he or she is reemployed by the pre-

service employer or by a different em-
ployer contributing to the same multi-
employer plan, provided that the pre-

service employer and the post-service
employer share a common means or
practice of hiring the employee, such
as common participation in a union
hiring hall.

§ 1002.267 How is compensation during
the period of service calculated in
order to determine the employee’s
pension benefits, if benefits are
based on compensation?

In many pension benefit plans, the
employee’s compensation determines
the amount of his or her contribution
or the retirement benefit to which he
or she is entitled.

(a) Where the employee’s rate of
compensation must be calculated to
determine pension entitlement, the
calculation must be made using the
rate of pay that the employee would
have received but for the period of uni-
formed service.

(b) (1) Where the rate of pay the em-
ployee would have received is not rea-
sonably certain, such as where com-
pensation is based on commissions
earned, the average rate of compensa-
tion during the 12-month period prior
to the period of uniformed service must
be used.

(2) Where the rate of pay the em-
ployee would have received is not rea-
sonably certain and he or she was em-
ployed for less than 12 months prior to
the period of uniformed service, the av-

erage rate of compensation must be de-

erived from this shorter period of em-
ployment that preceded service.

Subpart F—Compliance Assist-
ance, Enforcement and Rem-
edies

§ 1002.277 What assistance does the
Department of Labor provide to em-
ployees and employers concerning
employment, reemployment, or
other rights and benefits under
USERRA?

The Secretary, through the Veterans’
Employment and Training Service
(VETS), provides assistance to any per-
son or entity with respect to employ-
ment and reemployment rights and
benefits under USERRA. This assist-
ance includes a wide range of compli-
ance assistance outreach activities,
such as responding to inquiries; con-
ducting USERRA briefings and Webcasts; issuing news releases; and,
maintaining the elaws USERRA Advi-
sor (located at http://www.dol.gov/elaws/
userra.htm), the e-VETS Resource Advi-
sor and other web-based materials (lo-
cated at http://www.dol.gov/vets), which
are designed to increase awareness of
the Act among affected persons, the
media, and the general public. In pro-
viding such assistance, VETS may re-
quest the assistance of other Federal
and State agencies, and utilize the as-


Investigation and Referral

§ 1002.288 How does an individual file
a USERRA complaint?

If an individual is claiming entitle-
ment to employment rights or benefits
or reemployment rights or benefits and
alleges that an employer has failed or
refused, or is about to fail or refuse, to
comply with the Act, the individual
may file a complaint with VETS or ini-
tiate a private legal action in a court
of law (see § 1002.303). A complaint may
be filed with VETS either in writing,
using VETS Form 1010, or electroni-
cally, using VETS Form e1010 (instruc-
tions and the forms can be accessed at
http://www.dol.gov/elaws/vets/userra/
1010.asp). A complaint must include the
name and address of the employer, a
summary of the basis for the com-
plaint, and a request for relief.

§ 1002.289 How will VETS investigate a
USERRA complaint?

(a) In carrying out any investigation,
VETS has, at all reasonable times, rea-
sonable access to and the right to
interview persons with information rel-

evant to the investigation. VETS also
has reasonable access to, for purposes
of examination, the right to copy and
receive any documents of any person or
employer that VETS considers relevant
to the investigation.