

SECTION 508 COMPLAINT PROCESSING GUIDELINES

I. Purpose

To establish Section 508 complaint processing guidelines within the Department of Veterans Affairs. Section 508 allows complaints by any individual with a disability alleging that electronic and information technology procured by the Department on or after June 21, 2001, fails to comply with final accessibility standards issued by the Architectural and Transportation Barriers Compliance Board (Access Board) in violation of Section 508 of the Rehabilitation Act, as amended, 29 U.S.C. § 794d.

Section 508 provides that the Federal department receiving a 508 complaint shall apply the complaint procedures established for processing Section 504 complaints. While the same procedures for processing 504 complaints must be used for processing 508 complaints, the 508 complaint process involves different legal issues and the 504-complaint process must be adjusted accordingly.

The guidance is designed to ensure that a fair, consistent, and effective procedure for processing 508 complaints is followed. Administration Heads, Assistant Secretaries, and other key officials, or their designees will be delegated responsibility for making decisions and conducting investigations concerning 508 complaints. This guidance is intended to establish the 508-complaint process. It's patterned, in part, after the Department of Justice manual for conducting investigations of Title VI violations, which is referenced at the end of this guidance.

II. FUNCTIONAL RESPONSIBILITIES WITHIN VA's 508 COMPLAINT PROCEDURES

The Office of Resolution Management (ORM), Administrations Heads, Assistant Secretaries, Other Key Officials, the Office of General Counsel, and Secretary of Veterans Affairs all have responsibilities under the 508 complaint procedures.

A. ORM's Responsibilities:

Coordinating implementation of the 508 complaint procedures. Receive and review the complaint for referral to the appropriate Administration Head, Assistant Secretary, or Other Key Official for further processing. If ORM receives a complaint over which it does not have jurisdiction, promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate Government entity.

Collect information for preparation of a report to the Department of Justice on actions regarding individual Section 508 administrative complaints.

B. Responsibilities of Administration Heads, Assistant Secretaries, and Other Key Officials:

Accept and investigate all complete complaints for which it has jurisdiction.

The decision maker is responsible for timely informing ORM of the final disposition of each complaint.

Within 180 days of receipt of a complete complaint for which it has jurisdiction, attempt informal resolution and, if no informal resolution is achieved, notify the complainant of the results of the investigation in a letter containing findings of fact and conclusions of law; a remedy for each violation; and a notice of the right to appeal within 90 days to the Secretary of Veterans Affairs.

C. Secretary of Veterans Affairs:

Accept and process timely appeals. Notify the complainant of the results of the appeal within 60 days of receipt of the request, unless additional information is needed from complainant. If so, the 60-day time period will commence upon receipt of the additional information.

D. Responsibilities of the Office of General Counsel:

Assist ORM in implementing coordination of the 508 complaint procedures.

Advise the Secretary of Veterans Affairs, ORM, Administration Heads, Assistant Secretaries, and Central Office Board and Staff Heads on all legal issues concerning the 508 complaint procedures and assist the United States Attorney in defending lawsuits.

Conduct a legal sufficiency review on the proposed disposition of each complaint prior to final disposition.

III. PROCESSING OF COMPLETE COMPLAINTS FOR WHICH VA HAS JURISDICTION

A complete complaint means a written statement that contains the complainant's name and address and describes the Department's alleged non-compliance in sufficient detail to inform the Department of the nature and date of the alleged violation of Section 508. The complainant shall sign it or authorize someone to do so on his or her behalf. The complaint must inform the Department of the nature of the electronic and information technology that is not accessible to the complainant; the applicable accessibility standard issued by the Access Board, and a reasonable belief that the alleged violation concerns a procurement made on or after June 21, 2001.

A. Filing and Receipt of Complaint:

All written complaints may be sent to the Secretary of Veterans Affairs or the Deputy Assistant Secretary for Resolution Management (ORM). Such complaints should be immediately date stamped upon receipt (recording the postmark date, if mailed). ORM will review the complaint to determine if it should be processed as a 508 complaint. ORM will refer all 508 complaints¹ to the appropriate Administration Head, Assistant Secretary, or Other Key Official.

ORM will make an assessment of which entity is likely responsible for procuring the alleged non-compliant electronic and information technology and refer the complaint to that entity. The alleged non-compliant office is the office, which requisitioned the non-compliant product.

B. Acknowledgment and Closure of a Complaint:

(1.) Acknowledgement. Upon receipt of a complaint from ORM, Administration Heads, Assistant Secretaries and Other Key Officials, or their designees (hereinafter referred to as the decision-maker) will acknowledge receipt of the written complaint to the complainant within 15 days of receipt from ORM.

(2) Insufficient Information. Where a complaint contains insufficient information, the decision-maker shall seek the needed information from complainant. If the information is not furnished within 30 days of the date of receipt of such request, the complaint may be closed for that reason upon notice sent to complainant's last known address.

(3.) Jurisdiction, Timeliness, and Closure.

(a.) Jurisdiction. A complaint shall be closed for lack of jurisdiction. To sufficiently allege a violation under Section 508, the complainant must have a disability covered by the statute and allege that a specific electronic and information technology product procured by the Department on or after June 21, 2001, fails to comply with final accessibility standards issued by the Access Board.

(b.) Timeliness. All complete complaints must be filed within 180 days of the alleged noncompliance and closed if untimely raised, unless good cause for an extension is warranted.

¹ The Office of General Counsel (OGC) is working on a legal opinion concerning whether a 508 complaint filed by a VA employee should be treated as an EEO complaint and processed under 29 C.F.R. Part 1614, or processed as a non-EEO complaint, or the same way as 508 complaints filed by non-VA employees are processed. Since OGC has tentatively advised that 508 complaints should not be treated as EEO complaints, this model follows that tentative advice. Should the written legal opinion change, the model will be modified accordingly.

- (c.) Closure. A complaint may be closed for the following reasons: lack of jurisdiction; failure to sufficiently state a claim; untimeliness; the complaint has become moot; the same complaint has previously been decided in another forum; insufficient information; or, if the complaint is withdrawn. Before closure, the complaint must be reviewed by the Office of General Counsel for legal sufficiency. The decision-maker shall promptly notify the complainant when a complaint is closed.

(4) Notification of Acceptance of a Complete Complaint for Investigation.

When the decision-maker makes an acceptability determination that a complaint is complete and within the Department's jurisdiction, he or she will take the following steps: promptly notify the complainant of the acceptance of the complaint; state the issue(s) accepted for investigation; inform the complainant of the 180 day time period for completing the investigation; and, refer the complaint for informal resolution.

C. Informal Resolution. At any time prior to the issuance of the letter issued by the decision-maker containing findings of facts, conclusions of law and a remedy, if appropriate, the complaint may be resolved informally. All available alternative dispute resolution techniques should be considered. If resolved, the terms of the agreement shall be reduced to writing, be made a part of the complaint file, and complainant shall be required to withdraw the complaint.

IV. COMPLAINT INVESTIGATION

The decision-maker shall be responsible for assuring that complaints are fairly and thoroughly investigated in a timely manner. The extensiveness of the investigation will depend on the complexity of the complaint. The decision-maker, thus, must decide whether the investigation shall range from a brief fact gathering to an extensive investigation requiring technical or expert assistance and, referral to a cadre of internal information technology (IT) experts or to a contract investigator. The investigative file and report shall be provided to the decision-maker.

V. LETTER OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND REMEDY, IF APPROPRIATE

This letter should include a brief background and chronological history; description of how the complaint was investigated; a statement of each issue and the dispositive findings of fact supported by any necessary explanation or relevant evidence; and, a conclusion of law for each issue citing the applicable regulations and legal standard. The Office of General Counsel must review proposed decision letters for legal sufficiency prior to final decisions. The remedy in a 508 complaint is limited to injunctive relief. Questions concerning the applicable law and regulations may be referred to the Office of General Counsel.

The complainant shall be notified of the right to appeal within 90 days of receipt of the letter to the Secretary of Veterans Affairs.

VI. APPEALS

The Secretary of Veterans Affairs may extend the 90 day time period for filing an appeal for good cause; accept and process timely appeals; and, notify the complainant of the results of the appeal within 60 days of receipt of the request, unless additional information is needed from complainant. If so, the 60 day time period will commence upon receipt of the additional information.

VII. REFERENCES

Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. § 794

Section 508 of the Rehabilitation Act, as amended, 29 U.S.C. § 794d

38 CFR Part 15 -- Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Veterans Affairs.

36 C.F.R. Part 1194, Final Rule on Electronic and Information Technology Accessibility Standards Issued by the Architectural and Transportation Barriers Compliance Board (Access Board).

Department of Justice manual entitled "Investigations Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes." (This guidance is based, in part, on this manual which is available online at (www.usdoj.gov/crt/cor/coord/invmanual.htm)).

Federal Acquisition Regulations; Electronic and Information Technology Accessibility, 66 Fed. Reg. 20894 (2001) (to be codified at 48 C.F.R. Part 2, et al.