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**MEMORANDUM OF UNDERSTANDING BETWEEN VETERANS'
EMPLOYMENT AND TRAINING SERVICE, UNITED STATES DEPARTMENT
OF LABOR AND THE UNITED STATES OFFICE OF SPECIAL COUNSEL**

**SECTION 1
INTRODUCTION**

A. Purposes

The United States Department of Labor, Veterans' Employment and Training Service (VETS) and the United States Office of Special Counsel (OSC) have interrelated statutory obligations under two separate laws related to entitlements of persons who serve or have served in the uniformed services. Those laws are the Veterans' Employment Opportunities Act (VEOA) of 1998, Pub. L. No. 105-339, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. No. 103-353.

VEOA established a redress mechanism for veterans' preference eligibles who believe their rights under any law or regulation related to veterans' preference have been violated. In addition, the VEOA established a new prohibited personnel practice, section 2302(b)(11) of title 5, pertaining to veterans' preference. USERRA revised and restructured the Veterans' Reemployment Rights law formerly codified in sections 4301 through 4307 of title 38 of the United States Code. USERRA prohibits discrimination against any person because of his or her service in the uniformed services and sets forth the employment, reemployment and restoration rights of persons who leave their employment to perform military service. USERRA is codified in sections 4301 -4333 (If title 38).

This memorandum of understanding (MOU) is intended to describe the roles and responsibilities of VETS and OSC in carrying out their respective obligations under the two laws. The MOU sets forth the processes to be followed in the referral of cases from one agency to the other. The MOU also establishes guidelines for cooperative efforts by VETS and OSC in the handling of VEOA and USERRA complaints. Section II of this MOU pertains to VEOA in detail and Section III covers USERRA.

B. Goals

Both VETS and OSC are fully committed to active coordination and cooperation to ensure that protected individuals are accorded their statutory rights relating to veterans' preference, protection from prohibited personnel practices under section

2302(b)(11) of title 5, and the anti-discrimination and employment and reemployment provisions of USERRA. Such coordination and cooperation are particularly critical in light of limited budget and personnel resources within both VEIS and OSC.

C. Scope

Compliance with this agreement is subject to available funding. Nothing in this agreement is to be construed as requiring the expenditure of additional funds or provision of services beyond the requirements prescribed by applicable statutes, regulations and existing agreements. This agreement is intended only to describe the roles and responsibilities of VETS and OSC and to improve the coordination between VETS and OSC in handling VEOA and USERRA complaints. This agreement does not create any right or benefit, substantive or procedural, nor does it create any right to judicial review involving compliance or noncompliance with its provisions.

**SECTION II
VETERANS' EMPLOYMENT OPPORTUNITIES ACT**

A. Roles and responsibilities

1. General

Section 3 of VEOA provides that the Secretary of Labor (through VETS) investigates any claim by a preference eligible that an agency may have violated the claimant's rights under any law or regulation relating to veterans' preference. Section 6 of the VEOA provides that, in some cases, a failure to comply with veterans' preference requirements is to be treated as a prohibited personnel practice for certain purposes. Section 1214 of title 5 provides that the OSC is responsible for the investigation of alleged prohibited personnel practices.

2. Referral of VEOA claims that are potential prohibited personnel practices to OSC by VETS

VETS and OSC agree that 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 claimant. 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 documentation 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 of 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(h)(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.

3. Referral of allegations of a prohibited personnel practice involving veterans' preference to VETS by OSC

If OSC receives an allegation of a violation of veterans' preference under section 2302(b)(11) of title 5, OSC will advise the complainant that it does not have the authority to seek corrective action for alleged violations of § 2302 (b)(11) and will refer the individual to VETS to seek redress under VEOA. If the Initial complaint also involves an allegation of another prohibited personnel practice (whistleblower reprisal under 5 U.S.C. § 2302(b)(8), for instance) or some other matter over which OSC has jurisdiction, OSC will refer the individual's allegation relating to § 2302(b)(11) to VETS and, at the same time, take appropriate action with respect to the other (non-VEOA) issue(s).

B. Cooperation and coordination

1. In making referrals under this section, OSC will advise the complainant to contact the VETS office in the State in which the employer or potential employer is located. OSC will also notify the compliance staff of the VETS National Office of each such referral. The National Office will notify the RA involved. In light of the timeliness standards imposed on claimants under the VEOA, OSC will make all referrals under this section as expeditiously as possible.

Further, OSC and VETS agree that, to the extent permitted by applicable law, VETS and OSC will treat an allegation of a violation of 5 U.S.C. § 2302(b)(11) and a complaint filed pursuant to 5 U.S.C. § 3330a(a)(2)(A) as being filed with the Secretary of Labor as of the time such allegation is received by OSC.

2. 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.

**SECTION III
UNIFORMED SERVICES EMPLOYMENT AND
REEMPLOYMENT RIGHTS ACT**

A. Roles and responsibilities

1. General

Section 4324(a)(1) of USERRA provides that, upon request of the claimant involved, VETS will refer an unresolved USERRA complaint against a Federal executive agency to OSC for potential litigation before the Merit Systems Protection Board (MSPB). Section 4324(a) (2) (A) of USERRA provides that if OSC is satisfied as to the entitlement of the person to the rights/benefits sought, OSC may act as attorney for the person before the MSPB. If OSC declines representation, section 4324(a)(2) (B) of USERRA requires OSC to notify the person of that decision.

2. Process for referral of USERRA cases to OSC

Upon request of a claimant, VETS refers cases to OSC as required under section 4324(a)(1) of USERRA. The Regional Solicitor of Labor (RSOL), working with the Regional Administrator (RA), reviews the case and prepares a letter of referral to OSC. The letter of referral will include an identification of the issues, analysis of the law, and a recommendation as to whether representation should be provided. [The VETS case file and memorandum of referral will be sent to OSC with the letter.

B. Cooperation and coordination

1. OSC may request clarification of the letter of referral and legal analysis and/or further VETS investigative efforts through the appropriate RSOL. For purposes of technical assistance or clarification, the RSOL will facilitate communication between OSC, the RA and the case investigator, if OSC requests information concerning the referral or documents in the case file, if necessary, OSC may seek information and assistance from VETS' National Office compliance staff and the Office of the Solicitor Labor-Management Laws Division.

2. Should OSC arrive at a preliminary determination regarding representation that is different from the Department of Labor recommendation, OSC will notify the RSOL of its preliminary determination and provide the RSOL an opportunity (following consultation with VETS) to respond to OSC's preliminary determination through meetings, additional written submissions, or otherwise. OSC will not send the claimant the notification required by section 4324(a)(2)(B) until OSC has received and reviewed the RSOL's response. OSC will provide the RSOL a reasonable time to respond to OSC's preliminary decision. [he parties agree that OSC's release of information, if any, to the RSOL and/or VETS under tills paragraph is not to be deemed a waiver of OSC's attorney-work product doctrine, deliberative process privilege, attorney-client privilege, and/or any other evidentiary privilege or protection. In cases where OSC has decided to represent the claimant, OSC may request assistance and advice from the RSOL or from the Office of the Solicitor, Labor-Management Laws Division.
3. In cases of referrals where OSC declines representation, it shall notify the claimant of (1) the fact that the Special Counsel has decided not to represent the claimant and (2) his/her right to file an appeal with the MSPB. The notice will not address the factual or legal bases of such determination, Additionally, OSC will provide a copy of such notification to the RSOL and the RA. The parties agree that OSC's release of information, if any, to the claimant, RSOL, and br VETS is not to be deemed a waiver of OSC's attorney-work product doctrine, deliberative process privilege, attorney- client privilege, and/or any other evidentiary privilege or protection.
4. Neither OSC nor VETS will disclose any information to an employer, agency, or any other person regarding a claimant's case or materials in the case file unless such disclosure is required under the Freedom of Information Act or otherwise required by law. VETS may advise the employer that a USERRA case has either been closed or referred to OSC, but may not inform the employer that a finding of "no merit" has been reached. OSC may advise an employer that it has declined representation, but no information regarding an assessment of a case as not having merit or the reasons for such an assessment will be provided to an employer by OSC.

SECTION IV AGREEMENT

The Special Counsel and the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor agree to the terms of this MOU. They further agree to ensure their respective organizations fully understand the role of each entity with respect to this agreement. They will monitor relationships between their respective organizations to

U.S. Office of Special Counsel

Page 6

ensure a high level of cooperative effort is achieved in joint activities and the sharing of information.

The provisions of this MOU become effective on the date of signature. The provisions may be reviewed and modified or terminated when it is determined, by either agency that such review and modification or termination is in tile interest of efficient enforcement of the law or laws involved. Changes to this MOU shall be in writing and approved by the signatories below or their successors as an attachment to this agreement.

_____/s/_____
Espiridion (Al) Borrego
Assistant Secretary for Veterans'
Employment and Training,
U.S. Department of Labor

_____/s/_____
Elaine Kaplan
United States Special Counsel