facts as determined in the investigation, and the application of the law to the facts, I have determined that Complainant's Name's complaint in this case has merit.

It is requested that the agency again review Complainant's Name's application and that he/she be provided consideration for the position under vacancy announcement Numberas a resolution to his complaint. An expeditious response to this inquiry for information by Month Day, Year, is greatly appreciated.

If we are unable to amicably resolve this issue, we will provide Complainant's Name with his/her right to appeal hjs/her case to the Merit Systems Protection Board. Please contact me at Telephone Number if you have questions regarding this letter.

Sincerely,

Investigator's Name
Investigator's Title
cc: Complainant's Full Name

EXHIBIT 19: CLOSING LETTER TO COMPLAINANT DUE TO NON-MERITORIOUS COMPLAINT OR UNRESOLVED COMPLAINT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Ms. Complainant's Full Name
Complainant's Address

RE: **Case Number**

Dear **Mr. / Ms. Complainant's Last Name:**

This letter is to advise you that the U.S. Department of Labor, Veterans' Employment and Training Service (VETS), has completed its investigation of your veterans' preference complaint filed under the Veterans Employment Opportunities Act of 1998 (VEOA), 5 U.S.C. 3330a. Your complaint was timely filed on **Month Day, Year.**

[Read instructions on the next page of manual for language for meritorious or non-meritorious complaints.]

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB office address]

A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html. If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers about Appeals" at http://www.mspb.gov/. **[NOTE: Investigators are requested to check the websites listed in the above paragraph prior to sending the letter as website addresses may change.]**

Sincerely,

Investigator's Name
Investigator's Title
Enclosure: MSPB Appeal Form

INSTRUCTIONS

CLOSING LETTER TO COMPLAINANT DUE TO MERIT, NOT RESOLVED OR NO MERIT CLAIM

Below is the standard language to be used for this letter for merit, not resolved and no merit claims. Where highlighted in red, briefly provide specifics of the case.

Merit, Not Resolved Claim

After determining that your complaint had merit, the Secretary of Labor was unable to resolve your complaint.

No Merit Claim

Based on VETS' investigation of your complaint, we determined that the evidence does not support your allegation that [AGENCY NAME] violated your veterans' preference rights.. In your complaint, you alleged that **[brief summary of complaint – one to two sentences]**. Our investigation concluded that **[brief statement of the basis for the decision – generally two to three sentences].**

EXHIBIT 20: OPENING STATEMENT FOR CASE RESOLUTION CONFERENCES

Veteran's Employment and Training Service
U.S. Department of Labor

OPENING STATEMENT FOR CASE RESOLUTION CONFERENCES

The Department of Labor takes the leadership role in this Conference pursuant to the Veterans Employment Opportunities Act of 1998 (Public Law 105-339). VETS authority is codified in
5 U.S.C. 3330a.

The purpose of this conference is to assist VETS in reaching final resolution of this complaint. It is not a formal hearing, and the statements made here are not under oath. Notes will be taken and made part of the case file.

The agenda is as follows: First, I will present the complaint(s) made by the complainant, and ask for verification of the allegations. I will then present the agency's position, and, again, ask for verification that this is their position. Each party will be allowed to add any additional evidence without interruption during its presentation.

All statements and questions should be addressed to me. There will be no direct cross conversations or cross-examination. If anyone wishes to respond to what the other has said please wait until that person is finished. If you have any questions, please channel them through me.

The agency is represented by **SOL Rep Name**, Solicitor, at this conference. I would ask, however, that unless it is not possible, the agency and any witness speak for themselves. Again, let me repeat that cross-examination will not be permitted, except through me.

The Department seeks voluntary compliance and strongly urges the parties to consider settling this complaint. Suggested proposals to resolve the dispute will be open for discussion. Either party may request a recess, or I may request one if appropriate.

I ask all parties to maintain proper courtesy throughout the conference so that we may expedite the resolution of this matter.

If amicable resolution is not reached, I must inform you, **Federal Agency Name**, that the complainant has a right to appeal his/her case directly to the MSPB.

EXHIBIT 21: AGREEMENT OUTLINE

Veteran's Employment and Training Service
U.S. Department of Labor

AGREEMENT OUTLINE

Whereas the complainant, **Complainant's Name**, applied for Vacancy Announcement **Number XX-XXX**, **GS-X-XXXX Position** with **Agency Name**.

a. Complainant was not selected for Vacancy Announcement **Number XX-XXX**.

b. Complainant alleged a violation of his/her veterans' preference entitlement and filed a timely complaint **Case Number**, with the Veterans' Employment and Training Service in accordance with 5 U.S.C. 3330a.

c. In settlement of complaint **Case Number**, the **Agency Name** offered the complainant, **Complainant's Name**, a **GS-X-XXXX position**.

d. The complainant accepted the **Agency Name**'s offer of a **GS-X-XXXX position** and agreed to close **Case Number** with VETS.

e. Settlement as outlined above is relative only to rights and benefits arising from complainant's, **Complainant's Name**, Veterans' Preference case.

_____
Signature of Agency

_____
Signature of Complainant

_____
Signature of DVET, ADVET, or VPS

_____
Date

_____
Case Number

EXHIBIT 22: CLOSING LETTER TO COMPLAINANT DUE TO LACK OF INTEREST

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This is to advise you that your Veterans' Preference complaint against the **Federal Agency Name** is being closed this date based on your failure to respond to our **Month, Day, Year** certified letter.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 23: CLOSING LETTER TO COMPLAINANT DUE TO UNAUTHORIZED CONTACT BY THIRD PARTY

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This is to advise you that your Veterans' Preference complaint against the **Federal Agency Name** is being closed today because you retained another person as a representative for your complaint, and your representative is interfering with the Veterans' Employment and Training Service (VETS) investigation.

On **Month Day, Year**, we advised you that VETS will continue to represent you provided your representative's involvement in the case does not include any contact on your behalf with the **Federal Agency**, witnesses, or other interference with our investigation. This was confirmed in a letter to you dated **Month Day, Year**.

Your representative is obviously actively involved in representing you in this matter, other than with this office, and the representation is interfering with VETS' investigation. Therefore, your case is being closed as of the date of this letter.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 24: CLOSING LETTER TO AGENCY DUE TO MERIT, NOT RESOLVED OR NO MERIT CLAIM

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Ms. Agency's POC Full Name
Agency's POC's Title
Federal Agency's Name
Federal Agency's Address

RE: **Complainant's Name**
Complainant's Case Number

Dear **Mr. / Ms. Agency's POC Last Name**:

This is to inform you that we have completed the investigation of **Complainant's Name's** Veterans' Preference complaint filed against your agency under 5 U.S.C. 3330a, and have closed our file.

Complainant's Name has the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days of receipt of our closing letter.

We greatly appreciate your cooperation in this matter.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 25: CLOSING LETTER TO AGENCY - COMPLAINT GRANTED WITHOUT WRITTEN AGREEMENT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Mrs. Agency's POC Full Name
Agency's POC's Title
Federal Agency's Name
Federal Agency's Address

RE: **Complainant's Name**
Complainants' Case Number

Dear **Mr. / Ms. Agency's POC Last Name**:

This confirms our **Month Day, Year telephone conversation** regarding **Complainant's Name**'s case under 5 U.S.C. 3330a.

You agreed that **you would reconstruct the hiring process and provide [Complainant's Name] the opportunity to compete for the position, in compliance with the applicable veterans' preference provisions**.

Based on the above resolution, this case is being closed. We greatly appreciate your cooperation in resolving this matter.

Sincerely,

Investigator's Name
Veterans' Program Specialist

cc: **Complainant's Name**

EXHIBIT 26: SETTLEMENT AGREEMENT AND RELEASE FORM

Veteran's Employment and Training Service
U.S. Department of Labor

SETTLEMENT AGREEMENT AND RELEASE FORM

Complainants' Name
Complainant
v.
Federal Agency Name
Respondent

FILE NO. _____

Complainant's Case Number

This SETTLEMENT AGREEMENT and RELEASE are made and entered into between **Complainant's Name** and **Federal Agency's Name,** hereinafter referred to as Complainant and Respondent respectively, who agree and stipulate as follows:

WHEREAS, Complainant has filed a complaint with the United States **Department** of Labor, Veterans' Employment and Training Service, alleging that he was denied his veteran's preference for employment with Respondent on or about **Month Day, Year**, in violation of Title 5, U.S. Code; and WHEREAS, both parties now wish to settle this case without the necessity of litigation.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

A. Respondent agrees to place Complainant on the Employment Certificate of Eligibles for hire in full and complete satisfaction of Complainant's complaint as expressed above.

B. Complainant agrees to have closed VETS Case **Number** as identified above and agrees not to institute or pursue any further action relative to **[specify]**.

_____
Federal Agency Rep's Name
for **Federal Agency Name**
Respondent

_____
Date

_____
Complainant's Name
Complainant

_____
Date

NOTE

This form requires inclusion of the particular issues of the agreement.

EXHIBIT 27: CLOSING LETTER TO COMPLAINANT – NON-WRITTEN RESOLUTION

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This is to inform you that the **Federal Agency Name** has agreed to resolve your complaint by **summarize terms of agreement**. As a result of the agency's agreement to resolve your complaint, we are closing your file as of the date of this letter.

If you are not fully satisfied with the resolution of your complaint, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB Office Address]

A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html. If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers About Appeals" at http://www.mspb.gov/.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 28: CLOSING LETTER TO COMPLAINANT DUE TO RECONSTRUCTION

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This is to inform you that the **Federal Agency Name** has agreed to reconstruct the hiring process that was the subject of your Veterans Employment Opportunities Act complaint on **Month Day, Year**, and to provide you with the opportunity to compete for the position in compliance with the applicable veterans' preference provision. As a result of the agency's agreement to reconstruct the process, we are closing your file as of the date of this letter. If the agency fails to reconstruct the process, you may file a complaint with the Veterans' Employment Training and Service (VETS) within 60 calendar days from the date of receipt of this letter. If you believe the reconstructed process violated your veterans' preference rights, you may file a complaint with VETS within 60 calendar days from the alleged violation of the reconstruction process.

If you are not fully satisfied with the resolution obtained by VETS, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB Office Address]

A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html. If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers About Appeals" at http://www.mspb.gov/q&aappealsaug01.html. **[NOTE: Investigators are requested to check the websites listed in the above paragraph prior to sending the letter as website addresses may change.]**

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 29: CLOSING LETTER TO COMPLAINANT DUE TO WITHDRAWN COMPLAINT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This confirms your written request of **Month Day, Year** to withdraw your Veterans' Preference complaint. Accordingly, we are closing your case as of the date of this letter.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 30: CLOSING LETTER TO AGENCY DUE TO COMPLAINANT'S WITHDRAWAL OF COMPLAINT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Ms. Agency's POC Full Name
Agency's POC's Title
Federal Agency's Name
Federal Agency's Address

RE: **Complainant's Name**
Complainant's Case Number

Dear **Mr. / Ms. Agency's POC Last Name**:

This is to inform you that **Complainant's Name** has advised us that he does not wish to pursue his Veterans' Preference complaint any further. Therefore, we are closing our file on the above referenced case as of **Date of Letter to Complainant**.

Sincerely,

Investigator's Name
Veterans' Program Specialist

cc: **Complainant's Name**

EXHIBIT 31: CLOSING LETTER TO COMPLAINANT DUE TO NON–ELIGIBILITY

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Ms. Complainant's Full Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

This is to inform you that our investigation has determined that you do not meet the eligibility requirements of the applicable provisions of veterans' preference statutes and regulations under Title 5, U.S. Code. Therefore, we are closing your case.

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB Office Address]

A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html. If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers About Appeals" at http://www.mspb.gov/q&aappealsaug01.html. **[NOTE: Investigators are requested to check the websites listed in the above paragraph prior to sending the letter as website addresses may change.]**

Sincerely,

Investigator's Name
Investigator's Title

Enclosure: MSPB Appeal Form

EXHIBIT 32: NOTICE TO COMPLAINANT OF UNTIMELY FILING

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr. / Ms. Complainant's Full Name
Complainant's Address

RE: **Case Number**

Dear **Mr./Ms. Complainant's Last Name**:

Information submitted by the **Federal Agency Name** regarding your Veterans' Preference complaint clearly indicates that you applied for assistance after the Veterans Employment Opportunities Act's statutory deadline of 60 days from the date of the alleged violation, 5 U.S.C. 3330a(a)(2)(A). As a result, the Veterans' Employment and Training Service will be unable to investigate your complaint

If you believe that the 60-day filing deadline should be waived in your case, please contact me at **Telephone Number** so that we can discuss the situation.

If I do not hear from you by **Month Day, Year**, your case will be closed.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 33: CLOSING LETTER TO COMPLAINANT – FAILURE TO REFUTE UNTIMELY FILING DECISION

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Complainant's Name**:

Pursuant to our letter dated **Month Day, Year**, the Veterans' Employment and Training Service has closed your Veterans' Preference complaint because your claim was not filed within the Veterans Employment Opportunities Act's (VEOA) statutory deadline of 60 days from the date of the alleged violation, 5 U.S.C. 3330a(a)(2)(A), and you did not provide any additional information to refute this determination or that would provide a basis for waiving the 60-day deadline.

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB office address]

A copy of the MSPB Appeal Form is enclosed for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html. If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-8960. The MSPB also has an Internet site, "Questions and Answers About Appeals" at http://www.mspb.gov/q&aappealsaug01.html. **[NOTE: Investigators are requested to check the websites listed in the above paragraph prior to sending the letter as website addresses may change.]**

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 34: CLOSING LETTER TO COMPLAINANT DUE TO UNTIMELY FILING

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Complainant's Name**:

Information submitted by **Federal Agency Name** regarding your Veterans' Preference complaint clearly indicates that you applied for assistance after the Veterans Employment Opportunities Act's (VEOA) statutory deadline of 60 days from the date of the alleged violation, 5 U.S.C. 3330a(a)(2)(A). Your reasons for late submission of your complaint have been considered. As discussed below, we have determined that the reasons for late submission of your complaint are insufficient to waive the statutory 60 day filing requirement. Therefore, your case is being closed due to its untimely filing.

In explaining the late filing of your VEOA complaint, you alleged that [state reason/s given by complainant for late filing]. Our review of your stated reasons for the late filing concluded that [briefly explain why reason/s given for late filing did not merit waiver of the 60 day filing deadline (e.g., you had notice about the potential violation, but failed to file the complaint, you were not misled or misinformed by VETS or the agency, or you knew or should have know what the appropriate forum was to file your compliant)].

Although we have made this determination, you have the right to appeal your case to the Merit Systems Protection Board (MSPB) within 15 calendar days from the date of receipt of this letter. In accordance with the MSPB regulations, you must file your appeal with the MSPB regional or field office that has responsibility for the geographic area in which you were employed when your complaint arose. In your case, your appeal must be sent to:

[Regional MSPB office address]

A copy of the MSPB Appeal Form is attached for your convenience. If you prefer, you may file your MSPB appeal electronically at http://www.mspb.gov/e-appeal.html. If you have questions concerning the appeal process, you may contact the MSPB at 1-800-209-

8960. The MSPB also has an Internet site, "Questions and Answers About Appeals" at http://www.mspb.gov/q&aappealsaug01.html. **[NOTE: Investigators are requested to check the websites listed in the above paragraph prior to sending the letter as website addresses may change.]**

Sincerely,

Investigator's Name
Veterans' Program Specialist

EXHIBIT 35: ACCEPTANCE OF UNTIMELY COMPLAINT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Name
Complainant's Address

RE: **Case Number**

Dear **Complainant's Name**:

Your reasons for late submission of your Veteran's Preference complaint have been considered by the Veterans' Employment and Training Service (VETS). As discussed below, we have determined that the reasons for late submission of your complaint are sufficient to waive the statutory 60 day filing requirement. Therefore, pursuant to its authority under 5 U.S.C. 3330a, VETS will investigate and seek resolution of your complaint.

In explaining the late filing of your VEOA complaint, you alleged that [state reason/s given by complainant for late filing]. Our review of your stated reasons for the late filing concluded that [briefly explain why reason/s given for late filing merited a waiver of the 60 day filing deadline (e.g., the agency failed to timely notify you of the adverse employment action, and you were diligent in filing your complaint once you became aware of the alleged action, you were misled or misinformed by VETS or the agency, or you timely filed the complaint, but in the wrong forum)].

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 36: REPORT OF VETERANS' PREFERENCE TECHNICAL ASSISTANCE FORM

Veteran's Employment and Training Service
U.S. Department of Labor

REPORT OF VETERANS' PREFERENCE TECHNICAL ASSISTANCE FORM

Time: From _____ **To** _____

1. **Method of Contact:** _____ **Group TA:** _____ **Date:** _____
2. **Name of Organization:** _____
3. **Street Address:** _____ **Apt. No:** _____
   City: _____ **State:** _____ **Zip Code:** _____
4. **Principle Contact:** _____ **Phone No:** _____
5. **GROUP TA ONLY:** **Attendance:** _____ **Group Composition:** _____
6. **Topics Covered:** _____
7. **Comments:** _____
8. **Literature Distributed:** _____
9. **Other VETS Participant(s):** _____
10. **Submitted by:** _____
    Office _____ **Date** _____
11. **Reviewed by:** _____

Distribution: **State** _____ **Region** _____ **NO** _____

EXHIBIT 37: LETTER TO COMPLAINANT ADVISING CASE CLOSURE PENDING DUE TO LACK OF COOPERATION OF COMPLAINANT

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Full Name
Complainant's Address

RE: **Case Number**

Dear **Complainant's Name**:

Due to your failure to cooperate in the investigation of your complaint, closure of your case is being considered. If you have not contacted this office by **Month Day, Year,** to provide the necessary information/documentation required to continue with the investigation of your case, we will infer that you no longer wish to pursue your complaint, and the case will be closed administratively due to your lack of response.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 38: CLOSING LETTER TO COMPLAINANT DUE TO MERIT UNDETERMINED CLAIM

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Complainant's Full Name
Complainant's Address

RE: **Case Number**

Dear **Complainant's Name**:

This to acknowledge receipt of your written request **Month Day, Year,** concerning your Veterans Employment Opportunities Act of 1998 (VEOA) complaint. You have requested that the Department of Labor close your complaint **on [not earlier than the 61st day after filing of complaint].** In addition, your request advises that you intend to exercise your right to appeal directly to the Merit Systems Protection Board (MSPB), as allowed by 5 U.S.C. 3330a(d)(1) for complaints filed with the Department of Labor that have not been resolved by the Department within 60 days of filing.

The Department of Labor is treating your written request as notification of your intent to file an appeal with the MSPB, which is required by 5 U.S.C. 3330a(d)(2)(A) as a prerequisite to filing an appeal with the MSPB. As required by 5 U.S.C. 3330a(d)(3), the Department will take no further action to investigate or attempt to resolve your complaint. Accordingly, your case is being closed as of this date.

Sincerely,

Investigator's Name
Investigator's Title

EXHIBIT 39: CLOSING LETTER TO AGENCY DUE TO MERIT UNDETERMINED CLAIM

U.S. Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training
GEF 1, 201 Washington Ave., Room 250
Madison, WI 53701

Month Day, Year

Mr./Ms. Agency's POC Full Name
Agency's POC's Title
Federal Agency's Name
Federal Agency's Address

RE: **Complainant's Name**
Complainant's Case Number

Dear **Mr./Ms. Agency's POC Last Name:**

This is to inform you that **Complainant's Name** has requested that we discontinue our investigation of his/her veterans' preference complaint filed against your agency under Title 5, United States Code (U.S.C.) § 3330a, and has elected to pursue the complaint by directly appealing to the Merit Systems Protection Board (MSPB) per Title 5, U.S.C. § 3330a(d)(1). Therefore, we have closed our case effective this date.

We greatly appreciate your cooperation in this matter and we regret that we were unable to resolve this issue.

Sincerely,

Investigator's Name
Investigator's Title

cc: Complainant's Name