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PROTECTING THE RIGHTS OF THOSE WHO PROTECT US: PUBLIC SECTOR COMPLIANCE WITH THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND IMPROVEMENT OF THE SERVICEMEMBERS CIVIL RELIEF ACT

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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CONTENTS

June 23, 2004

Page

Protecting the Rights of Those Who Protect Us: Public Sector Compliance with the Uniformed Services Employment and Reemployment Rights Act and Improvement of the Servicemembers Civil Relief Act 1

OPENING STATEMENTS

Chairman Smith 1
Hon. Lane Evans, ranking democratic member, full committee on Veterans' Affairs 2
Prepared statement of Congressman Evans 99
Hon. Henry E. Brown, Jr., chairman, Subcommittee on Benefits 3
Hon. Susan A. Davis 4
Prepared statement of Congressman Michaud 102
Prepared statement of Congresswoman Hooley 104

WITNESSES

Blair, Dan J., Deputy Director, Office of Personnel Management, accompanied by Michael Mahoney, Staffing Group Manager, Office of Personnel Management 25
Prepared statement of Mr. Blair 134
Bloch, Scott J., Special Counsel, U.S. Office of Special Counsel 23
Prepared statement of Mr. Bloch 124
Bradley, Hon. Jeb, a Representative in Congress from the State of New Hampshire 6
Prepared statement of Congressman Bradley 106
Brown-Waite, Hon. Ginny, a Representative in Congress from the State of Florida 8
Prepared statement of Congresswoman Brown-Waite 109
Burris, Jason, Corporal, Oregon National Guard 15
Prepared statement of Mr. Burris 118
Ciccolella, Charles, Deputy Assistant Secretary, Veterans' Employment and Training Service, Department of Labor 63
Prepared statement of Mr. Ciccolella 150
Cox, Col. Brarry, Director, Military Member Support and Ombudsman Services, National Committee for Employer Support of the Guard and Reserve .. 66
Prepared statement of Colonel Cox 167
Duehring, Craig W., Principal Deputy Assistant Secretary of Defense for Reserve Affairs, Department of Defense 64
Prepared statement of Secretary Duehring 159
Iglesias, David C., United States Attorney, District of Mexico, Department of Justice 59
Prepared statement of Captain Iglesias 141
Kaplan, Judithe Hanover, Former Colonel, U.S. Air Force Reserve 16
Prepared statement of Dr. Kaplan 120
Kimmel, Tammy M., military spouse, Killeen, TX 13
Prepared statement of Ms. Kimmel 116
McGovern, Hon. James P., a Representative in Congress from the State of Massachusetts 5
Prepared statement of Congressman McGovern 113
Moakler, Kathleen B., Deputy Director, Government Relations, The National Military Family Association 70

Page

Moakler, Kathleen B., Deputy Director, Government Relations, The National Military Family Association—Continued
Prepared statement of Ms. Moakler 206
Norton, Col. Robert F., U.S. Army (ret.), Deputy Director, Government Relations, The Military Officers Association of America 77
Prepared statement of Colonel Norton 198
Quinn, Pat, Lieutenant Governor of Illinois 73
Prepared statement of Lieutenant Governor Quinn, with attachments 176
Saunders, Margot, Managing Attorney, National Consumer Law Center 81
Prepared statement of Ms. Saunders 213
Slaughter, Hon. Louise M., a Representative in Congress from the State of New York 61
Van Sickle, Harry, Commissioner, Union County, Pennsylvania and Chair of the Labor and Employment Steering Committee of the National Association of Counties (NACo) 75
Prepared statement of Mr. Van Sickle 182

MATERIAL SUBMITTED FOR THE RECORD

Bills:
H.R. 4477, a bill to amend the Uniform Services Employment and Reemployment Rights Act of 1994 to require employers to post a notice of the rights and duties that apply under that Act 87
H.R. 3779, a bill to amend the Servicemembers Civil Relief Act to prevent the disruption of the education of children who change residence based on the military service of their parents 90

Draft bills:
H.R. ——, a bill to amend chapter 43 of title 38, United States Code, to extend the period for which an individual may elect to continue employer-sponsored health care coverage under the Uniform Services Employment and Reemployment Rights Act of 1994, and for other purposes 93
H.R. ——, a bill to amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act 95

Statement:
Sarah J. Hayhurst, Army spouse 111
Dennis W. Archer, President, American Bar Association 172

Reports:
"Agencies without policies regarding Federal Employees Health Benefits (FEHB) premium payment for Reserves and Guardsmen, submitted by Mr. Bloch 29
"Veterans' Employment Audit Report," prepared by Office of Personnel Management, June 2004, submitted by Mr. Bloch 31

Survey report:
"Has the Deployment of Reserves Affected Your County?" June, 2004, submitted by Mr. Van Sickle 187

Written committee questions and their responses:
Chairman Smith to Department of Defense 219

PROTECTING THE RIGHTS OF THOSE WHO PROTECT US: PUBLIC SECTOR COMPLIANCE WITH THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND IMPROVEMENT OF THE SERVICEMEMBERS CIVIL RELIEF ACT

Wednesday, June 23, 2004

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 334, Cannon House Office Building, Hon. Christopher Smith (chairman of the committee) presiding.

Present: Representatives Smith, Quinn, Brown, Boozman, Bradley, Beauprez, Brown-Waite, Evans, Hooley, Strickland, Udall, Davis, and Herseth.

OPENING STATEMENT OF CHAIRMAN SMITH

The CHAIRMAN. The hearing will come to order.

Good morning, ladies and gentlemen. Today's hearing is entitled "Protecting the Rights of Those Who Protect Us." We'll examine how well the Uniformed Services Employment and Reemployment Rights Act, commonly known as USERRA, as well as the Servicemembers Civil Relief Act, are operating to protect our servicemembers called to active duty.

These two major Federal statutes are designed to protect the legal, financial, and job rights of active duty Guard and Reserve members of our armed forces that could be adversely affected by their service.

Both of these laws are particularly important to our nations Reserve and Guard members more than 153,000 of whom have been called to active duty in the war on terrorism. It is worth noting that many of these brave men and women are also first responders in their civilian jobs, including police, firefighters and emergency medical personnel.

We must ensure that the laws designed to protect them are complete, effective and, perhaps most important, faithfully executed and enforced. With thousands of Reserve and Guard members returning from active duty every month, we need to be certain that USERRA is doing the job Congress intended.

Servicemembers' civilian careers should not be harmed as a result of their military service. In July of last year, the Benefits Subcommittee held an oversight hearing on private sector USERRA compliance looking at how well the law was understood and enforced.

Today's hearing will focus more closely on compliance by the public sector, including local, state and Federal Government agencies. We will hear about some instances where servicemembers had difficulty enforcing their USERRA rights, and we'll examine legislative proposals to further strengthen USERRA.

The committee will also examine the Servicemembers Civil Relief Act to determine how well it is protecting the legal and finance rights of our military personnel. This legislation, which I was very proud to sponsor along with my good friend and colleague Lane Evans, was approved by Congress and signed by President Bush last year.

The act, which restated and expanded the Soldiers' and Sailors' Civil Relief Act, is designed to help protect legal and financial rights of U.S. military personnel called to active duty.

Among the most notable new protections added were automatic 90-day stays for civil and administrative proceedings, protections for servicemembers and their families from housing evictions, the right of servicemembers and their spouses to terminate housing and automobile leases, protection from repossessions of automobiles and limits on credit card interest rates while on active duty.

Unfortunately, as one of our witnesses today will explain, some property management companies have tried to find a loophole in the Service Member Civil Relief Act to eliminate one of the very protections we specifically included in the law just last year.

The committee will examine how best to close even the smallest potential loopholes that would harm our servicemembers and their families as well as consider legislation to further expand the reach of the law to cover additional hardships on servicemembers and their families caused by activation or relocation.

We have a number of important witnesses for other hearing today, including a panel of private citizens who have personally experienced violations of their rights under the Service Member Civil Relief Act and USERRA, two panels of senior federal officials responsible for policy and enforcement regarding these laws and a panel of representatives from interested organizations.

We welcome all of them and thank them for their time and the effort that they put into preparing their testimony and the work that they are doing. I'd like to yield to my friend and colleague, Lane Evans, for any comments he might have.

OPENING STATEMENT OF HON. LANE EVANS, RANKING DEMOCRATIC MEMBER, FULL COMMITTEE ON VETERANS' AFFAIRS

Mr. EVANS. Thank you, Mr. Chairman, for holding this hearing to discuss and examine employment rights and responsibilities under the Uniformed Services Employment and Reemployment Rights Act and the Service Member Civil Relief Act.

Additionally, I'm very pleased that we have before us today a number of legislative measures aimed at improving and enhancing

these laws. Mr. Chairman, we have an obligation to do all we can to provide servicemembers and their families the full benefits of these laws and provide them the peace of mind necessary to fulfill their duties.

It is very clear that the armed forces of this nation are serving under stressful conditions, and they and their families are greatly sacrificing. Accordingly, laws concerning their reemployment rights and legal and financial protections play an integral part in their role to serve our country.

Mr. Chairman, I look forward to working with you and the other members of this committee to maintain oversight over the administration of these laws. And before I begin, I'd like to extend a warm welcome and thanks to all the witnesses.

I particularly want to welcome and recognize the Honorable Patrick Quinn, lieutenant governor of my home state, Illinois and appreciate him being with us. He'll be part of one of the panels coming up.

Mr. Chairman, our oversight of these topics is essential, and I appreciate your efforts. I yield back the balance of my time.

[The prepared statement of Congressman Evans appears on p. 99.]

The CHAIRMAN. Thank you very much, Mr. Evans. I'd like to yield to Chairman Brown.

OPENING STATEMENT OF HON. HENRY E. BROWN, JR., CHAIRMAN, SUBCOMMITTEE ON BENEFITS

Mr. BROWN. Thank you, Mr. Chairman. I want to thank you and Ranking Member Evans for convening today's hearing which addresses, in part, policy and compliance issues associated with reemployment of mobilized Reservists and Guard members who work for public sector organizations in their civilian jobs.

We have many witnesses who have traveled some distance to be with us, and I welcome you and thank you for your participation.

Today, the Department of Defense reports it has mobilized almost 387,000 Reserves and Guard members in support of Operation Noble Eagle, Operation Enduring Freedom and Operation Iraqi Freedom.

Ranking Member Michaud and I and the Benefits Subcommittee held a hearing on July 24, 2003, with respect to private sector compliance of reemployment protections for our mobilized Reservists. At that hearing, we took testimony from companies such as Schering-Plough, ExxonMobil, W.W. Grainer, International Paper, Wal-Mart, and my electric company in South Carolina, SCANA Corporation. All these companies in various ways exceed current law requirements regarding reemployment of mobilized Reservists.

Mr. Chairman, I also want to thank Ranking Member Michaud. At our July 24, 2003, subcommittee hearing, Mr. Michaud suggested that the committee hear testimony from public sector employers—indeed, our topic today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Chairman Brown. Ms. Hooley?

Ms. HOOLEY. I will enter a statement for the record.

The CHAIRMAN. Very good.

[The statement of Hon. Darlene Hooley appears on p. 104.]

The CHAIRMAN. Mrs. Davis.

OPENING STATEMENT OF HON. SUSAN A. DAVIS

Mrs. DAVIS. Yes. Briefly, Chairman Smith, thank you very much and Ranking Member Evans for holding this hearing. I wanted to thank all of you who are here today also for sharing with us your experiences.

As we know, thousands of Reservists are serving overseas in Iraq and other theaters, so this timing today, Mr. Chairman, is very appropriate. With thousands of Reservists serving in Iraq and other parts of the world, it is important that we ensure the laws protect those willing to act as an important line of defense against our enemies and for our freedoms.

I've heard from so many Reservists in San Diego about the current laws, and many of them, of course, praise the Uniformed Services Employment and Reemployment Act and reported that their employers took them back immediately without question.

But unfortunately, there are others who reported complications when they return from active duty. One Reservist told my staff that his employer would only take him back on a part-time basis, causing him to lose his health and other benefits that he had relied upon.

If there are problems with the current laws, then it's up to us to fix these problems and to inform employers, both private and public, of their obligations. So I hope we can act on legislation before the committee and give them back the protections that they need and deserve.

Mr. Chairman, along with my colleague, Ms. Brown-Waite, we'll certainly be leaving at one point perhaps to manage the Home Loan bill on the floor, and, of course, there's Armed Services as well, but I hope to be here for the bulk of the hearing. Thank you very much.

The CHAIRMAN. Thank you very much, Mrs. Davis. We would like to welcome our distinguished first panel, Members of Congress. I'd just point out that Congresswoman Slaughter will join us later; she is attending to some duties on the floor right now.

We will begin first with the Honorable James P. McGovern, who is currently serving his fourth term as a representative from Massachusetts' Third Congressional District. He is the third-ranking democrat on the House Committee on Rules.

We will be then hearing from the Honorable Jeb Bradley, one of our committee's members. Mr. Bradley serves on you are Subcommittee on Health and Benefits. He is also a member of the Armed Services and Small Business Committees.

And we'll also be hearing from the Honorable Ginny Brown-Waite, a member from Florida, one of our committee members, as well. She serves on our Subcommittee on Benefits and Health. Ms. Brown-Waite is also a member of the Budget and Financial Services Committee. Mr. McGovern, if you would proceed.

STATEMENTS OF HON. JAMES P. McGOVERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS; HON. JEB BRADLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE; AND HON. GINNY BROWN-WAITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

STATEMENTS OF HON. JAMES P. McGOVERN

Mr. MCGOVERN. I want to thank Chairman Smith and Ranking Member Evans and members of the committee. I appreciate this opportunity to testify before this committee as it considers legislation that pertains to the Uniformed Services Employment and Reemployment Rights Act, otherwise known as USERRA.

Specifically, I'm here to discuss legislation I introduced, H.R. 4477, which promotes the rights and responsibilities of employers and employees under USERRA, and I'm pleased that Ranking Member Evans and my neighboring colleague from New Hampshire, Representative Bradley, join me as original co-sponsor of this legislation, and I'm honored to have them as part of this effort.

Mr. Chairman, since September 11, 2001, over 373,000 member of the Guard and Reserve have been placed on active duty. Not since World War II have so many members of the Guard and Reserve been called to active duty. They and their families face many burdens in service to their country.

One burden faced by the men and women of the National Guard and Reserves is their employment status upon return from active duty. The uncertainty of their activation and period of time away from their jobs also severely affects their employers, a situation that has been compounded by extended deployments.

The United States Chamber of Commerce has estimated that 70 percent of military Reservists called to active duty work in small or medium-size companies.

In an effort to assist the National Guardsmen and Reservists and their employers, the National Committee for Employer Support of the Guard and Reserves, ESGR, was established to address potential problems arising among the nation's employers. Trained ESGR employers manage to solve roughly 95 percent of the cases where problems have arisen when a Reserve or Guard member returns to his or her workplace through an informal process without the Department of Labor having to get involved.

But what about the other 5 percent? According to the ESGR, many of the problems facing this 5 percent of cases grew out of a lack of understanding of the rights and responsibilities of employers and their returning employees. H.R. 4477 seeks to address the small percentage of employers who do not fully understand or who are unaware of USERRA.

H.R. 4477 is a simple, straightforward bill. It seeks to promote understanding between employees and employers when it comes to their rights and obligations under USERRA. This bill would require the Department of Labor to produce a poster similar to the Family and Medical Leave poster for employers to post at work sites.

Currently, many posters are available on the Department of Labor's website. H.R. 4477 would not create additional paperwork or

burden employers with difficult Labor Department requirements. In fact, this bill is an effort to educate employers and keep them from unknowingly breaking existing law.

As this committee is aware, many employers across the country do not know about USERRA, or they are only vaguely aware of it. But not complying with USERRA, however, employers put themselves at risk of facing Labor Department investigations. By educating employers and employees before USERRA could be violated, employers will save themselves costly litigation, potential fines and public embarrassment.

Now, I'm quite sure that this committee would agree with my belief that our small and medium-size companies do not need to put themselves at risk of a Labor Department investigation.

Let me briefly share with you how I came to introduce this bill. I was contacted by a constituent who is a member of the Massachusetts ESGR. He suggested that simply altering USERRA to require its posting would solve many of the problems that he has seen arisen between employers and returning Reservists and Guardsmen.

He described how many employers are not fully aware of their responsibilities under USERRA and why many employees are afraid to exercise their rights even though those rights are protected by USERRA. In posting USERRA and familiarizing themselves with the law, employers and employees will gain a deeper understanding of USERRA and preferably work out any potential conflicts before employees are activated.

Mr. Chairman, I would like to thank both Ranking Member Evans and Representative Bradley again for being original co-sponsors of this legislation. I appreciate their support and the dedication that they have shown to the men and women of the National Guard and Reserves.

In fact, Representative Bradley and I share constituents who are members of the 94th Regional Readiness Command, in particular the New Hampshire and Massachusetts Army Reservists assigned to the 94th Military Police Company headquartered in Londonderry, New Hampshire, and I know he cares deeply about the 94th and its families.

I would also like to acknowledge the work done by Geoffrey Collver of the Democrat Staff of the House Committee on Veterans' Affairs. He has worked closely with me and my staff in investigating this problem, and this bill that I'm talking about today reflects his hard work as well.

Again, I thank you for having me here today. I'm grateful for the opportunity to testify on H.R. 4477, and I look forward to the committee acting affirmatively on this bill.

The CHAIRMAN. Mr. McGovern, thank you very much for your testimony. Mr. Bradley.

STATEMENT OF HON. JEB BRADLEY

Mr. BRADLEY. Thank you very much. Chairman Smith, Ranking Member Evans, members of the committee, I appreciate the opportunity to testify today on H.R. 4477, introduced by my colleague, Congressman McGovern. H.R. 4477, the Patriotic Employer Act of 2004, relates to an area of great importance given current military operations.

Since September 11, 2001, deployments of the majority of Guard and Reserve units have been a reality. Therefore, it is important that we ensure that our military personnel are aware of their rights and that their private sector careers are not harmed due to their commitment for our country.

I commend Representative McGovern and join Ranking Member Evans in advocating for this common sense bill that will help reduce unnecessary frustration and misunderstandings for both Guard members, Reservists and employers.

With the percentage of the employed Guard and Reservists at its highest point in the past 50 years, it has become evident that these men and women and many employers are aware of the rights afforded them under the Uniformed Services Employment and Reemployment Rights Act of 1994.

Although only a small percentage of employers and Reservists have significant problems understanding and abiding by USERRA their situation deserves our attention during this time of increased deployments. H.R. 4477 would seek to intervene before a problem arises by simply providing for the posting of the current law in the workplace.

I believe this legislation provides a simple, inexpensive answer to a problem we must address in order to best provide job security to our Guard and Reservists. The Patriotic Employer Act of 2004 would not create a burdensome clerical requirement for small businesses or for the Labor Department.

Furthermore, there would be no cost to employers to post the labor laws in the workplace, and the cost would be negligible to the Labor Department. Currently, federally required postings are available free of charge to employers as the Labor Department provides hard copies of the laws to employers upon request.

Additionally, the Labor Department has downloadable versions of the postings available in Portable Document Format, PDF, on their website. Requiring employers to post an additional labor law poster would not burden employers with excessive cost but may, in fact, save them from the expense of litigation in defense of violations of USERRA.

Although only a small amount of the conflicts result in a lawsuit they are costly to the employer, the employee and the Labor Department and can destroy long-standing relationships. Many of these problems are the result of poor communication between employers and employees due to a lack of knowledge. H.R. 4477 is a straightforward and inexpensive and appropriate response to this problem.

Mr. Chairman, I want to thank Representative McGovern and Ranking Member Evans for their leadership and initiative on this issue. Like them, I believe that all Guard and Reservists deserve job security when they are called on to serve our nation.

Fortunately, current law already provides for this security. H.R. 4477 raise awareness for employers and Reservists and will make them explicitly aware of this law.

I thank the committee for the opportunity to testify before you today, and I would be happy to answer your questions that you may have on this bill.

The CHAIRMAN. Thank you very much, Mr. Bradley. Ms. Brown-Waite.

STATEMENT OF HON. GINNY BROWN-WAITE

Ms. BROWN-WAITE. Thank you very much, Mr. Chairman. I am pleased to have the opportunity to discuss this legislation, and I regret that Ms. Slaughter has been delayed. I've worked with Congresswoman Slaughter, and I serve currently as vice-chair of the Women's Caucus. And it was as a result of this caucus that we developed this legislation.

The bill H.R. 3779, Safeguarding Children of Deployed Soldiers Act, will help to ease the burden of deployment on the families of our soldiers. As if the emotional strain of separation is not enough, some of our soldiers' children are currently forced into a new environment and new school as a result of their parent's deployment. This, obviously, causes additional stress on the child who is already adjusting to the temporary loss of their parent.

An established routine, familiar peer group and good friends help the child to cope with their parent's deployment. This legislation provides a common sense solution to help families who are already sacrificing so much.

Let me tell you, basically, how the bill works. It amends the Servicemembers Civil Relief Act of 1940. Congress has long recognized the need to minimize the hardships of our men and women in uniform. Originally enacted in 1940, this law provides relief to military personnel from many of the economic and legal burdens they have incurred because of their deployments.

The bill requires schools to treat a child who changes residences based on the military service of one or both of the parents as if the child has the residence he or she had before the location. This will allow the student to continue to taken the school, the same school that the student attended before the parent was deployed.

This legislation will not burden the school with the transportation of a child to or from school because the transaction will be the responsibility of the student and his or her guardian.

In the Fiscal Year 2005 budget, the Bush administration recognized the need to mitigate the hardships of deployment on military families. On page 107 of the president's proposed budget it reads: "Children of military families who frequently move to new schools face difficult changes when the new schedule has different educational and health related requirements. The Department of Education and the Department of Defense will work with the states on strategies to prevent description in the educational progress of children of military families and to ease the stress on military families."

This legislative intent is one that we hope will provide continuity to the lives of military families.

In conclusion, let me state that as our men and women in uniform continue to be deployed in support of military operations around the world, it is vital that we do our best to minimize the disturbance to their lives and the lives of their families.

The proceedings provided by this measure is of great consequence to our children's education and the peace of mind of our soldiers. I certainly urge support of H.R. 3779, and I appreciate the

efforts of the committee and certainly this chairman to hold the hearing today to discuss the merits of the bill. I yield back my time, and I do believe that Ms. Slaughter does plan on getting here a little bit later.

The CHAIRMAN. Thank you very much, Ms. Brown-Waite. I just have one question, and I want to thank all of you for your testimonies. Ms. Brown-Waite, how many are we talking about? How many would be affected by 3779?

Ms. BROWN-WAITE. We do not have an CBO score yet, so we are not sure how many families will be affected. Again, please remember that it's a voluntary program. Some may want their children to attend a new school. It may be a better school.

The CHAIRMAN. I understand. I have a number of military families, and impact aid has been an issue that I have worked on. Part of the impact aid coalition here in Congress have worked for years to try to get the fair share to the school districts. And frankly, we all have failed to some extent because they never get the actual amount of money from the Federal Government that is commensurate with the schooling, and the local school districts never lose an opportunity to remind me of that.

Ballpark, how many kids are we talking about? It would be helpful to know.

Ms. BROWN-WAITE. It would purely be a guesstimate, and that would be anywhere from 1,000 to 10,000 students.

The CHAIRMAN. Okay. Thank you. Mr. Evans.

Ms. BROWN-WAITE. Pure guesswork, sir.

Mr. EVANS. I have no questions at this time.

The CHAIRMAN. Thank you, Mr. Evans. Mr. Quinn.

Mr. Jack QUINN. Thank you, Mr. Chairman. And I thank our colleagues for their testimony here this morning. I know Ms. Slaughter is on her way, but in her absence, as her next door neighbor up in Buffalo, NY, I want to commend her and mention to the full committee here and our colleagues at the table of her support with Ms. Brown-Waite to develop this bill.

As a former high school English teacher myself for ten years before I came here to the Congress I'm fully aware, as many of us are, how fragile sometimes the situation is at home and the impact it has once our children go to school for the day.

Add to this the situation now with father or mother or both, in some instances, add to the flavor of all this the divorce rate of sometimes about 50 percent depending on where you are in the country, we can completely disrupt the situation of our students, our young people before they even get to school to start to learn.

So Mr. Chairman, I want to add the voice of Ms. Slaughter here this morning, as both of us represent Niagara Falls and its reserve installations up there in our part of New York state, commend all of the people who did work on this.

I'm sitting here at your question. I think that's an important question as to how many people we are talking about. I'm certain we can get a handle on that in the next few weeks but certainly more where we have facilities, like in Niagara Falls. This was actually, I know, in Ms. Slaughter's case, some case work that came to her, a 10-year-old and parents.

So I think if we get a handle on that the committee would know better where we're headed. But I wanted to thank our colleagues and Ms. Slaughter in my instance for the work that she has done on this and support the chairman in any way I can. Yield back. Thank you.

The CHAIRMAN. Thank you. Ms. Hooley.

Ms. HOOLEY. I have no questions.

The CHAIRMAN. Chairman Brown.

Mr. BROWN. Thank you, Mr. Chairman. And thank you, Ms. Brown-Waite, for bringing this to our attention today. I was just trying to figure out exactly what would constitute the child having to transfer to a new school.

Ms. BROWN-WAITE. Well, this is a school that the child was going to that they would prefer to stay in.

Mr. BROWN. I mean, what would cause the child to have to move to another school, I guess is my question.

Ms. BROWN-WAITE. Well, obviously, there's an impact on the new school of the child moving there, but this gives the parents the choice of keeping the child in the school district in which they may have even grown up in.

Mr. BROWN. But I guess my question is if one of the parents are actually engaged in some military conflict somewhere and they have to leave, does it cause the other spouse to have to move? Is that what we're saying, and if they move can they still keep their child in the current school district? I'm trying to figure out in my mind exactly what problem we're trying to correct.

Ms. BROWN-WAITE. I would strongly suggest that we wait until Ms. Slaughter get here for one reason. It was her constituent who had the particular problem, but I think it involves more a case where the parent are separated and/or divorced.

Mr. BROWN. I see. Okay.

Ms. BROWN-WAITE. And that's the problem.

Mr. BROWN. Okay. Thank you.

The CHAIRMAN. Mrs. Davis.

Mrs. DAVIS. Mr. Chairman, thank you. I was just going to mention—and I don't know whether you've thought about this as part of the legislation, but really it's the counselor, even at the school that the child continues at or the school that the child goes to and the sensitivity of the teachers and the counselors there.

And I think we have some guidelines and some ways that schools can respond, and perhaps that could just be incorporated. I know it's out there certainly in San Diego. They work very hard at that, particularly in areas where there are a lot of students whose parents are deployed. And whether they're moving or not those kids need a lot of assistance often, and some schools are better prepared to others. So maybe just some reference to that.

Ms. BROWN-WAITE. I certainly agree with Mrs. Davis, Mr. Chairman. That's something that school districts have as part of their ongoing counseling programs, and those with large numbers of members that have been deployed have taken on this new challenge and done a pretty darn good job of it. But that's an excellent suggestion.

The CHAIRMAN. Dr. Boozman.

Mr. BOOZMAN. The question I would have for anyone, I was on the school board for seven years, and if you have a situation where a child lives in another district; in other words, the parent does, then their tax money stays in that district. The child attends the other school, so there is really no funding for the child in the sense that those local taxes, whatever school district they reside in that money stays there regardless of where the child goes to school.

So as a school board member I can't imagine if we had a situation like that in a town that I represented where we wouldn't work something out, that we'd be glad to keep a child. I'm like the chairman. I'd really like to know about the numbers.

If you had a situation where it might impact a district of maybe 100 kids, then it really would be an unfunded mandate on that system and might create some problems for the system and trying to deal with it.

If we're talking about a few kids scattered here and there, I really think the better way would be to work with the school boards through us or whoever, but that would be my only hesitancy. Like I say, I agree with the concept, and I can't imagine, as a school board member—and they have the power to do that. The school board is law. They can do whatever they want to. I can't imagine being in a situation where you really wouldn't try and accommodate a family like that.

In Arkansas, we've got a little over 13,000 National Guardsmen. Over 3,500 are deployed in Iraq. So this is something that really does resonate home. Again, I think the only thing we need to look at where you have large quantities of schools I think we really would look at impact and make sure that we didn't create an unfunded mandate on some schools.

Ms. BROWN-WAITE. From what I recall, the particular situation is where there is a divorce or a separation and one member is in the military and gets deployed, and the non-custodial parent then books the custodial parent and lives in a different area. And if they are willing to transport that child back to the original district, that's where this bill would come in.

That allows the child to go to the original custodial parent who is now in the military to go to the school district that the child was in before that deployment.

Mr. BOOZMAN. Which, again, is fine. Like I say—and I really haven't studied the bill, to be honest, very much, but you'd want it really tight in the situation that that school district once the custody reverts back to the other person that lives outside of the district, then that school doesn't receive taxpayer money to pay for the kid's education. They do the state, but they don't get the local taxpayer money, and so they just have to suck it up.

Ms. BROWN-WAITE. Well, Mr. Chairman, if I may respond, let's say that the student starts in September, and the custodial parent gets deployed in October. The funding is already there for that child to be in that school district for that year. He or she is already counted, and it does vary from state to state.

But they're counted in the original school district, and this would just be a continuation of that, as opposed to them being a new student in, perhaps, an adjoining school district.

Mr. BOOZMAN. Okay. And again, I'm not being argumentative at all. I agree.

Ms. BROWN-WAITE. I understand.

Mr. BOOZMAN. And like I say, I can't imagine a school board not working with somebody, and that would be fine for a couple kids. I mean, I'd envision it that if they're going to finish out that year I'd like for them to stay the next year and be with their friends, and the whole bit.

And you'd have to look at it state by state, but that's the area you'd want to look at is make sure a couple kids, you know, no problem. If you had a situation near a base, or something, where the thing was pretty broad where you could get into a loophole situation where a school district perhaps at 50 or 100 kids without the tax base, you know, they just had to suck it up and pay for it without it, then that would create an unfunded mandate that we'd have to deal with it.

That's the only concern that I have, and I'm not saying that that's even a possibility. Again, I think it's something that can be worked out, but I'd like to know the numbers also. Thank you.

The CHAIRMAN. Ms. Hooley.

Ms. HOOLEY. Thank you, Mr. Chair. I think one of the things if we decide to pass it it would be very easy to add an amendment where the money follows the child. I mean, frequently I know schools will, for whatever reason, a child will transfer out of where they live into a different school, and the money just follows them to that new school.

So I think there's a way that it can be worked out. And again, if we're going to pass this, we can look at some amendments that would take care of that. I understand every school really doesn't want to lose a child, but schools accommodate this situation frequently, and what we don't want to have happen is for somebody to refuse the child to stay in that same school if that's what's best for that child.

The CHAIRMAN. Thank you very much, Ms. Hooley. I want to thank our very distinguished panel for their testimony, and we appreciate you taking the time and the effort to be here. Thank you.

I'd like to welcome our second panel to the witness table, if they could make their way. If you wouldn't mind, please stand. I would say to our distinguished witnesses, we are extremely grateful that you've taken the time to be here, and I think by doing this, you protect yourselves in terms of your situation. If you wouldn't mind standing and raising your right hand.

[Witnesses sworn.]

The CHAIRMAN. I'd like to introduce our second panel, beginning with Ms. Tammy Kimmel, who is an accountant and military spouse from Killeen, TX. While in Killeen, she started her own business, First Impressions Resume Service, and also worked preparing taxes. And we will get into her testimony momentarily.

Mr. Jason Burris serves in the Oregon National Guard and will be introduced by Ms. Hooley, who is his representative. Ms. Hooley, if you wouldn't mind at this point.

Ms. HOOLEY. Thank you, Mr. Chairman and Ranking Member, for holding this hearing today on Public Sector Compliance with

the Uniformed Services Employment and Reemployment Rights Act—a lot of words.

It is important that we ensure that our servicemembers and their families are treated with the respect that they deserve. I'm honored to be joined by fellow Oregonian and constituent Corporal Jason Burris, who is here to testify on his experience with USERRA compliance at the U.S. Postal Service.

Corporal Burris is from Woodburn, Oregon, has been a member of the National Guard since 1998 and is currently assigned to E Troop 1 of the 82nd Cavalry. Corporal Burris is a dedicated, hard working American who worked at the post office located in Woodburn, Oregon, and one weekend a month and two weeks a year trained hard for the defense of this nation just like hundreds of thousands of other patriotic Americans.

In this case, however, that patriotism cost him his job. I am happy that Corporal Burris is able to join is today and look forward to his perspective and problems with USERRA compliance in the public sector. Thank you.

The CHAIRMAN. Thank you very much, Ms. Hooley. I want to thank both Ms. Kimmel and Mr. Burris for traveling so far to testify before the committee and for their willingness to testify on issues of importance to servicemembers and their families.

I also ask unanimous consent that a statement by Mrs. Sarah Hayhurst be placed in the record. Without objection, so ordered.

[The statement of Sarah J. Hayhurst appears on p. 111.]

The CHAIRMAN. The statement is included in all of your hearing folders, and I hope you take the time to read it. Ms. Hayhurst is an Army spouse who has given to the committee a written statement about the problems she experienced with termination of a residential lease in the Fort Hood area, and the committee appreciates her willingness to provide that information to us.

We'll also hear from Mrs. Judithe Hanover Kaplan, who holds a Bachelor of Science degree in nursing from the University of California, San Francisco Medical Center, a Ph.D. from the University of California, Berkeley, and is a graduate of the University of Washington Law School.

Dr. Kaplan has developed educational programs as a nurse and aeromedical staging specialist for the Air Force and is a graduate of the Air War College.

If we can begin with Ms. Tammy Kimmel.

TESTIMONY OF TAMMY M. KIMMEL, MILITARY SPOUSE, KILLEEN, TX; JASON BURRIS, CORPORAL, OREGON NATIONAL GUARD; AND JUDITHE HANOVER KAPLAN, FORMER COLONEL, U.S. AIR FORCE RESERVE

TESTIMONY OF TAMMY M. KIMMEL

Mrs. KIMMEL. I would like to thank Chairman Smith and all the committee members for this opportunity to contribute to the hearing on the Servicemembers Civil Relief Act. My name is Tammy Kimmel. My husband is SFC James Kimmel. He has served in the Army for 21 years.

Last summer we were sent to Fort Hood so my husband could participate in the UFTP training with the 2nd Squadron, 6th U.S.

Cavalry. This training was expected to last no longer than one year, and then we would PCS with the entire unit to Illesheim, Germany.

In August of 2003, we signed an 11-month lease on a home with Colonial Real Estate and Property Management. The lease had a PCS clause in it allowing us to get out of the lease for a PCS move and pay a $45 administration fee.

On March 31st, I gave Colonial a 60-day moving notice and turned in my husband's PCS orders for Germany. Three office staff members told me that I would not be released from the lease. They told me that a new law was passed in December of 2003 that said only the active duty service member would be released.

They said that I was still responsible for the entire term of the lease. I reminded them that we had a PCS clause in our lease. Their response was the new law supersedes all previous laws and contracts. They continued on to say they have tried to find a way around this, but there's nothing they can do.

They said their business could be closed if they violate a federal law. I told them they were wrong, and that's not what the law says. I told them I would go to the Fort Hood legal office. Again, their response was that JAG had already contacted them regarding other families they had done this to, and they don't care what JAG says because JAG has their own interpretation of the law.

Mrs. Cooney gave me a copy of part of the Servicemembers Civil Relief Act with parts of section 305 and 308 highlighted and said that those sections pertain to a PCS move. They gave me a list of four things that I could do to get out of the lease.

The first would be to go to a court and apply for protection under the Servicemembers Civil Relief Act. They also said they could contact the owner and see if she would let me out of the lease, or I could find my own renters for the property, or I could pay the remaining rent, 85 percent of the remaining rent for the months we were breaking the lease, and then they would start the process of renting the property.

I refused to do any of these things. I was appalled that a law that was meant to product us servicemembers was used against us at a time that we needed it the most. That same day I found an article in the Army Times titled, "Law Weaves Stronger Safety Net on Leases and Evictions."

I contacted the writer of the article and informed her of our situation. She encouraged me to go to the legal office. She also contacted our rental agency regarding their position on this law. The rental agency referred her to their company attorney, who said that he was under the understanding that they do release families for a PCS move.

She informed him our situation. Over the next week there were several calls between myself, the Army Times Reporter, the Colonial Real Estate attorney, and eventually, on April 7, they left a message for me on my voice mail that stated they had found a way to let me out of the lease, that there would be no more problems, and I would be released the same as my husband.

Even now, after we've moved out of the house, we have ongoing problems with the real estate management company. All this has created enormous stress on our family. It's very stressful to com-

plete a military move, especially overseas. This move to Germany is our third in four years.

I hope that this problem can be resolved and that other families don't have to go through this type of stress. Thank you.

[The prepared statement of Ms. Kimmel appears on p. 116.]

The CHAIRMAN. Thank you very much for your testimony and for being here.

If you could proceed, Mr. Burris.

TESTIMONY OF JASON BURRIS

Mr. BURRIS. Chairman Smith and members of the committee, thank you for inviting me to testify here today. In the fall of 2000, I was employed with the U.S. Postal Service, and when I went to attend my monthly drill IDT approximately 30 days after the beginning of my employment with the Postal Service, I was injured in the course of training to where I was unable to move my arm and was unable to report to work for two days.

On the second day, I was called to be informed that my term of employment was being terminated due to failure to report to work due to a non-postal injury. One of my first actions was to call my unit readiness NCO and ask them if what had just happened was, in fact, legal.

And his reply was no, and he put me in touch with the U.S. Department of Labor-VETS. After speaking with them, the U.S. Department of Labor-VETS, I proceeded to file a formal complaint and grievance. And then I also contacted my father, who is a postmaster in the U.S. Postal Service.

He was unaware and had been unaware of any USERRA training or information put out by the post office up to that point. His knowledge of the matter now is largely due to my experience.

The U.S. Department of Labor and VETS investigated the incident, and they came to a conclusion that what the U.S. Postal Service had done was not in violation, and they offered me the change to refer my case to Office of Special Counsel.

I forwarded it to the Office of Special Counsel in the hopes that perhaps it would bring light to the subject that there is no training in place with the Postal Service and that it would help to bring that to light and allow further training and fewer situations of this to occur.

Late this last year the Office of Special Counsel and the U.S. Postal Service have been in contact as far as regards to this. The Office of Special Counsel found that the U.S. Postal Service did indeed violate USERRA in terminating me for a non-postal injury which was military related, and so they've been progressing through settlement status.

The U.S. Postal Service has, in fact, agreed verbally to settle this incident outside of the courtrooms and is quickly coming to a close.

The Office of Special Counsel has done an exemplary job in reviewing and investigating this incident with all the information that has been provided them by the U.S. Postal Service, Department of Labor-VETS and myself, and I would lake to thank them greatly.

Again, I'd like to thank you all for inviting me to testify here today and would be more than willing to answer any of your questions.

[The prepared statement of Mr. Burris appears on p. 118.]

The CHAIRMAN. Thank you very much, Mr. Burris. Dr. Kaplan.

TESTIMONY OF JUDITHE HANOVER KAPLAN

Ms. KAPLAN. Mr. Chairman, distinguished members of the House Veterans' Committee. Thank you for the opportunity to address you pertaining to my USERRA case. USERRA protection and veterans' employment/reemployment rights are absolutely critical at this time of war with military activations, deployments and employment returns of Reservists and National Guard members.

I'm a former colonel in the United States Air Force Reserve. I joined the Air Force Reserve on August 20, 1990, and was separated from service on March 31, 2003, by mandatory age mandate. I served 12 and a half years, and I loved every minute of it. I'm a disabled veteran resulting from serving during the Gulf War as a battlefield/aeromedical staging nurse.

Additionally, I was recalled to active duty to serve post 9/11 for eight months at Keesler Air Force Base. As a civilian, I'm a nurse with a career spanning 37 years, ten years in management/administration, ten years as a college university professor and the remaining years as an eclectic mental health nurse. I have been successful and high-performing all my life.

On October 26, 1999, I was employed by the Veterans' Affairs Medical Center San Diego as a Title 38 staff nurse/performance improvement consultant. On December 7, 1999, a memo was written for my termination, the day following my presentation of military orders to my supervisor. I was terminated January 14, 2000.

Six weeks passed between initial employment and termination. The reason given for my termination was unavailability. The reason for my unavailability was military service.

Prior to my employment my future supervisor and I discussed my military service and obligations. There was a mutual agreement to try to work with the agency regarding my military responsibilities even though USERRA does not require such an agreement.

By December 1999, I had begun implementing a transfer to military IMA status and was being assigned to Headquarters Air Force Pentagon, Office of the Surgeon General at Bolling Air Force Base, Washington, D.C.

This was done as an attempt to prevent scheduling conflicts between my military career and my VA employment. This reassignment would remove me from critical mobility status to planned military duty. My supervisor and I discussed prior to my being hired pending military orders for national medical conference that I had already received. My supervisor approved the orders and attendance at the conference.

My military leadership position was at March Air Reserve Base, California and entailed responsibility for the suicide and violence prevention program and teaching of more than 3,000 Reservists. I attended reserve training two weekends per month and missed one day from work each weekend for preparation wrap-up until I could

transfer my responsibilities to another Reservist, which was projected to take place in January.

The incident that triggered my immediate termination was my receipt of orders for an unexpected crucial medical essential mission in which I was selected to replace an aerostaging nurse at Hickam Air Force Base, Hawaii. I was a specifically and specially trained skilled nurse, and there was no one else to fill the need.

All Reserve ASTS medical units in the country had been asked for a volunteer, and no one volunteered. I presented my orders to my supervisor on December 6, 1999. She was furious and told me I could not go, which in itself is a USERRA violation.

The next day, December 7, she wrote a memo requesting my termination. This was unfortunate because within a month or so work and military conflict would have been resolved.

Actual process. Reservists are given briefings on USERRA and employment rights during military training. Immediately after termination I contacted our military base JAG officer. He recommended that I contact the Veterans' Employment and Training Service, VETS, within the Department of Labor.

In turn, upon advisement, I filed a complaint January 26, 2000, which VETS investigated. My package was sent to the Office of Special Counsel with a recommendation to prosecute the case because of a USERRA violation. I was appointed an attorney from the Office of Special Counsel to represent me.

My case has taken four years to arrive at the settlement point. I can only state how helpful the attorney with the Office of Special Counsel, Francisco Ruben, has been throughout this time. I lost an excellent job. I was degraded and shamed.

My employment record kept me from any consideration for a future Federal Government job. Until recently I was unable to find an equivalent job, necessitating working night shift or per diem nurse positions. I lost self-confidence and suffered from depression.

I am currently unemployed due to a geographic move from Connecticut to Virginia as part of my husband's employment, he a retired Air Force colonel. Now facing job interviewing, I am terrified of finding myself supervised by another person with similar leadership characteristics.

Positions to the one that I lost are extremely difficult to find. I believe I have been professionally and personally harmed by the employment situation outcomes and four-year period before resolution and closure.

I might also add as a consequence that it has been very difficult to find management employment because I was a Reservist. One private sector company stated and quoted, "If I had to select someone for the job, I would not hire the Reservist." This is a very common attitude that is held by private sector employers.

In summary, this was a tragic situation. I lost my career, and the VA lost a very qualified and skilled nurse leader and clinician. USERRA was critical in protecting me. Legal precedents such as mine are absolutely essential to assure continuing employment rights for our Reserve and National Guard military personnel as they are called to service and face employment issues.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or members of the committee might have.

[The prepared statement of Dr. Kaplan appears on p. 120.]

The CHAIRMAN. Dr. Kaplan, thank you, and thank all three of our witnesses for your tenacity and your courage in coming here to state your case. You're here because you, I think, highlight the fact that some people just don't get it out. The law is the law. The law couldn't be more clear.

Specifically, section 305 of the Servicemembers Relief Act couldn't have been more clear. We consulted with judge advocates from each of the services in crafting this legislation, and frankly I'm very, very glad to hear all three of you speak highly of the assistance you've gotten from the government lawyers, with the Office of Special Counsel. That, I think, speaks well to our men and women who are trying to enforce the law.

As we all know, no law is worth its salt unless it's adequately enforced. On behalf of the committee, I'm very grateful to those individual attorneys that are representing you and doing their job and doing it well. It's very encouraging to hear that.

But ignorance of the law is not a defense, and when you get a management company that flagrantly violates the law and puts you, Ms. Kimmel, through the kind of hell that you were put through, that is absolutely unacceptable.

And I think one of the things we can do as a committee as part of our oversight capacity is to try to get a better handle from the executive branch and from the field. Who are these people? What kind of pattern of abuse are they engaging in? Is this isolated? Was your case or any of your cases isolated? Are we talking about a pattern of defrauding on their part and certainly abusing you?

And that will have to become part of, perhaps, a larger action against them. Yes, you finally find a remedy after four years in your case, Dr. Kaplan and you too, Mr. Burris, four years as well. That's absolutely unacceptable.

Like I said, the law couldn't be more clear as to your rights. I think, Dr. Kaplan, you raised another point that we'll ask our witnesses that will follow you, and the that is the more subtle discrimination that's used against Guard and Reservists by employers who don't necessarily want the problems that may come with your deployment.

You're doing your duty for our country, and for that you are penalized preemptively by a potential employer. That, too, is against the law, but it's much harder to prove, as we all know.

It's harder to get into the mind of the personnel managers to find out what they're thinking when they say this candidate for the job gets it, and this one does not. I think that's a larger question that we need to address more aggressively as well.

I just want to thank all three of you. Again, you help us do our job. I'm sorry that you have gone through this. On behalf of my colleagues, please know that this isn't the way it ought to be. When we did the Servicemembers Relief Act, we painstakingly went through every aspect of it.

The Old Soldiers' and Sailors' Relief Act resulted in all kinds of judgments that had been issued by judges in different jurisdictions

that created a patchwork of confusion, and we wanted to clear that up. We did clear it up. This plain language couldn't be more clear. And you've been wronged, and we'll do everything we can to assist you. And I'm so glad, again, your government attorneys have been so helpful.

Mr. Evans.

Mr. EVANS. Mr. Chairman, I support your efforts here. It's very clear that we need to have a completely pair good system so people, such at these outstanding civil servants, are respected, and I look forward to working with you and other members of Congress and the committee to make sure the system works better.

The CHAIRMAN. Thank you. Dr. Boozman? Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. I just want to say, as the member who represents the VA La Jolla Hospital in San Diego, that I'm terribly sorry that that happened, and I can assure you that I'd like to follow up with some people there and understand that that's not happening to anybody else.

I wonder if you could just comment. I think you mentioned the support from the Office of Special Counsel. Should they be involved earlier in this investigation? How would you see that happening?

Ms. KAPLAN. I'm not sure they could be involved earlier because it has to move through the Department of Labor and then be investigated by VETS. And then it was very quickly thereafter that I was assigned a special counselor. I don't know what hung it up for four years. I think that's up to you to investigate and see. There is an issue there.

Mrs. DAVIS. We might look into some way that they would intervene earlier in the process. I mean, that's a possibility. I think what's disconcerting about this is this is a federal law, and it's the federal agencies that are violating these laws.

Ms. KAPLAN. What was also disturbing was my supervisor was a Navy commander in the Reserve force.

Mrs. DAVIS. Were you aware of other individuals who served there who were having a similar experience?

Ms. KAPLAN. I think I'm the only one that was hired and then fired or military unavailability. I was called out quite a bit. I had a responsible position, and the that is why I was terminating to an IMA, which is an Individual Augmentee Status, which means I could plan my military around my job versus being called out for critical missions where I was specially trained.

Mrs. DAVIS. Thank you very much. We'll focus more on that. Thank you.

The CHAIRMAN. Thank you. Mr. Bradley? Ms. Hooley.

Ms. HOOLEY. Thank you, Mr. Chair. I want to thank all the panelists for being here today and telling us your story. Mr. Burris, are you aware of any attempts that have been made through the National Guard to better educate members about USERRA?

Mr. BURRIS. As of this time I am not. The only information that I have received is that which I have sought myself.

Ms. HOOLEY. So a lot of members don't know about this in the first place?

Mr. BURRIS. Correct. I'm not sure as to if they are informed of these protections during the term of basic training now, but when

I went through in 1998 and 1999 none of the information regarding USERRA was given to me.

Ms. KAPLAN. Might I add that in the Air Force we have annual training on rights and on USERRA.

Ms. HOOLEY. Okay. Good. Mr. Burris, you generally expressed satisfies with the outcome of the incident. What part of the response by the Department of Labor or the Office of Special Counsel worked, and what didn't work, and what could be improved?

Mr. BURRIS. The delay between the Department of Labor-VETS forwarded to Office of Special Counsel and the time the Office of Special Counsel responded to me was almost a year and a half, and that was somewhat unacceptable to me. But I understand that the Office of Special Counsel is most likely inundated by a very large case load.

So given that I think things have progressed rather quickly from when they have contacted me to where we are today.

Ms. HOOLEY. How long did it you to get through the Department of Labor?

Mr. BURRIS. To get through the Department of Labor it was only a few months.

Ms. HOOLEY. Okay. And then how long did it take for your case to get to the Office of Special Counsel?

Mr. BURRIS. The Office of Special Counsel contacted me April of 2002.

Ms. HOOLEY. Okay. And so what time period was that?

Mr. BURRIS. Almost a year and a half.

Ms. HOOLEY. Okay. Okay. So it's a timing piece that probably could be the most improved?

Mr. BURRIS. Correct.

Ms. HOOLEY. May have a lot of cases to work on.

Mr. BURRIS. Yes.

Ms. HOOLEY. Okay. Thank you, Mr. Chair.

The CHAIRMAN. Thank you. Mr. Beauprez.

Mr. BEAUPREZ. Thank you, Mr. Chairman. Not really a question but more of an observation. Dr. Kaplan, your case is particularly annoying I'm sure to you, but to find a federal agency having trouble with a federal law and of all federal agencies the VA when you are a disabled veteran yourself it just seemed absolutely absurd.

All three of your cases seem absurd to me. I'm a former employer. I used to have about 150 people under my employ, and one of the multitude of laws that my human resources or personnel director, whatever you're going to call them, is most familiar with are the laws of USERRA and the rights of especially our Guardsmen and Reservists.

To find a veterans hospital—I mean, you highlighted it so perfectly, Congresswoman. It is the ultimate absurdity I think that I can imagine.

I don't know, Mr. Chairman, other than that we need to create much more awareness and understanding. I guess that's a starting point. And it certainly shouldn't take this wrong to resolve a dispute, especially within the Federal Government. I mean, that's—well, I guess I've said enough. I just can't imagine anything more perplexing than the situation you outline. Thank you for being here.

The CHAIRMAN. Thank you very much, Mr. Beauprez. Mr. Udall was next.

Mr. UDALL. Thank you, Mr. Chairman, and thank you for holding this hearing. I think this is a very important issue, and I think our panel has elucidated on that today. Let me share the comments of my colleague from Colorado.

I think this is a very frustrating situation for us. You have a federal law. It's clear. Employers violating this is absolutely unacceptable, and so we need to find a way to make sure that this law doesn't get violated under any circumstances.

Dr. Kaplan, you were asked if you knew of specific circumstances of others that have run into this kind of situation. I don't think the other two were asked that. Ms. Kimmel and Mr. Burris, are you aware of others that are in your circumstance that these same situations occurred?

Mr. BURRIS. No, I'm not.

Mrs. KIMMEL. I am.

Mr. UDALL. You are. Could you tell us about that?

Mrs. KIMMEL. All the information that I have is from the legal office, III Corps legal office, and two attorneys that we met with. All three of them have open cases, open files of military members that were not allowed out of leases for either deployments—many involved deployments where the spouse was not allowed out of a lease.

They're just ongoing cases with several real estate property management companies in the Fort Hood area. I don't have names, or anything like that because it's all protected, but they're ongoing.

Mr. UDALL. Right. One of the bills that's pending before this committee involves educating employers, posting notices, taking things that are on the website now of some of these departments and more fully educating employers about their responsibilities.

Do any of you have any comments on the need for that? Do you think that that might make a difference? Would that be something that would further the cause here?

Mrs. KIMMEL. The lawyers seemed very aware in our area but maybe don't—how are they supposed to handle these companies? You can sue them, but they just keep doing it. The two that we met with just both said, "I'm just tired of this. I'm tired of these same cases over and over." It seems like it's going to have to come from somewhere higher.

The CHAIRMAN. Would my friend yield on that point?

Mr. UDALL. Sure.

The CHAIRMAN. I appreciate that. The issue as you see it wouldn't be that there needs to be more information in terms of the employers knowing, but it would be enforcement. Would putting certain apartments off limits, would that be something that might be helpful?

Mrs. KIMMEL. Absolutely. Absolutely. And that off limits list is not utilized right now at Fort Hood. I don't understand it.

The CHAIRMAN. Because that will get their attention real quick.

Mr. UDALL. You bet it will. Thank you. Mr. Burris, do you have any comments on that?

Mr. BURRIS. From the contact that I've had through the private sector there is very little knowledge that I've come across through speaking with HR personnel and directors on USERRA itself.

So I think a push in education, both public and private sectors, is well in need, and I would hope that throughout even the public sector and the military itself that the USERRA become more up front as far as what it can protect and the protections themselves for soldiers.

Mr. UDALL. Thank you.

Mrs. HOOLEY. I know as part of my settlement there will be a training on USERRA at the medical center in San Diego. I would hope that the USERRA training would not be limited to that VA Medical Center but would go throughout the whole system.

Mr. UDALL. Thank you. Thank you very much, and we very much appreciate having you here today and you telling your stories. I think it helps us a lot. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you much. Mr. Strickland.

Mr. STRICKLAND. Thank you, Mr. Chairman. I will be brief. I'm sorry that I was unable to be here during the earlier part of the hearing. My office, my congressional office, has had numerous contacts from people who have had lease problems.

Our experience has been that when our office contacts the relevant people responsible that they have done the right thing, but I can see where this would be a terrible problem. The Columbus Dispatch, which is located in the capital city of Ohio, reported a tragic incident some months ago where a young man returned from deployment, had been promised a promotion when he left.

When he returned, he found that that position had, in fact, been filled. He was despondent, apparently became more despondent and took his own life. And I think, as a result of that, the city of Columbus has learned a very tragic but a valuable lesson, and I'm sure that will never happen again.

That's just an example of where there could be really tragic consequences as a result of this law not being properly understood and enforced and followed. I want to thank you for your testimony, all of you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Let me just conclude again by thanking you for being here. The San Diego VA has had a number of problems. Over 10 percent of their personnel are deployed, and we know of at least four problems of different scope and nature but certainly dealing with this issue.

During the Persian Gulf War members of the committee will recall we had a similar problem with public agencies that ought to be leading by example falling far short of that leadership when people under their jurisdiction found themselves struggling once they returned.

So I again want to thank you. We need to lead by example. We want the private sector to really live up to the spirit and the letter of the law. Certainly, the public sector needs to do likewise. Again, you have helped us immensely, and we thank you for that.

I'd like to ask our third panel if they would make their way to the witness table beginning with the Honorable Scott J. Bloch, who was nominated to serve as Special Counsel of the Office of Special Counsel by President Bush on June 26, 2003, and unanimously

confirmed by the U.S. Senate on December 9, 2003. He has over 17 years of experience in litigation of employment, lawyer ethics, and complex cases before state courts, federal courts, and administrative tribunals.

We'll next hear from the Honorable Dan G. Blair, who was nominated to serve as Deputy Director of the Office of Personnel Management by George Bush on December 20, 2001. He previously served as senior policy advisor to OPM Director Kay Coles James and has almost 17 years of experience on the staffs of both the House and Senate committees charged with federal civil service oversight.

So I would begin with Mr. Bloch and then go to Mr. Blair.

STATEMENTS OF SCOTT J. BLOCH, SPECIAL COUNSEL, U.S. OFFICE OF SPECIAL COUNSEL; AND DAN J. BLAIR, DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY MICHAEL MAHONEY, STAFFING GROUP MANAGER, OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF SCOTT J. BLOCH

Mr. BLOCH. Mr. Chairman, Mr. Ranking Member, members of the committee, I'm honored to appear before you today to speak to the role of the Office of Special Counsel in enforcing USERRA.

As you know, we are charged with the duty of prosecuting USERRA cases in the Federal work force. I also want to emphasize that my office is committed to ensuring that servicemembers are not discriminated against based on their military service and receive all of the reemployment rights to which they are entitled.

The country is in the midst of an historic and unprecedented mobilization and demobilization of National Guard and Reserve forces. Those brave and talented service men and women have temporarily left their civilian vocations and joined career soldiers such as my 20-year-old son, Lance Corporal Michael Bloch, a marine who has been stationed in Iraq once and is soon to be redeployed there.

The Federal Government is the country's largest employer of Guardsmen and Reservists. God willing, each of the thousands of servicemembers now valiantly defending our freedom will return safely home to their families, friends and civilian jobs.

As head of the independent Federal agency with the authority to prosecute violations of USERRA occurring in the federal workplace I share completely in Congress' mandate that the Federal Government should be a model employer in carrying out the provisions of USERRA.

Indeed, given the often negative coverage of the global war or terrorism which I know that our soldiers hear and see, it is especially important that our service men and women know that we have not forgotten them nor devalued their personal sacrifices. We will give USERRA matters the priority they justly deserve.

Now, prior to today OSC has never filed a USERRA action before the Merit Systems Protection Board (MSPB). Unfortunately, I had to instruct my staff yesterday to file a case this morning with MSPB because an agency was not willing to provide adequate relief for a service member.

Since becoming Special Counsel on January 5, 2004, I have carefully examined the statutory process pursuant to which the Department of Labor refers USERRA cases to us. I can report some instances of inefficiency and duplication of effort by our office and the Department of Labor.

I agree with British Prime Minister Gladstone that "justice delayed is justice denied." Thus, our office and the Department of Labor are looking at ways to streamline the referral process. In particular, we have asked Labor to identify difficult cases that would benefit from OSC's early involvement. The earlier we are involved the better we can fully exercise our enforcement role.

I appreciate Department of Labor Solicitor Howard Radzely and his staff for working closely with us to bring about this change. My office has change the manner in which USERRA referrals are handled internally. Since becoming Special Counsel, I have established a Special Projects Unit, or SPU, which can be likened to a SWAT team that can be quickly deployed to address any issues inhibiting OSC's ability to fulfill its various missions.

Experienced attorneys with specialized knowledge of USERRA have been detailed to SPU and, at my direction all USERRA referrals are assigned to SPU where they receive priority attention.

I also sense another concern affecting OSC's ability to enforce the law expeditiously which has been testified to by the previous panel, and this is a lack of awareness among the federal work force regarding OSC's role as well as a misconception about our willingness to aggressively fulfill that role.

We have instructed all attorneys who do outreach in federal agencies throughout the country to include in each presentation a description of our role in enforcing USERRA. To be sure, OSC is ready, willing and able to assist servicemen who have had their reemployment rights violated and who have suffered discrimination because of their military service.

Let the message be heard loud and clear. As Special Counsel, I will not tolerate discrimination against persons because of their military service. I will not permit anything less than the prompt reemployment of persons upon their return from military service, and I will not shy from prosecuting the failure to comply with any provision of USERRA. And I will not hesitate to file an action before MSPB if necessary.

In conclusion, Mr. Chairman and members of the committee, regardless of what may have been the past policy, under my leadership, OSC takes its role as the sole enforcer of USERRA seriously.

As you can see, we have already moved away from past practice and have given USERRA cases the priority they deserve.

Shakespeare wrote, "There is a tide in the affairs of men which, taken at the flood, leads on to fortune. Omitted, all the voyage of their life is bound in shallows and in miseries. On such a full sea are we now afloat, and we must take the current when it serves or lose our ventures."

Given the unparalleled number of Guardsmen and Reservists returning to the federal work force the full sea now surrounds us. OSC will navigate the current with 100 percent commitment to enforcing USERRA aggressively, diligently and zealously.

The daily sacrifices made by our brave service men and women merit no less. To that end, we welcome any legislative changes that enhance our ability to enforce this important law.

Mr. Chairman, I have submitted written testimony for the record which provides greater detail about these matters. Thank you for the opportunity to testify today, and I welcome any questions.

[The prepared statement of Mr. Bloch appears on p. 124.]

The CHAIRMAN. Mr. Bloch, thank you very much for your testimony and your exemplary service.

I'd like to now ask Mr. Blair, I understand you're joined by Michael Mahoney, who is Manager, Staffing Group at OPM.

Mr. BLAIR. That's correct. Mr. Mahoney is one of our resident experts at OPM on veteran reemployment rights and veterans preference.

The CHAIRMAN. Thank you.

STATEMENT OF DAN G. BLAIR

Mr. BLAIR. Good morning, Mr. Chairman, Mr. Strickland, members of the committee. I'm Dan Blair, the Deputy Director of the Office of Personnel Management. Thank you very much for extending an invitation to testify here this morning on the proposed legislative changes to the Uniformed Services Employment and Reemployment Rights Act (USERRA).

I have a written statement for the record, and I am pleased to summarize.

The CHAIRMAN. Without objection, your full statement will be made a part of the record.

Mr. BLAIR. Thank you, Mr. Chairman. President Bush and the Office of Personnel Management are dedicated to ensuring veterans receive the rights and benefits to which they're entitled under all veterans employment laws, including USERRA.

Today, over 15,000 Federal employees are serving on active duty with the Guard and Reserve. These veterans left their employment and placed their careers on hold to go fight in far-off lands for their country and for us. These brave men and women were not forced to serve. It was by choice.

These veterans deserve more than our thanks. When they leave the uniformed services, they deserve to know that their right to return to public sector employment is protected. We take OPM's obligations to reemploy these men and women under USERRA very seriously. Recognizing it is the right thing to do, we also respect it is the law as well.

While this hearing is looking at several legislative proposals, I want to focus on the proposed changes to USERRA. First, I'll speak to the proposed legislation to expand health benefit premium payments for Reservists called up for active military service. Then, I will address OPM's role in USERRA reemployment rights and our outreach activities directed to veterans.

OPM is the Government's chief personnel office, which includes responsibility for administering the Federal Employee Health Benefits (FEHB) Program for Federal employees and annuitants. OPM has repeatedly called on departments and agencies to assist employees called up to active duty by paying both the required Gov-

ernment share as well as the employee share of the FEHB premium.

I'm pleased to report that, out of the 114 agencies surveyed last fall, 96 paid the full premium. We've also learned that the Postal Service recently indicated they will pay both shares of the premium retroactive to 2003.

OPM will continue to support our called-up employees in every way possible. If the extension of FEHBP coverage to 24 months becomes law, we will again strongly encourage agencies to pay both shares of the health benefits premium for the entire 24-month period.

Now I'd like to turn to USERRA reemployment rights. While the Department of Labor has enforcement responsibility for ensuring the agencies and departments reemploy the returning Reservists and Guardsmen, OPM plays a key role in providing guidance to agencies and in reaching out to veterans so that they will understand their rights.

In addition, OPM is responsible for the placement of a returning military service member in a different agency if the original agency no longer exists or if it is impossible or unreasonable for the original agency to reemploy the returning veteran.

At this time, we are not aware of any cases where agencies have been unable to reemploy returning veterans. We understand that most of the problems with USERRA are related to improper restoration, such as not restoring a vet to a position of like status, seniority and/or pay, and those enforcement areas are the responsibility of the Department of Labor.

OPM has taken a number of steps to guarantee that the rights and entitlements of veterans are not compromised when they return to their Federal jobs. Just three days after the tragedy of September 11th, we published extensive guidance to agencies on the rights and benefits of employees called to active duty.

Later, we published a set of frequently asked questions on military leave, and we continually update our website to ensure that it remains most comprehensive for veterans employment information.

OPM also ensures that veterans are protected against discrimination as a part of our general oversight authority. Each year we conduct approximately 120 operational audits and delegated examining unit audits Government-wide. We notify agencies of our coverage of veterans' issues and programs before each review and discuss key OPM initiatives.

The Federal human resources community understands our veterans are a valued resource who have earned through their very life's blood hiring preference and reemployment rights, and they've earned those rights through their very presence at the battlefield.

They bring strength, courage and commitment in a way that cannot be fully imagined for those who have never stood in harm's way. And at OPM, we stand committed to making sure that those rights are protected.

I'm happy to answer any questions the committee may have.

[The prepared statement of Mr. Blair appears on p. 134.]

The CHAIRMAN. Thank you very much to both of you for your fine testimonies. I do have a couple of questions. First, Mr. Bloch, you

mentioned the problem with the referral process. And notwithstanding that the number of referrals, as you point out, is rather low compared to what they could be, we heard from two of our previous witnesses who spoke in high praise of the representation that they received from the Office of Special Counsel.

My question is what kind of backlog do you have? Do you anticipate you'll get more cases? Is there any thought of establishing a special strike unit task force that would focus on this to try to clean up any backlog with regards to this? And do you have timeliness standards?

Mr. BLOCH. Thank you, Mr. Chairman. With regard to the issue of backlogs, we are currently engaged in an historic effort to reduce all backlogs throughout the agency which have been there for many years in various areas, including prohibited personnel practices, whistleblower rights, Hatch Act violations, as well as USERRA.

When I joined the agency, there were only eight USERRA cases, but there were approximately 1,500 cases in the other areas that were in backlog and have been in backlog for quite some time.

Now, although there were only eight USERRA cases in the office, a couple of them you heard from today were in our office for approximately two years, actually more than two years having been referred from VETS, and we, of course, consider that time frame unacceptable.

So, we have established guidelines whereby we immediately will get after these USERRA violations. As soon as I came aboard, my deputy had a briefing on all pending USERRA cases, and we immediately realized the Burris case, Mr. Burris and Ms. Hanover Kaplan case, had been with our agency too long, and we immediately went after those cases.

And we're very proud of the opportunity to serve those individuals and to bring these cases to conclusion. So we are definitely desirous of working these cases more expeditiously, and we hope to receive more of these referrals from Labor as the case may present themselves.

The CHAIRMAN. Do you have sufficient resources, a sufficient number of attorneys to do the job? And when it comes to changes in USERRA itself, are there recommendations you might convey to us given the fact that you're on the front line of this that we might look to do some draft legislation?

We're looking now at some changes with the Servicemembers Relief Act to make sure that any ambiguity, and we don't believe any exists, but if there is any possibility we wanted to rid the law of that as soon as possible.

Any set of changes you would recommend to us now, or would you, perhaps, tender those changes to us?

Mr. BLOCH. Thank you, Mr. Chairman. We are very desirous of continuing to work with Labor, and are very grateful that we have been able to get involved in cases with them now at an earlier time frame.

However, we welcome any legislative changes that the committee would see fit to put forth that would get us involved earlier because our office—our bread and butter, essentially, is investigation and prosecution of violations of Federal employment rights.

We have highly trained and professional, experienced people in the area of investigation as well as prosecution. Our attorneys get involved in cases at a very early point. Nearly all of the USERRA cases that come to our office also involve prohibited personnel practice issues. Again, prohibited personnel practices are our bread and butter.

So the sooner we can get involved from an investigative and prosecutorial standpoint, the more we can emphasize USERRA enforcement, which is better for both the merit system and the government, as well as the individuals involved.

So any legislative changes that might help that to happen more quickly I think would be effective.

The CHAIRMAN. Well, consider yourself asked. If you could provide us every recommendation you think that would be helpful, we will do our best and due diligence to ensure that if we can enact it into law before this session ends we will do it. So I would ask you to do that, if you would.

Mr. BLOCH. We'll be delighted to.

The CHAIRMAN. I'd just like to ask Mr. Blair, you mentioned that 96 federal agencies are voluntarily picking up their share of the Federal Employees Health Benefits Program and 18 don't. Could you provide for the record the 96 as well as the 18? And if you could tell us why the 18 perhaps are not.

(The information follows:)

Agencies without policies regarding Federal Employees Health Benefits (FEHB) premium payment for Reserves and Guardsmen

During the Office of Personnel Management's poll in late 2002 and early 2003, the following Federal agencies reported no affected employees; therefore, they have no policy at this time:

Appalachian Regional Commission
Bonneville Power Administration
Corporation for National and Community Service
Export-Import Bank of the United States
Federal Housing Finance Board
Federal Mine Safety and Health Review Commission
Federal Reserve Board
Federal Retirement Thrift Investment Board
Institute of Museum and Library Services
Library of Congress
National Council on Disability
National Endowment for the Arts
National Endowment for the Humanities
Navajo and Hopi Indian Relocation Office
Office of Special Counsel
Panama Canal Commission
Pension Benefit Guaranty Corporation
Postal Rate Commission
West Virginia Cooperative Extension Service
Wyoming University, College of Agriculture

The following Federal agencies do not have employees in the FEHB Program:

National Railroad Passenger Corporation (AMTRAK)
Tennessee Valley Authority

Mr. BLAIR. I'd be happy to. They're primarily small agencies, boards. And when we canvassed them in 2002, 2003, the reason that they don't have a policy in place is because they didn't have affected employees.

So to the best of our knowledge, there is no one at these small agencies who has been called up to active duty who is not receiving the employer and employee shares of their health benefits premium from their agency.

The CHAIRMAN. Does OPM track violations of USERRA by federal agencies both in terms of cases that are settled and those that are litigated in order to identify particular agencies that have policy compliance deficiencies or have education and training needs?

Mr. BLAIR. We don't track it per se. Agencies would come to us if they're seeking to have an employee reinstated in another agency, and that's a rather extraordinary circumstance. And according to staff, we haven't had a formal application from an executive branch agency for such a reinstatement.

We would come across those through our operational audits. We do about five a year—we do about ten a year of both large and small agencies. But we don't track it per se. Most of that enforcement authority rests with the Office of Special Counsel and with the Department of Labor, who would have those numbers.

The CHAIRMAN. Okay. That's something we would seek perhaps from you or from those other agencies. One of the things we did not so long ago was to ask for and we received how well each agency was doing with regards to set asides and whether or not veterans were getting their fair share, and it was quite appalling to find that while we only had goals in the law, some agencies were doing well, others were doing very, very poorly.

And it might be helpful—nothing speeds accountability and perhaps compliance than when they're juxtaposed next to some other agency and are held to account. So if you could help us with that, we'd appreciate it.

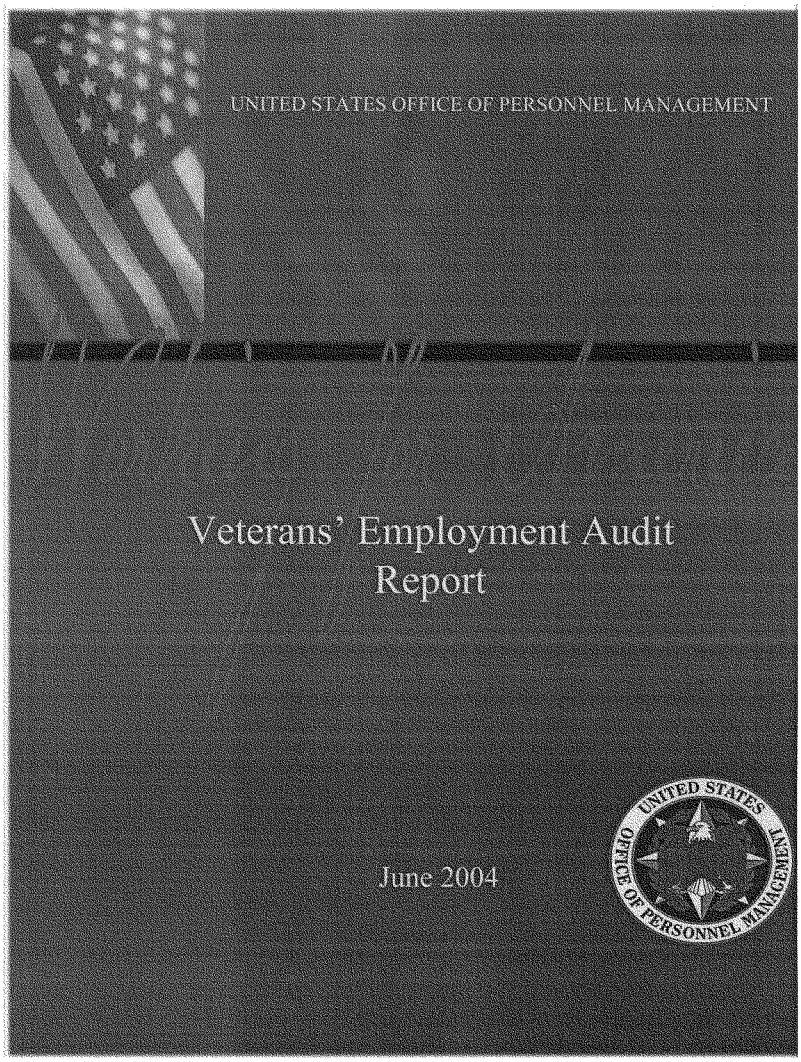
Mr. BLAIR. We will certainly be happy to work with the committee on that.

The CHAIRMAN. I appreciate that. Mr. Strickland?

Mr. STRICKLAND. Thank you, Mr. Chairman. Mr. Blair, in your written testimony you discuss the audits that you've conducted to ensure veterans preference laws are upheld. Would it be possible to provide the committee with copies and the results of those audits?

Mr. BLAIR. Certainly. I'd be happy to provide that for the record.

(The information follows:)


UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Veterans' Employment Audit Report
June 2004
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Executive Summary

Veterans' employment is a key priority of the President and this Administration. The Office of Personnel Management (OPM) is committed to ensuring that veterans receive the preference they are due under law. Veterans' preference is a legal right that reflects a national value, and providing our veterans with the hiring preference they have earned is a small way of acknowledging their many sacrifices to our country and our society. As Director Kay Coles James noted:

> *It is a priority of President George W. Bush, and it is my personal mission, to see that each and every veteran who wants to serve his or her country as public servants be given the chance to do so. Veterans have served our country with distinction; they have put their civilian lives on hold to defend our democratic principles and protect our friends around the world; and, they have sacrificed in ways we cannot begin to understand.*

OPM considers any violation of veterans' preference to be a serious matter and will direct any agency to take appropriate action to correct veterans' preference violations. As a matter of public policy, OPM is also committed to supporting veterans' employment in the Federal Government.

To ensure veterans are receiving their proper preference, Director James tasked the Division for Human Capital Leadership and Merit System Accountability to conduct a broad and comprehensive audit of veterans' employment in the Federal Government. The purpose of the audit was two fold: to determine whether Federal agencies are taking affirmative measures to employ veterans; and to determine if agencies are providing veterans their employment preferences under the Veterans' Preference Act. The following are highlights from the audit:

- We audited numerous unused competitive certificates to determine if veterans received proper consideration. Our assessment found that veterans do receive appropriate consideration in the competitive examining process. However, the audit, as well as information received from other sources, revealed four specific cases in three agencies where veterans' preference had not been properly applied in competitive examining. Under OPM's direction, these agencies have been required to take corrective action by granting priority consideration to the affected veterans. Each case was processed by a delegated examining unit (DEU). OPM has taken strong measures to avoid future merit system and veterans' preference violations in these agencies. OPM is considering whether to withdraw delegated examining authority from one agency. In another case, OPM is expanding its review of that agency's DEU to determine if it is appropriate to withdraw examining authority. In the third and fourth cases, the agency has already withdrawn delegated examining from the installation, which is the course of action OPM would have required.

- Agencies have more discretion in determining how to consider veterans' preference for excepted service positions, such as attorney and student trainee positions, but preference eligibility status should still be considered. The veteran community is a source of well qualified applicants and agencies should aggressively recruit in that community. OPM will continue to work with the agencies to clarify that veterans' preference eligibility status should be considered as a positive factor in the selection process. During the audit, OPM ordered specific corrective action in one case where records existed to show that no preference consideration was given to a 30 percent disabled veteran for a student appointment. That agency was directed to give the veteran priority employment consideration.

- In many cases, agencies do not have adequate internal accountability systems to detect the kind of veterans' preference violations we found during the audit. Under delegated examining agreements with OPM, agencies are required to maintain an oversight system which provides for the review of these activities by non-delegated examining unit staff.

- Hiring of disabled veterans is very uneven across Federal agencies. The vast majority of disabled veterans work in either the Department of Defense or the Department of Veterans Affairs (VA). While agencies have Disabled Veterans Affirmative Action Program (DVAAP) plans, few agencies fully implement them in a way that produces significant results. Most managers were unaware of specific initiatives by their agency to hire disabled veterans.

- The manner in which agencies hire veterans has changed significantly over the years. Special non-competitive hiring authorities designed to support veterans' employment are now used to a far greater extent than traditional competitive examining. Over 41 percent of the veterans hired into the Federal Government are brought in through non-competitive means versus 25 percent from competitive examining. Regardless of the hiring source, our audit revealed that most Federal agencies failed to conduct veterans' outreach beyond simply posting positions on OPM's job website and did not undertake additional recruitment measures designed to attract veterans as a public policy initiative.

- Agency human capital staff need to reinforce the fact that veterans' preference is the law. They should also do more to convince managers of the value of the military training, experience, and discipline that veterans bring to the job.

- Some hiring officials felt that the way veteran applicants described their work experience impeded their job consideration. Many veterans use acronyms and other descriptive terms that are well understood within the military community, but are unfamiliar to other employers. Conversely, some agencies can do a better job of describing their job requirements clearly so all applicants, including veterans, can adequately reflect how their knowledge, skills, and abilities (KSAs) match those required for the position.

- Even agencies with a low representation of veterans in their workforce failed to take a strategic approach to hiring veterans. They lacked specific goals and objectives to promote veterans' hiring and did not track their progress in meeting veterans' employment public policy initiatives. Although we did not identify any agency policies or practices specifically designed to inhibit veterans' employment, few agencies had placed any special emphasis on veterans' hiring.

The fact that the Federal Government employs veterans at a rate more than two times their representation in the civilian labor force is a commendable achievement. However, the audit findings clearly indicate that agencies can do more to support the employment of veterans through better outreach, education, systems development, and accountability. There are many actions OPM, Federal agencies, Veteran Service Organizations (VSOs), and even veterans themselves can take to further strengthen our shared commitment to veterans' employment in the Federal Government. OPM pledges its continued commitment to work with agencies, VSOs, and other stakeholders to address veterans' issues. The recommendations contained in this report are designed to meet this commitment.

Introduction and Background

In a letter to agencies issued November 15, 2002, OPM Director Kay Coles James expressed the view that although the Federal Government's employment of veterans surpasses the private sector (23 percent compared to 10 percent), more can be done to promote this public policy. Veterans' employment has been high on OPM's leadership agenda for some time. OPM has taken important steps to ensure that veterans receive the preference they are due by statute, and that veterans' employment is emphasized as important public policy. In December 2001, Director James established a Veterans' Issues Task Force to assess veterans' issues and implement measures for Government-wide improvement. Further demonstrating her leadership commitment, Director James has designated her Deputy Director, Dan Blair, to serve as OPM's direct liaison with VSOs. Deputy Director Blair meets regularly with the VSOs to address issues of mutual concern, working in a cooperative spirit to achieve veterans' employment goals. OPM also tracks inquiries and complaints involving veterans' employment to help keep abreast of current issues and identify any problems that require investigation or oversight. In connection with the oversight role, Director James recently tasked OPM staff to conduct a special audit of veterans' employment. The audit was designed to determine whether Federal agencies are taking affirmative measures to employ additional veterans and providing veterans their employment preferences under the Veterans' Preference Act.

Methodology

Given the enhanced personnel flexibilities agencies now have for making appointments, Director James asked that this audit focus on title 5 agencies and on special veteran hiring authorities.

Focus

The objectives of the study were to determine:

- if any specific agency policies or practices serve to advance or restrict the employment of veterans;
- the extent of agencies' outreach to veterans' sources to promote employment interest;
- if competitive certificates topped by veterans are unused more frequently than those headed by non-veterans;
- how and the extent to which agencies use special non-competitive hiring authorities in support of veterans' employment; and
- if consideration is given to veterans as appropriate in exempt, excepted service, or other non-title 5 personnel system positions.

Sample
Our audit focused on external hiring over the past two years. We visited a total of 45 installations nationwide, representing 18 President's Management Council agencies (listed in Appendix A). Several agencies were selected that hire veterans below the Civilian Labor Force (CLF) level, which is currently 10 percent according to the Bureau of Labor Statistics.[1] We were also seeking to identify best practices and included several agencies with veterans' representation significantly above the CLF level. Finally, our sample included agencies where problems or complaints concerning veterans' issues had surfaced.

Procedures
We reviewed competitive examining (see Appendix B) in the agencies covered by the study, regardless of whether it was conducted by a Delegated Examining Unit (DEU) or OPM. We paid close attention to reasons given for not using certificates headed by veterans. We also visited agencies' Human Resources (HR) offices and reviewed the use of special non-competitive hiring authorities and overall accessions of veterans. In all, we reviewed 1,983 appointment actions. We interviewed agency DEU and HR staff, along with supervisors and managers, and gathered information on the basis for actions taken on competitive certificates, as well as the use of other veterans' hiring authorities. In addition, we worked through OPM's Human Capital Officers and assessed the level of attention agencies are devoting to veterans' employment as a strategic human capital management issue.

Findings and Recommendations

Excepted service and non-title 5 personnel systems

Numerous title 5 statutory provisions and accompanying regulations provide detailed information on appointment procedures, including the application of veterans' preference, to positions in the competitive and excepted services. The appointment procedures from 5 CFR Part 302, Employment in the Excepted Service, do not apply to certain positions, including attorney and student trainee positions. The appointment procedures for these positions allow agencies greater latitude in determining how veterans' preference will be applied. However, the regulation requires that "each agency shall follow the principle of veterans' preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him or her with the reasons for his or her non-selection."

A number of agencies do not have any policy pertaining to the application of veterans' preference in filling these positions, and in many instances, there was no evidence that veterans' preference was being considered in the hiring process at all. Except for one case, files were not available to completely reconstruct the actions taken.

[1]In comparing veterans' employment data between the Federal and private sectors, we focused on CLF rather than relevant CLF (RCLF) to ensure we are viewing veterans' employment as a whole without limiting the focus to certain occupations. We recognize that using RCLF figures would render a more precise measure of how well agencies are doing with veterans' employment.

This is significant due to the large number of attorney and student trainee accessions that occurred during our review period. For example, over the past two years the Federal Government has hired over 8,000 attorneys and 95,000 student trainees through excepted appointments. Many HR specialists and selecting officials consider 5 CFR 302.101(c) to be very ambiguous, and it is clear that some erroneously interpret it to mean that veterans' preference does not apply to these positions. OPM's guidance is that, consistent with the law, veterans' preference is one factor to be taken into consideration for these positions.

In the one case where adequate records exist to reconstruct the action (United States Attorney's Office in San Antonio, Texas), we found a 30 percent disabled veteran did not receive preference for a Student Temporary Employment Program vacancy. We have directed corrective action and the veteran will receive priority employment consideration.

Our audit also included a review of several non-title 5 personnel systems, specifically title 38 within the Department of Veterans Affairs (VA) and title 49 that was used to establish the personnel system for the Transportation Security Administration (TSA). We found that procedures to apply veterans' preference have been established in both systems. VA recently issued additional guidance for its field components to clarify the specific procedures that must be applied in granting veterans' preference under title 38, and our review of staffing actions did not identify any instances where veterans' preference was not applied properly. We found nearly 42 percent of the recently hired baggage handlers at TSA are veterans, which is impressive. During an internal review, TSA found several instances where veterans' preference was applied inconsistently; however, TSA is taking steps to correct the problem.

Recommendation:

- OPM will provide additional guidance to all agencies to help eliminate the confusion that exists with applying veterans' preference, where appropriate, to excepted service positions and other positions exempt from title 5 appointment procedures.

Competitive examining

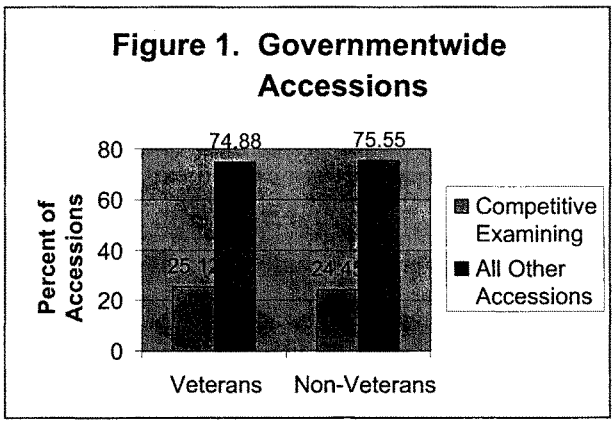
The audit included a review of unused competitive certificates issued by both agency delegated examining units and OPM to determine if veterans received proper consideration and application of the preference to which they are entitled, and to identify patterns of missed opportunities to select veterans if they exist. Our assessment found veterans do receive appropriate consideration and application of preference in the competitive examining process, and requests for passovers and objections to veteran applicants are limited. The objection and passover cases we reviewed were handled properly and contained the appropriate justifications.

Agencies provided the same reasons for not using a competitive certificate whether the unused certificate was topped by veterans or non-veterans. Generally, the position was

filled by some other means, e.g., merit promotion or non-competitive appointment, or a funding issue causing the vacancy to be cancelled surfaced between the time the job was announced and the certificate was provided to the selecting official.

The terms "competitive examining" and "competitive certificate" do not denote that those procedures and results are the only means of meeting the merit requirement of competition. For example, merit promotion and most non-competitive promotion procedures (e.g., "career ladder" promotions) are either themselves a form of direct competition (e.g., "merit promotion") or reflect prior competition. However, the benefits of veterans' preference requirements only operate in the examining and accessions described in Figure 1 as "competitive examining."

We did not find a direct correlation between agencies' use or non-use of certificates containing veterans and the representation of veterans in the workforce. We found the same pattern of use and non-use among agencies with a high percentage of veterans on their rolls as in those agencies with veteran levels below the CLF percentage. In fact, 25 percent of veteran accessions are through competitive examining, which is about the same selection rate from this appointment source for non-veterans (as depicted in Figure 1).



As a result of the audit and cases brought to OPM's attention during the course of the audit, there were three agencies and four specific instances where veterans' preference had been violated in competitive examining. Each of the violations occurred while accessions were being processed by an agency's DEU, and OPM ordered corrective actions in each case.

Department of Agriculture, Departmental Administration, Washington, DC

- In this case, there was a violation of the "rule of three" for a GS-2210-13, Information Technology Specialist position. The number three ranked preference eligible was not selected. A non-preference eligible ranked fourth on the certificate was selected improperly. Agency human resources officials attributed the error to inadequately trained staff and the lack of an internal quality control process. To correct the violation, the agency has agreed to provide the veteran priority consideration for the next available vacancy in the same occupation and grade. The agency is attempting to obtain authorization to fill another position so that the veteran can be given priority consideration in the near term. OPM is initiating a further review of the agency's DEU to ensure that it is functioning in accordance with merit principles and in compliance with law. To date, the agency has put in place an aggressive schedule to address these concerns, and OPM will continue to monitor its progress.

Department of the Army, Army Materiel Command, George C. Marshall Center, Garmisch, Germany

- This case involved a selecting official soliciting the declination of a disabled veteran who had been referred by a delegated examining unit as the number one eligible for a GS-0301-11, Operations Specialist position. The veteran alleged that the agency asked him to disavow his interest in the position because management wanted to choose another candidate who was blocked by the veteran. The veteran declined to withdraw from consideration, and subsequently the agency sent a request to OPM asking for permission to bypass the veteran because he was not qualified. OPM disagreed and advised the agency that the veteran should be considered for the job. The agency cancelled the vacancy announcement and re-wrote it in a manner that excluded the veteran from consideration. Several months later, another candidate was selected. Responding to a complaint filed by the veteran, an Office of Special Counsel investigation concluded that several prohibited personnel practices were committed in connection with this case. The agency, without admitting liability, agreed to a lump sum payment of $132,706 in settlement of the complaint. In reviewing this finding, OPM concluded that the circumstances of this case were so serious that further action must be taken to protect the integrity of the merit system and ensure compliance with the law. OPM has notified the agency that OPM may withdraw delegated examining authority from the unit unless it provides sufficient assurances that appropriate corrective actions have been taken and that it has instituted measures to avoid future failures of its human capital accountability system.

Centers for Disease Control and Prevention, Morgantown, West Virginia

- In the final case, two veterans were illegally passed over for a non-veteran who was ranked fourth on the same certificate for a GS-1910-12, Quality Assurance

> Specialist position. The error was attributed to a lack of training of the DEU staff, and there was no accountability system in place to catch such mistakes. To correct these violations, OPM directed the agency to provide both veterans with priority consideration for the next available vacancy in the same occupation and grade. In addition, the agency conducted an internal review and has subsequently withdrawn delegated examining from this installation and assigned it to another organization. Withdrawing delegated examining authority is the appropriate course of action OPM would have prescribed in this case.

These cases illustrate the importance of agencies maintaining adequate internal accountability systems to ensure compliance with merit system principles and veterans' preference requirements. Most agencies that we audited did not have adequate accountability systems to detect the kinds of veterans' preference violations we found during our audit. In addition, there are specific oversight requirements for agencies exercising delegated examining on behalf of OPM. The general delegated examining agreement between OPM and the agency states:

> The agency shall establish and maintain an internal accountability system designed to assure that the use of delegated examining authorities is in compliance with law and merit system principles. This system will be subject to regular periodic management review by OPM.

The results of delegated examining unit reviews conducted by OPM indicate that many agencies have failed to establish and maintain an effective internal accountability system.

Recommendations:

- OPM Human Capital Officers will work with agencies to establish sound internal accountability systems that ensure agencies comply with veterans' preference requirements.

- OPM will enhance its oversight to ensure that agencies conduct the internal reviews required under delegated examining agreements.

Because of its unique nature, we also reviewed category rating during our audit at two United States Department of Agriculture (USDA) Forest Service installations. Category rating was part of a demonstration project within the USDA that became permanent. Since that time, the Chief Human Capital Officers Act of 2002 has authorized all agencies to use category rating systems, and OPM issued regulations to implement this form of delegated competitive examining at 5 CFR Part 337.

Under a category rating system, candidates are placed into two or more quality groups. All preference eligibles are placed at the top of the list within each group. The names of all compensably disabled veterans, including those basically eligible, are placed at the top of the highest quality group, except for scientific and professional positions GS-9 and

above, as provided for in statute. Within a quality group, applicants entitled to veterans' preference must be selected unless a formal objection is sustained. The Forest Service's use of a category rating system was evaluated by Pennsylvania State University under the demonstration agreement between OPM and the Forest Service. Category rating was found to have a positive impact on veterans' hiring (18.9 percent selection rate for veterans at the Forest Service versus 16.7 percent at the comparison sites). In terms of compliance, we found that veterans' preference is being properly applied when category rating is used at the Forest Service for competitive examining.

Special hiring authorities

Greater efforts must be made to increase the number of 30 percent or more disabled veterans in the Federal workforce across a broader spectrum of agencies. According to OPM's *Annual Report to Congress on Veterans Employment in the Federal Government*, the representation of 30 percent or more disabled veterans in the Federal workforce in FY 2002 was 2.0 percent, which is significantly better than the 0.3 percent in the private sector. However, 78.9 percent of the employees in this category work in either the Department of Defense or Department of Veterans Affairs. The Disabled Veterans Affirmative Action Program (DVAAP) requires agencies to develop formal plans to reach this group of veterans. However, at the installation level, we found that the DVAAP plan is not always implemented, and there is very little knowledge of the specific goals and objectives that the program was designed to achieve. There needs to be better communication of expected results, and managers and supervisors must be held accountable for adhering to their respective agencies' DVAAP plans.-

A few agencies have recently set specific goals to increase the employment of disabled veterans. For example, starting in FY 2001, the United States Department of Agriculture committed to hiring 9,000 individuals with disabilities over a 5-year period. This effort stemmed from a Presidential initiative to hire 100,000 individuals with disabilities across the Federal Government during this period. More agencies across the Federal Government need to establish specific strategies to increase the employment of disabled veterans.

Recommendations:

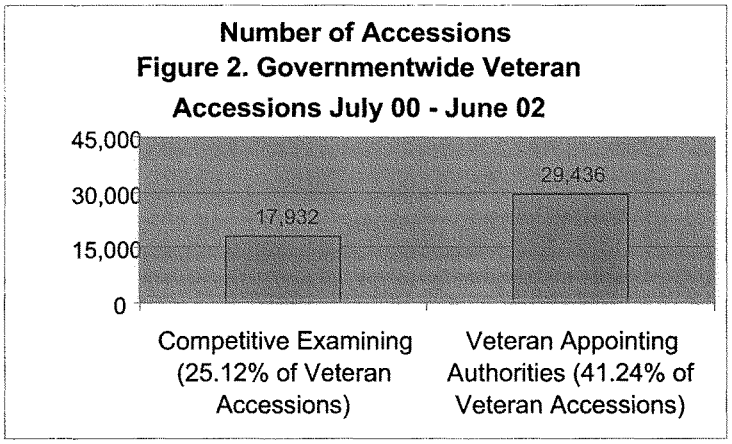
- OPM will emphasize, through its compliance program, the importance of the DVAAP by reviewing the effectiveness of agency plans during headquarters and field installation reviews.

- Agencies should re-evaluate their hiring strategies to determine additional actions that can be taken to increase the employment of disabled veterans.

There are a number of special appointing authorities that are available for agencies to use outside of the competitive examining system. These include the Veterans Recruitment Appointment (VRA – formally the Veterans Readjustment Appointment), the Veterans Employment Opportunities Act (VEOA), and appointments for disabled veterans

(DAV). These non-competitive appointments have now replaced the competitive examining system as the principal means that agencies use to hire veterans. Human resources management officials indicate that agencies know about the special non-competitive hiring authorities for veterans, use them correctly, and believe they are very useful tools.

OPM's Central Personnel Data File (CPDF) information reflects that during our review period 41 percent of veterans entering the Federal Government were hired using the VEOA, VRA, or DAV hiring authority. This is considerably higher than the 25 percent hired through competitive examining (as depicted in Figure 2). Managers like the quality of veteran candidates referred as VEOA eligible, and see this authority as a way to reach veterans who are not eligible for VRA or DAV. The new VRA authority, which went into effect November 7, 2002, permits appointments to be made without time limit and without regard to any limitation relating to the date of the veteran's last discharge. Collectively, the special appointing authorities expand the options that agencies have at their disposal to support veterans' employment. The trend indicating favored use of these special authorities to hire veterans over competitive examining is likely to continue.



Even though the special appointing authorities are widely used, there were indications that agencies could do even more to educate managers and supervisors about their availability. A number of selecting officials we interviewed in various agencies indicated they were not familiar with these staffing flexibilities. Through proper education, the use of these authorities could have an even broader impact on veterans' employment.

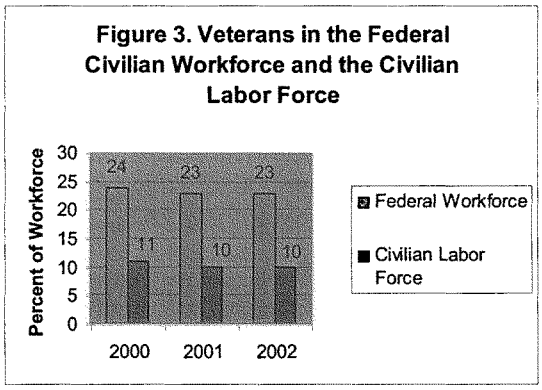
Recommendation:

- Agencies should do a better job of educating selecting officials on special hiring authorities designed to support veterans' employment, e.g., VEOA, VRA and DAV.

Outreach

We looked at a number of accession actions to determine the extent to which agencies conduct active outreach to veterans' sources to stimulate applicant interest. We found that this is an area that is ripe for improvement. A few agencies do an excellent job, but many others do only the minimum. Some agencies send copies of vacancy announcements to a variety of veteran organizations; however, others only post job vacancies on USAJOBS and do not conduct any specific outreach efforts targeting veterans at the local level. Reasons given for not conducting targeted recruitment included lack of knowledge of good applicant sources, inadequate resources, and lack of a perceived need to conduct outreach. Even though the percentage of veterans in the Federal civilian workforce continues to be significantly higher than the percentage in the private sector (as depicted in Figure 3), outreach is critical to sustaining this record.

In support of agency outreach activities Governmentwide, OPM has initiated a number of leadership activities in coordination with VSOs, VA, and the Department of Labor. In particular, OPM has launched the Veteran Invitational Program (VIP) which is an educational and recruitment strategy that targets military personnel who are transitioning to civilian life. Working with Transition Assistance Program (TAP) centers on military bases, the VIP targets veterans nationwide, providing educational and employment information electronically to veterans' groups and Federal Government agencies that serve veterans. Providing quick and easy access to employment information aids veterans in their job search and enhances their employment prospects.



As with 30 percent or more disabled veterans, greater efforts could be made to increase the number of female veterans in the Federal workforce. According to CPDF data, in FY 2002 only 10.21 percent of the veterans in the Federal workforce were female. This is better than the 7.58 percent reflected in the most recent CLF data for 2001. The CPDF data over the past five years reflects that female veterans' employment is increasing (7.76 percent in FY 1997 to 10.21 percent in FY 2002).

Recommendations:

- OPM will provide guidance to agencies on effective veterans' outreach efforts. OPM will provide examples of "best practices" found throughout the Government and provide technical assistance upon agency request.

- OPM will encourage agencies to develop specific strategies that will increase the employment of female veterans in the Federal workforce as the number of female veterans increases.

- Agencies should increase outreach efforts to veterans' groups based on strategic goals and objectives, utilizing VIP and other Governmentwide veterans' outreach efforts.

One of our audit objectives was to identify any noteworthy agency outreach activities that could be shared across the Government, and we found a few. The Department of Labor and the Department of the Interior have memoranda of understanding with various military TAP centers and maintain continuing relationships with organizations that help veterans find jobs such as the American Association of Retired Persons and the American GI Forum. These activities greatly increase the number of veterans who are aware of Federal career opportunities and will potentially lead to significant increases in the number of veterans who can apply for Federal jobs. The Department of Defense's web portal for those leaving the military, www.dodtransportal.org, makes it easy to locate and contact the TAP centers of military services across all states as well as international locations. These kinds of activities demonstrate a commitment to go beyond minimum requirements and to take affirmative steps to ensure that veterans are aware of employment opportunities.

Recommendation:

- OPM will publish on its website, information on available resources (e.g., military associations and locations of TAP centers) to assist agencies in the area of veterans' outreach, and provide examples of agency "best practices."

Some agencies have an easier time attracting veterans to their workforce because of their mission and other circumstances. For example, in the Department of Defense, military members work side-by-side with civilians on a daily basis. This provides many veterans with first-hand knowledge of civil service career opportunities, and there is a natural tendency for their organizations to value the skills and abilities of veterans. Certain occupations historically attract veterans, which gives some agencies clear advantage. For example, Federal Emergency Management Agency representatives believe veterans naturally gravitate to their positions. In addition, the Department of Justice indicated that law enforcement positions have proven to be a magnet for transitioning military personnel whose KSAs closely match its law enforcement occupations.

On the other hand, the predominant occupations in some agencies present extra challenges in finding well-qualified veteran applicants. An agency with a workforce composed primarily of specialized engineering and scientific positions would find it more difficult to attract an adequate supply of applicants, including veterans, who possess the requisite skills and abilities. In these situations, well-planned recruitment strategies should be a critical component of the agency's human capital management.

Agencies need to clearly understand how their missions and occupations can affect their efforts to employ veterans. Agencies should move beyond simply avoiding violations of veterans' preference laws to actively pursuing veterans' employment. For example, one of the agencies in our sample with the lowest percentage of veterans in its workforce has no targeted outreach efforts to veterans groups. Key officials explained that if they determined there was a need to increase the representation of veterans in the agency workforce, then and only then would they conduct veterans' outreach and recruitment. The fact that this agency has not taken a more aggressive posture regarding the employment of veterans clearly illustrates the point that more can and should be done to facilitate veterans' employment outreach in the Federal sector.

Issues that Impact Veterans' Employment

Another focus of the audit was to identify if there were any barriers, issues, or practices that have a negative impact on the hiring of veterans. Several managers commented that strict adherence to veterans' preference impeded their ability to select the best qualified candidates. However, veterans' preference is the law and agencies must hold their managers accountable for following it. Agency HR officials indicated that when veterans are advised of the importance of responding to the specific KSAs related to a vacancy, they do a better job of reflecting their qualifications, and selecting officials are less likely to view them as a hiring obstacle. A good example of this was found at the Centers for Disease Control and Prevention. The applications of 10-point veterans, who apply but are not selected, are kept on file for future consideration in accordance with regulations. The installation then provides a unique service by encouraging the 10-point veteran to address the specific KSAs required for a subsequent vacancy being filled, rather than the former practice of automatically recycling the original application for each vacancy regardless of the specific KSAs required. Candidates with veterans' preference are more likely to be rated highly qualified which makes them attractive to selecting officials.

Recommendation:

- Agencies should educate selecting officials on the requirements of the Veterans' Preference Act, as well as on the business-based value of adding veterans to the workforce who are uniquely qualified by virtue of their military training, experience, and discipline.

Another impediment is the way veteran applicants describe their work experience and the way agencies describe the qualifications required for civilian jobs. Some veteran applicants do not effectively translate their experience and training into civilian terms.

They often use military acronyms that are not understood by HR representatives and selecting officials, lowering their qualification and rating determinations. Conversely, a number of HR representatives themselves stated that more can be done to describe KSAs and other job requirements in clear non-exclusionary terms that would benefit all applicants, including veterans.

Recommendations:

- Agencies should describe job requirements and qualifications in a manner easily understood by all applicants. Agencies should also provide more guidance to applicants on how to better describe their work experience.

- VSOs should provide coaching and assistance to veteran applicants on better describing their work experience.

A number of the HR specialists we interviewed said veterans often fail to provide supporting documentation for veterans' preference, e.g., DD 214 or disability letter from the VA, causing them to lose the full consideration to which they would otherwise be entitled. This happens most often when applicants apply electronically and must then mail in their supporting documentation. Veteran applicants need to recognize their responsibility in the hiring process and submit all necessary information in the application package.

Recommendations:

- Agencies should provide more guidance on completing applications to include documentation required to claim veterans' preference.

- VSOs should provide coaching and assistance to veteran applicants on completing job applications that include documentation required to claim veterans' preference.

Agency policies and strategic planning

The audit also probed how agencies integrated veterans' employment into their human capital management policy and strategic framework. We found no agency policies that intentionally restricted the hiring of veterans. Conversely, we did not find that agencies had developed specific policies that promoted veterans' hiring, with the exception of DVAAP plans, which are required by law. The majority of agency headquarters representatives indicated that their Human Capital plans address hiring a diverse, well-qualified workforce. They stated that this generically includes veterans but we did not find evidence of this interpretation during our discussions with agency managers. Agencies need to have policies and plans that are specific and proactive in order to maximize opportunities for veterans. We found a good example of an agency initiative in this area at the Department of State, where efforts to increase veterans' employment opportunities in the Foreign Service and Civil Service are included in their Human

Capital Plan. Department of State representatives informed us that veterans and military personnel are targeted because they have been found to be a good source of skilled candidates.

Selecting officials recognize their responsibility for upholding the law. However, few agencies have accountability systems that track results in veterans' employment. Agencies should have such systems in order to monitor their progress.

Recommendations:

- OPM will review agency Human Capital Plans to ensure they include strategies designed to attract veterans. OPM will also determine if accountability systems exist that are capable of measuring the outcomes and results of those strategies.

Most agencies track the employment of veterans through some form of automated system; however, the emphasis of these assessments is primarily focused on the number of disabled veterans in the workforce, and not whether veterans hiring strategies or practices are effectively attracting applications from veterans. The competitive examining process, with its requirements for determining veterans' status and eligibility for veterans' preference, lends itself to such tracking. Setting the right goals and objectives, measuring the results, addressing needed changes, and holding managers responsible for the outcomes will increase the likelihood that veterans' opportunities will be maximized. As Dr. Peter Drucker, an expert on management theory once noted: "What gets measured gets done." Tracking the results of recruitment efforts directed at veterans is an important step in assessing an agency's hiring strategy and determining what can be done to improve veterans' employment opportunities.

Recommendation:

- Agencies should ensure that their accountability systems track and measure the results of recruitment strategies for hiring veterans.

Summary of Recommendations

Veterans' employment is a key priority of the President, the Administration, and the Director of OPM, and OPM is committed to ensuring that veterans receive the preference to which they are entitled under the law. As a matter of public policy, OPM is also committed to supporting veterans' employment in the Federal Government. Veterans' preference reflects a national value, and emphasizing veterans' employment is one way of recognizing their many contributions to our country and our society.

Even though situations vary from agency to agency and the Federal Government overall has a good track record in hiring veterans, more can be done to ensure veterans' opportunities are maximized. OPM, Federal agencies, and VSOs can take actions that should produce meaningful results. The following recommendations address each of the major deficiencies we identified during the audit process. The Director of OPM is committed to working with Federal agencies, VSOs, and other interested stakeholders to ensure that these, as well as other appropriate actions, are taken to strengthen veterans' employment opportunities in the Federal Government.

OPM Actions:

- OPM will provide additional guidance to all agencies to help eliminate the confusion that exists with applying veterans' preference, where appropriate, to excepted service positions and other positions exempt from title 5 appointment procedures.

- OPM Human Capital Officers will work with agencies to establish sound internal accountability systems that ensure agencies comply with veterans' preference requirements.

- OPM will enhance its oversight to ensure that agencies conduct the internal reviews required under delegated examining agreements.

- OPM will emphasize, through its compliance program, the importance of the DVAAP by reviewing the effectiveness of agency plans during headquarters and field installation reviews.

- OPM will provide guidance to agencies on effective veterans' outreach efforts. OPM will provide examples of "best practices" found throughout the Government and provide technical assistance upon agency request.

- OPM will encourage agencies to develop specific strategies that will increase the employment of female veterans in the Federal workforce as the number of female veterans increases.

- OPM will publish on its website, information on available resources (e.g., military associations and locations of TAP centers) to assist agencies in the area of veterans' outreach, and provide examples of agency "best practices."

- OPM will review agency Human Capital Plans to ensure they include strategies designed to attract veterans. OPM will also determine if accountability systems exist that are capable of measuring the outcomes and results of those strategies.

Agency Actions:

- Agencies should re-evaluate their hiring strategies to determine additional actions that can be taken to increase the employment of disabled veterans.-

- Agencies should do a better job of educating selecting officials on special hiring authorities designed to support veterans' employment, e.g., VEOA, VRA and DAV.

- Agencies should increase outreach efforts to veterans' groups based on strategic goals and objectives, utilizing VIP and other Governmentwide veterans' outreach efforts.

- Agencies should educate selecting officials on the requirements of the Veterans' Preference Act, as well as on the business-based value of adding veterans to the workforce who are uniquely qualified by virtue of their military training, experience, and discipline.

- Agencies should describe job requirements and qualifications in a manner easily understood by all applicants. Agencies should also provide more guidance to applicants on how to better describe their work experience.

- Agencies should provide more guidance on completing applications to include documentation required to claim veterans' preference.

- Agencies should ensure that their accountability systems track and measure the results of recruitment strategies for hiring veterans.

VSO Actions:

- VSOs should provide coaching and assistance to veteran applicants on better describing their work experience.

- VSOs should provide coaching and assistance to veteran applicants on completing job applications that include documentation required to claim veterans' preference.

APPENDIX A – Agencies Included in the Audit

United States Agency for International Development
Department of Agriculture (Forest Service)
Department of the Army
Department of Defense (Washington HQ Service only)
Department of Education
Department of Energy
Environmental Protection Agency
General Services Administration
Department of Health and Human Services
Department of the Interior (National Park Service)
Department of Justice (US Attorneys)
Department of Labor
Office of Management and Budget
National Science Foundation
Department of the Navy
Social Security Administration
Department of State
Transportation Security Administration
Department of Veterans Affairs (Title 38)

APPENDIX B – Summary of Veterans' Preference and Application

How are Veterans Appointed to Competitive Service Positions?

Veterans can be appointed to jobs in the competitive civil service in one of three ways: by **competitive appointment** through a certified list of candidates; by **non-competitive appointment** under special authorities that provide for conversion to the competitive service; or by **Merit Promotion selection** under the Veterans Employment Opportunities Act (VEOA).

1. An **appointment** made on the basis of **competitive examining** is one in which the veteran competes with others on a certified list of candidates (or agency equivalent under delegated examining authority). This is the normal entry route into the civil service for most employees. Veterans' preference applies in this situation, and those veterans who qualify as preference eligibles -- i.e., who are entitled to veterans' preference -- have 5 or 10 extra points added to their passing score on a civil service examination or, under the category-based examining method, are provided a form of absolute preference. Before a job is filled by competitive appointment, the examining office must report it to OPM for announcing to the public; OPM also notifies State employment service offices. The examining office then determines the candidates' qualifications and rates and ranks them according to job-related criteria. This list of eligibles, or certificate, is then given to the selecting official.

2. A **non-competitive appointment under special authority** is one such as the Veterans Recruitment Appointment (VRA) authority (formerly known as the Veterans Readjustment Appointment (VRA) authority) and the special authority for 30 percent or more disabled veterans. Eligibility under these special authorities (which are explained below) gives veterans a very significant advantage over others seeking to enter the Federal service in that they do not compete with them. An agency that wants to hire under one of these authorities can simply appoint the eligible veteran to any position for which the veteran is qualified. There is no red tape or special appointment procedures. However, use of these special authorities is discretionary with the agency. Veterans' preference applies when making appointments under these special authorities if there are two or more candidates and one or more is a preference eligible. These authorities provide for non-competitive conversion to the competitive service after a suitable period of satisfactory service.

3. A **Merit Promotion selection** under the VEOA is one in which the veteran competes with current Federal employees under an agency's merit (or internal) promotion procedures. The VEOA allows eligible veterans to apply under an agency merit promotion announcement open to other Federal employees outside the agency who have competitive status. However, agencies do not apply veterans' preference when considering individuals under Merit Promotion procedures or under the VEOA. Use of this special authority, as with other authorities, is discretionary with the agency. A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment.

Who Is Entitled to Veterans' Preference in Employment?
(Note: Not all former members of the armed forces are entitled to veterans' preference.)

Five-point preference is given to those honorably separated veterans (this means an honorable or general discharge) who served on active duty (not active duty for training) in the armed forces:

- during any war (this means a war declared by Congress, the last of which was World War II);
- during the period April 28, 1952, through July 1, 1955;
- for more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- during the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- in a campaign or expedition for which a medal, such as the Armed Forces Expeditionary Medal, or the Korea Defense Service Medal has been authorized. The VetGuide available on OPM's website provides information about qualifying campaigns, expeditions, and medals. (See http://www.opm.gov/veterans/)

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty.

Effective on October 1, 1980, military retirees at or above the rank of major or equivalent are not entitled to preference unless they qualify as disabled veterans.

Ten-point preference is given to:

- those honorably separated veterans who 1) qualify as disabled veterans because they have served on active duty in the armed forces at any time and have a present service-connected disability or are receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs; or 2) are Purple Heart recipients;
- the spouse of a veteran unable to work because of a service-connected disability;
- the unmarried widow of certain deceased veterans; and
- the mother of a veteran who died in service or who is permanently and totally disabled.

How Does Preference Apply in Competitive Examining?

Veterans who are eligible for preference and who meet the minimum qualification requirements of the position, have 5 or 10 points added to their passing numerical score on a civil service examination. Under 5 U.S.C. 3313, for scientific and professional positions in grade GS-9 or higher, names of all eligibles are listed in order of ratings, augmented by veterans' preference points, if any. For all other positions, the names of 10-point preference eligibles who have a service-connected disability of 10 percent or more are placed ahead of the names of all other eligibles. Other eligibles are then listed in order of their earned ratings, augmented by veterans' preference points. A preference eligible is listed ahead of a non-preference eligible with the same score.

The agency must select from the top three candidates (known as the "rule of three") and may not pass over a preference eligible in favor of a lower ranking nonpreference eligible without sound reasons that relate directly to the veteran's fitness for employment. The agency may, however, select a lower-ranking preference eligible over a compensably disabled veteran within the "rule of three." A preference eligible who is passed over on a list of eligibles is entitled, upon request, to a copy of the agency's reasons for the passover and the examining office's response.

If the preference eligible is a 30 percent or more disabled veteran, the agency must notify the veteran and OPM of the proposed passover. The veteran has 15 days from the date of notification to respond to OPM. OPM then decides whether to approve the passover based on all the facts available and notifies the agency and the veteran.

As an alternative to using traditional scored examinations, agencies may use a category rating system to assess and rate job applicants for positions filled through the competitive examining process. (See 5 CFR Part 337) The category rating system does not add veterans' preference points or apply the "rule of three," but protects the rights of veterans by placing them ahead of nonpreference eligibles within each category. For all positions other than scientific and professional positions at GS-9 (and equivalent) or higher, otherwise qualified preference eligibles who have a compensable service-connected disability of at least 10 percent must be listed in the highest quality category. This requirement is similar to the provisions of 5 U.S.C. 3313, which are used in numerical rating.

Entitlement to veterans' preference does not guarantee a job. There are many ways an agency can fill a vacancy other than by appointment from a certified list of candidates.

Mr. STRICKLAND. Thank you. I appreciate that. What happens if an agency while a soldier is deployed abolishes a department or a job, and that job as it was when the person was deployed no longer exists? Are there protections for that soldier.

Mr. BLAIR. For that soldier, the law would require that the agency come to us and say that it is impossible or unreasonable for us to rehire that employee. In that case, we would be obligated to find that soldier, that man or woman, a like job in another agency.

Mr. STRICKLAND. A comparable job at a comparable salary or income?

Mr. BLAIR. It's my understanding that we would place the individual in a job that would represent where he or she would have been but for the fact that they were called up to active duty.

Mr. STRICKLAND. Thank you. Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. Thank you, Mr. Strickland. Dr. Boozman?

Mr. BOOZMAN. The question I would have, you know, you talked about having a taskforce and things like this. I guess what happens if an apartment complex or whatever repeatedly, you know, basically says we don't care, whatever? Is there any enforcement in the law? What are the steps that can be taken? Can you find them? Mr. Smith mentioned blacklisting and things. What are the steps that are done if you truly do find somebody that intentionally, you know, willfully seems to take advantage of the situation?

Mr. BLAIR. Well, Congressman, as the law is currently stated, there are no fines or penalties that we can assess against an agency who violates USERRA repeatedly. Unlike our other enforcement powers with regard to whistleblowers and prohibited personnel practices where we have disciplinary action authority and we have the ability to seek fines, we don't have that under USERRA.

It's unclear whether we have disciplinary authority under USERRA. It is clear we have corrective action authority.

One of the things that we have been looking at and trying to consider is, what if you have a recalcitrant agency that just keeps doing this to people? Can you bring a pattern and practice action against that agency? And that's something that we would like to clear up in the law to see if we could do something of that nature where an agency really has to clean up its act.

Mr. BOOZMAN. So that's authority that you would like to have to?

Mr. BLAIR. Yes, very much.

Mr. BOOZMAN. Okay. Thank you.

The CHAIRMAN. Thank you. Ms. Hooley?

Ms. HOOLEY. Thank you, Mr. Chairman, and thank you for testifying today. Mr. Blair, based on the testimony that you heard from the panel before this from Colonel Burris—or Corporal Burris and Colonel Kaplan, do you believe you need to do a better job of educating the other agencies about USERRA?

Mr. BLAIR. I think you can always do a better job about education. It's my understanding that our current director, Kay Coles James's predecessor, began educating agencies on their obligations and duties with regards to restoring individuals who have been called up to active duty beginning back in the late 1990s and in 2000.

Beginning with September 11th, we began publishing guidance. We issued guidance as of late March of this year. But this is something that we need to continually do. Next week we're having a hiring symposium in which we're bringing in a number of HR professionals from across Government to talk about what we can do better improve the Federal hiring process.

Although this isn't a hiring issue, this seems to me to be a ripe issue for that session, to remind agency HR specialists that they have rights and obligations under USERRA and to access the information that's available out there.

Ms. HOOLEY. Thank you. Mr. Bloch, thank you for your testimony. You seem to be willing to take a greater role with USERRA in investigation and enforcement process for federal employees. Is this consistent with the Administration? And what do we need to do to make sure that you don't have another backlog that has plagued your office?

Mr. BLOCH. Yes, thank you, Congresswoman. This is consistent with the position of the Administration to support the rights of reservists as well as all members of the military service.

Our office, as I said, we were engaged in this process of reducing the backlog, and we do have the Special Projects Unit that is currently looking at each and every aspect of the backlog in our agency—why it occurred, how to prevent it in the future.

In addition to that, we're actually reducing the backlog, and I am confident that by end of the year, all the backlogs within our agency will be removed, and all of the individuals who filed complaints with our office will receive full and fair justice.

But also critical to this process is to set up a system whereby these backlogs cannot occur again, so that we'll have processes in place that prevent that from happening, including time limits upon which cases can be handled, including more accountability, and including more targeted efforts by what I call special projects or SWAT teams that will look at cases that need priority attention.

So we are confident that we can have this backlog down by the end of the year, but also that we can have operating procedures in place that will prevent it from occurring again.

And I would add to that, I think we really do have the resources now to handle the USERRA cases that come our way and that might come our way if we got involved at an earlier date.

We also have the authority to hire more full-time equivalents, which we will be doing, and that number is something in the area of 20 individuals. So we have an agency now with approximately 104 individuals, and we'll be able to increase that almost 20 percent within the next fiscal year.

Ms. HOOLEY. As you talk about getting rid of the backlogs and getting onto a non-backlog schedule, what do you expect the timeframe would be to get through the process, knowing that you're going to have some more complicated than others, but sort of what's your best guess or what's your hope and desires for a person to get through the process?

Mr. BLOCH. Well, as I say, I think I'm confident that by the end of this year, we will be through that process. But in terms of if you're asking about——

Ms. HOOLEY. Right. I mean, if a person comes to you and said, I need help, how long do you—what's your desire? How long do you think it's going to take them to get through the process, understanding that you've gotten rid of your backlog?

Mr. BLOCH. I would like to see that happen within a year from the date that they file their complaint, so that if they file a complaint with the Vets Office, Department of Labor—and this admittedly asking a lot—but that investigation and prosecution would not take more than a year. Now sometimes if you file something with MSPB it can linger and languish for some period of time through no fault of those who are trying to prosecute.

But all things being equal, if you average it out, I would like it to be done in under a year. And that will require retooling. That will require a concerted effort.

Ms. HOOLEY. Okay. Thank you.

The CHAIRMAN. Thank you. Mr. Udall?

Mr. UDALL. Appreciate your testimony. In light of seeing the panelists before you testify, do any of you have any additional thoughts on their testimony or any comments for the committee?

Mr. BLAIR. Well, I share the committee's outrage and believe that it's just unacceptable that when a guardsman or a reservist is called to active duty, that the Federal Government, who is asking them to put their life on the line, doesn't honor the commitment to bring them back. And so you certainly have the commitment of the Office of Personnel Management and its director, Kay Coles James, and myself, that we'll do what we need to do to get the job done in order to make sure the guards and reservists who are called to active duty receive the rights and benefits to which they're entitled.

Mr. BOOZMAN (presiding). Thank you, Mr. Blair. Mr. Bloch?

Mr. BLOCH. I would echo that, and I would thank again the individuals that testified here for the trouble they went to, with the courage they showed in being willing to stand up publicly and talk about these issues. It's not easy sometimes, but that is critical to putting a face to the problem and to the suffering that occurs as a result of it, and we are very committed to addressing that and to making examples where we can of agencies that refuse to comply.

Mr. BOOZMAN. Thank you both. Yield back.

The CHAIRMAN. One final question if I could. Section 4311, as you know, makes it very clear that you cannot deny a job to someone based on the fact that they're with the guard or reserve. The question of enforcing it has to be a very, very difficult process. What kind of education—and perhaps, Mr. Blair, you might touch on this as well—what kind of education is done or carried out to ensure that personnel managers know that that is against the law, spirit and letter? And do you have any actions pending? Do you anticipate any against a personnel manager who may have denied employment because that person was in the guard or reserve and could be called up?

Mr. BLOCH. Thank you, Mr. Chairman. I am unaware of any case we have pending in which that scenario has occurred, but I do concur with you that that is a more difficult case. Notwithstanding that, we would not hesitate to pursue a case of that nature, par-

ticularly if we have some indicia of discrimination, such as this having occurred in the past, statements of animus, which we are familiar with, do occur. And as one of the witnesses previously said, in the interview she had with the private sector, they literally said if I had to choose between you and someone who's not a reservist, I would pick the non-reservist. So people sometimes will stumble into those statements of animus that help you prosecute.

But we do not have any cases pending of that nature. In terms of the education process, our office does quite a bit of education and outreach in the federal workforce regarding the rights that employees have both to personnel managers as well as to workers. And up until the time that I joined the agency, I do not believe we were doing any outreach in the area of USERRA. We have started including that in every outreach, to talk about USERRA and how we enforce those rights and a very brief overview of those rights.

We are also interested in doing more targeted outreach in the USERRA area where we actually do the whole presentation concerning that issue.

The CHAIRMAN. Well, I thank you for your leadership in beginning that initiative. Maybe one way of targeting that, and you probably have already thought of this, might be to look at those areas where there have been problems, like the San Diego VA, where there have been a couple of cases of reemployment problems, that may suggest a lack of sensitivity to hiring a guardsman or reservist because at the other end, there's a discrimination or a lack of compliance with the law. It might just highlight some problem areas. I just suggest that.

Mr. BLOCH. I think that's an excellent idea.

The CHAIRMAN. Thank you for taking the lead on that. We do appreciate it. Mr. Blair?

Mr. BLAIR. I think that since I began my tenure at the Office of Personnel Management, one of the issues which has received the most heightened attention is making sure that we follow the laws that dictate veterans preference, and I think this hearing today also sensitizes us to the USERRA issues that are going to be coming up, especially as more guardsmen and reservists return from active duty to employment.

We've been engaging in extensive outreach to the veterans organizations over the past two-and-a-half years. I chair quarterly meetings with the veterans service organizations, in which we have oftentimes open and frank discussions for a whole host of issues affecting Federal employment. I think that this is going to be part of our continuing agenda.

We've also conducted hiring fairs across the country in which we've highlighted what we've been working on with veterans' issues, and USERRA has been part of that. Just this past month we had a meeting with the veterans service organizations, and the chief human capital officers across Government up at Walter Reed, and we discussed veterans' issues as well.

But I think the most important issue that you just raised is making sure that employees know about that. And although it may not be explicitly written, this would appear to be an issue of merit and something that the merit system principle should at least cover in one way, shape or form.

And at OPM, employees are given this little card, and I keep it on my identification card, of the merit system principles and what the violations and what those principles are. So we're all well aware and understand the need to educate and continue to educate the workforce on what these rights are.

The CHAIRMAN. Let me just ask you, Mr. Blair, one final question if I could. What kind of flexibility have you seen within the various agencies where we do have a number of servicemen and women returning who have been disabled. And, obviously, they will make claims, hopefully they'll make claim before the VA for compensation. The number of men and women coming back missing an arm or a leg or both is appalling. And, obviously, it is difficult if their job required a certain skill and capability and they have less than that to give.

When they are reintegrated, how flexible are you finding the agencies to make sure that a job similar of value and compensation is awaiting them upon their return?

Mr. BLAIR. I'm not aware of any specific cases to date, but I will say that there's a Presidential initiative to extend and reach out to people with disabilities, and it has been a priority for us to reach out to veterans groups, and we've been going to VA hospitals. We've been at Walter Reed. Just yesterday we had staff down at the Hampton VA, making sure the veterans that were coming back in were aware of their rights and what they could do.

And so I think you bring up a very important point. Our current laws give disabled veterans a preference in hiring, and that's something that we will continue to uphold and enforce.

The CHAIRMAN. As well as reintegration?

Mr. BLAIR. Pardon?

The CHAIRMAN. Not just in hiring, but also in reintegration? You know, reemployment when they return?

Mr. BLAIR. Exactly.

The CHAIRMAN. If you could be on the lookout for that, because I could see how if someone's capabilities have been so diminished they're getting a 50 percent disability compensation rating, and all of a sudden they find, there's no longer a place for them, that would be appalling. But I thank you for being aware of that.

Mr. BLAIR. Thank you.

The CHAIRMAN. Without any further questions, thank you so much for honorable and very distinguished service.

Mr. BLAIR. Thank you. Appreciate it.

The CHAIRMAN. I'd like to welcome our fourth panel to the witness table, beginning with the Honorable David Iglesias, who is the United States Attorney for the District of New Mexico. Mr. Iglesias has served on active duty as a Navy JAG officer between 1985 and 1988 at the Pentagon and Naval Legal Service Office, Washington, D.C.

Mr. Iglesias is a captain in a Naval reserve JAG Corps and was named Reserve Offices of the Year, U.S. Special Operations Command, 2001.

I also want to observe that Capt. Iglesias is going on duty, tomorrow, and we thank him for his service to the nation in both of his capacities.

We will then hear from Mr. Charles Ciccolella, who is the Deputy Assistant Secretary for Veterans' Employment and Training Service, VETS, in the U.S. Department of Labor. VETS is the agency responsible for helping veterans secure employment and protecting their rights and benefits.

We then will hear from the Honorable Craig W. Duehring, who is the Principal Deputy Assistant Secretary of Defense for Reserve Affairs. As Principal Deputy, he serves as the senior deputy to the Assistant Secretary of Defense for Reserve Affairs in policy development and overall supervision of the reserve forces of the armed forces of the United States.

And finally, we'll hear from Colonel Brarry A. Cox, who is the Director of Ombudsman Services for the National Committee for Employer Support of the Guard and Reserve. Col. Cox holds a Bachelor of Arts degree from the University of Charleston and a Master of Science degree in management.

Capt. Iglesias, if you could begin.

STATEMENTS OF DAVID C. IGLESIAS, UNITED STATES ATTORNEY, DISTRICT OF MEXICO, DEPARTMENT OF JUSTICE; CHARLES CICCOLELLA, DEPUTY ASSISTANT SECRETARY, VETERANS' EMPLOYMENT AND TRAINING SERVICE, DEPARTMENT OF LABOR; CRAIG W. DUEHRING, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS, DEPARTMENT OF DEFENSE; AND COL. BRARRY COX, DIRECTOR, MILITARY MEMBER SUPPORT AND OMBUDSMAN SERVICES, NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

STATEMENT OF DAVID C. IGLESIAS

Mr. IGLESIAS. Thank you very much. Mr. Chairman, Mr. Ranking Member, members of the committee, and a special hello to a former boss of mine, Congressman Tom Udall of New Mexico. I want to thank you for the opportunity to appear and discuss DOJ's representation of servicemembers pursuant to USERRA.

My name is David C. Iglesias, the U.S. Attorney for the District of New Mexico. I'm also a captain in the U.S. Naval Reserve JAG Corps, with four years active duty and 15 years of reserve experience.

I was voluntarily mobilized to Bahrain in the Persian Gulf in late 1999 in support of Operation Southern Watch. In fact, I'll be leaving, as you mentioned, Mr. Chairman, for my two weeks of annual duty tomorrow.

Four members of the eight drilling reservists in my office have been mobilized since 9/11, one stateside, two to Afghanistan and one is on his way to the Persian Gulf. Two of them are still on active duty. USERRA provides the fundamental right to reinstatement to civilian employment following noncareer military service. USERRA also contains broad antidiscrimination laws which prohibits discrimination or acts of reprisal against an employee or prospective employee based on past, current or future military obligations.

This committee's interest in this important area is especially timely in light of the large number of reserve and guard personnel

serving on active duty in Southwest Asia and elsewhere. According to the ESGR, more than 385,000 guard and reserve personnel have been mobilized since 9/11, and as of June 15th of this year, more than 156,000 guard and reserve members are still on active duty.

Members of the uniformed services alleging a violation of USERRA may request representation by DOJ, provided that the member first submits a complaint to the Department of Labor's Veterans Employment and Training Service, commonly called VETS, and VETS is unable to successfully resolve it.

Upon the request of a complainant, DOL refers claims to DOJ in two cases. First, where it concludes the claim is meritorious but cannot resolve it administratively; and second, where it determines that the claim lacks merit by the servicemember nevertheless asks that it be referred.

DOJ's Civil Division serves as a gateway for DOL's USERRA referrals. based on its review of the investigative file, DOL memoranda and its own analysis, the Civil Division either forwards the case to a United States Attorney's Office for appropriate action or declines representation and returns the matter to the Labor Department because the claim lacks merit.

When we return a claim, DOL informs the servicemember of our decision against representation, reminds the claimant that he or she remains free to pursue the claim through private counsel.

When the Civil Division refers a claim to a United States Attorney's Office, the United States Attorney assigns the matter to an AUSA or an Assistant U.S. Attorney, who reviews the investigative file, DOL memoranda and then interviews the claimant and potential witnesses. The AUSA may recommend that the United States Attorney decline to represent the servicemember because further review and investigation demonstrates that the claim lacks merit.

When representation is provided, the AUSA will typically contact the employer and attempt to resolve the matter without litigation. If this proves impossible, the AUSA will file a complaint against the employer in federal district court.

One type of case is somewhat unusual. That's a suit against the state. Recent case law curtailed employee suits against state governments based on federal law because of immunity provisions in the Eleventh Amendment of the Constitution. That's the *Velasquez* v. *Frapwell* case, a 1998 7th Circuit case. In response, Congress amended USERRA in 1998 to allow DOJ to sue states in the name of the United States on behalf of state employees, or in the alternative, USERRA allows a servicemember represented by private counsel to sue in his or her own name in state court in accordance with state law.

The number of USERRA claims DOL referred to DOJ annually has increased approximately 20 percent since 9/11. During fiscal year 2002, DOJ received 52 cases. Fourteen of those were referred to United States Attorneys, 38 returned to DOL because the facts were insufficient for action. During fiscal year 2003, DOJ received 53 cases. Twelve were referred to United States Attorneys, 41 were returned to DOL due to lack of merit. By way of comparison during fiscal years 2001 and 2000, DOJ received 45 and 43 cases, respectively.

Of the 105 cases DOJ received during fiscal years 2002 and 2003, 16, or approximately 15 percent, involved claims against states. DOJ recognizes the important role it plays in enforcing USERRA. We're committed to working closely with DOL in these matters and to representing USERRA claimants vigorously. In addition to promptly processing USERRA referrals, the Civil Division and the United States Attorneys have taken the following steps in this area:

Several United States Attorneys, including myself, have conducted press conferences, lectured at chambers of commerce meetings, posted web site links to USERRA, written op ed pieces and in general gotten the word out both to the business community and the guard and reserve communities that DOJ is taking this issue seriously.

Second, the most recent addition of DOJ's Federal Civil Practice Manual, which came out in February of 2003, includes a new chapter on USERRA. Approximately four United States Attorneys are drilling reservists. Three more are retired from active duty, the guard and reserve. Several more are prior active duty veterans.

In June of 2003, lawyers from DOJ and DOL presented a Justice Television Network program entitled "A Practical Legal Guide to USERRA for AUSAs." This was broadcast to all United States Attorneys offices.

In conclusion, Mr. Chairman, I want to thank this committee for protecting the rights of those citizen soldiers, sailors, airmen and marines who fight to protect us. Why do they do it? Author Stephen Ambrose wrote words about World War II GIs which are still true. He wrote: "At the core, American citizen soldiers knew the difference between right and wrong, and they didn't want to live in a world in which wrong prevailed, so they fought and won, and we all of us living and yet to be born must be forever profoundly grateful."

Thank you for this opportunity. I look forward to your questions.

[The prepared statement of Captain Iglesias appears on p. 141.]

The CHAIRMAN. Capt. Iglesias, thank you so much for your testimony. And if I could just go out of order for one minute. We've been joined by Louise Slaughter, who was scheduled to speak in an earlier panel, the first panel, but business on the floor precluded that. If she could join us now and perhaps make her presentation, and then we'll go right back to Panel 4, if you don't mind.

The podium works, so if you want to go right there, sure.

STATEMENT OF HON. LOUISE M. SLAUGHTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. SLAUGHTER. Thank you. Please excuse me. I really thank you for your kindness to let me come late, but there are only three of us on Rules Committee, which was just meeting. This is a very important matter to me, and I really thank you for the opportunity to come before this distinguished group.

I want to talk about H.R. 3779, which is The Safeguarding Schoolchildren of Deployed Soldiers Act. I was pleased to introduce this legislation along with Congresswoman Brown-Waite.

According to the Department of Defense figures, there are currently 200,000 American troops serving in the Middle East, includ-

ing nearly 55,000 reservists and members of the National Guard. When soldiers are deployed, many arrangements must be made. These men and women leave their jobs, their families, and even their children behind.

As the Congressional Representative for the Niagara Falls Air Reserve Station, I have seen the enormous disruption and burden that deployment places on the families of these men and women. I have also seen the grace with which these families accept the many challenges presented to them.

As an institution, Congress has long recognized the need to minimize the hardships to these soldiers and their families, as demonstrated in the Servicemember's Civil Relief Act, which my bill would amend. It is important for us to recognize that this comprehensive law, first enacted in 1940, never anticipated lengthy deployments by fathers and mothers in the reserve and the Guard. It never anticipated a time when both parents might be deployed to an overseas theater. And it certainly did not anticipate a time when our nation's divorce rate would reach nearly 50 percent, a fact that creates new challenges for deployed parents. Today, the citizen soldiers called up for active duty may have no choice but to send their children to live with the other parent, another relative, or someone who lives one or two towns away or even further.

Obviously, a parent's absence creates many voids in a child's life. Whether it's a missing father who regularly cheered on his little leaguer, or a mother who was always there to help out with the algebra homework, the absence of these parents is felt every day in small moments in these young lives. We cannot possibly realize the aggregate impact that a parent's absence can have. Having to start at a new school, make new friends, and adjust to new demands should not be added to the many hardships experienced by these children.

Last summer, I learned firsthand how deployment causes significant upheaval in a child's life. I was informed that a 10th grader in my district—and all of us who have been parents or grandparents know that's a tricky age—was being forced out of her school system when her father left for Iraq. She, naturally, went to live at her mother's home in the next town. At a time of great disruption, this event caused considerable stress to the hardships my constituent and her family were experiencing.

This instance, and others like it, demonstrates the need for federal legislation requiring that school districts allow the children to remain enrolled in their home district if they wish, while they reside outside the district because a parent is deployed. I am pleased that a handful of states have already enacted provisions offering this protection. The Safeguarding Schoolchildren of Deployed Soldiers Act would ensure it is offered on the national level.

The Military Officers Association of America and the National Military Family Association support this bill as a common sense solution to a problem by ensuring that more American military children have continuity in their education and in their lives.

I strongly urge the committee to approve The Safeguarding Schoolchildren of Deployed Soldiers Act. We owe this protection to our children and to their families, and to the peace of mind of the soldier, which is a very important part of what we do here.

And, Mr. Chairman and other members of this committee, I thank you for your kind consideration of this measure.

The CHAIRMAN. Thanks very much, Ms. Slaughter, for your testimony, and we appreciate you coming by.

Mr. Evans, do you have any comments?

We just thank you, and I appreciate it.

Ms. SLAUGHTER. Thank you all very much. And please forgive me. I'm sorry to interrupt.

The CHAIRMAN. Mr. Ciccolella?

STATEMENT OF CHARLES CICCOLELLA

Mr. CICCOLELLA. Thank you, Mr. Chairman, Ranking Member Evans. Thank you for holding today's hearing, and thank you for inviting the Department of Labor to testify in this important law.

I'll focus my comments this morning on several areas of particular interest to the committee. Overall, we believe at the Department of Labor that we're doing a very good job with enforcing this important law. We take the responsibility for enforcing USERRA very, very seriously.

The number of USERRA cases has gone up since September 11th of 2001. Since that time, we've experienced an overall increase of about 45 percent, which would put us on track for about 1,400 actual cases this year. However, the increase that we're seeing is not really proportional to the numbers of men and women who have been activated under the current mobilization, nearly 400,000, nor by comparison to the increases that we saw during the first Persian Gulf war. And keep in mind that many of the reservists and guardsmen who were called up today are being called up for longer periods of time, up to two years.

There are three reasons there has not been a larger increase in the complaints. First of all, the enactment of USERRA strengthened the protections for servicemembers and it strengthened the ability of Department of Labor vets to enforce the law.

Secondly, under Secretary Chao, we have a very aggressive compliance assistance program to employers and employees. So we are not only talking about enforcement, we're talking about educating employers about these important laws.

And thirdly, the response from employers has been very supportive and very positive, with many, many employers going above and beyond the call of duty, obviously notwithstanding those egregious cases that we all have heard today.

Now with regard to the specific focus of this hearing, which is public service employees, between 30 and 35 percent of the USERRA cases are against government employees. Federal cases make up 10 to 14 percent of those cases, and state and local cases make up about 20 percent.

Our investigators have been very effective at investigating these complaints and resolving them when we open cases, but our goal is to resolve the problems before they become complaints. That is why we have a tremendous emphasis on our compliance assistance program.

Since September of 2001, we've responded to thousands of requests for information, technical requests regarding USERRA from employers and members of Congress, from guardsmen and reserv-

ists and so forth. We've delivered briefings to over 150,000 individuals and presentations. That includes an awful lot of guardsmen and reservists. And keep in mind that ESGR and the military also conduct these briefings.

The longer tours of duty have introduced a more complex range of USERRA issues. In fact, employers and servicemembers are now asking not only about issues of discrimination and reinstatement, but today they're more concerned with things like layoffs, reorganizations that occur during a period of duty, missed pay raises, either seniority or merit-based, reinstatement of health care benefits, pensions, et cetera.

As we consider these cases, we are always guided by two underlying principles that underlie reemployment rights in this country since 1940. First, we construe the USERRA law liberally to the benefit of the servicemember, and secondly, we enforce the escalator principle, which says that the individual should be reinstated in the position he would have had but for the military service.

What we've learned has been codified now into regulations, and those regulations, Mr. Chairman, are now at OMB, and we expect to see them in the Federal Register in September of 2004.

We have an aggressive outreach program, as I said. I think the committee is familiar with our elaws resource adviser, and also with the outreach we've made to numerous organizations, including the ABA and the HR policy organizations.

Mr. Chairman, the Department of Labor supports both H.R. 3779 and H.R. 4477. With regard to the extension od health care coverage to 24 months, we are supportive of that, and we've offered to the committee assistance in clarifying those provisions. And with regard to the reinstitution of the report on the USERRA cases, in the part we found that report to be helpful, so we obviously would defer to Justice and Special Counsel for their views.

Mr. Chairman, at the Department of Labor we believe that every military member serving our nation, particularly those activated guardsmen and reservists today, deserve to know their employment rights are protected. The Department of Labor is committed to informing employers about USERRA and we're committed to protecting the employment and reemployment rights of our citizen soldiers and veterans.

That concludes my oral statement. I'd be happy to answer any questions.

[The prepared statement of Mr. Ciccolella appears on p. 150.]

The CHAIRMAN. Thank you very much. Secretary Duehring.

STATEMENT OF CRAIG W. DUEHRING

Mr. DUEHRING. Mr. Chairman and members of the committee, thank you for giving me the opportunity to come before you to discuss several proposed improvements to the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act.

The Department of Defense supports enactment of the Servicemembers Legal Protection Act of 2004, which would amend several provisions of the SCRA to reflect our experience with the SCRA during its first six months. Each proposed amendment in the draft bill addresses a problem that has been encountered by

servicemembers and brought to the attention of the Department through the legal assistance programs of the military services.

Legal assistance attorneys play a key role in ensuring that servicemembers are able to fully exercise the rights and protections afforded by the SCRA, and we have been attentive to their experiences during this initial shakedown period under the new law.

The Department passed on its concerns and recommendations to your staff, and you have responded expeditiously with this draft bill and this hearing. I commend and thank the committee and its staff for this impressive responsiveness to the needs of our servicemembers.

With respect to H.R. 3779, The Safeguarding Schoolchildren of Deployed Soldiers Act of 2004, we note that we are not aware of the situation that the bill addresses is at all widespread or merits federal legislation. In fact, it has not come to our attention through legal assistance or reserve component channels.

Since the global war on terrorism and the ongoing reserve mobilization began, these channels have proved extremely effective in identifying deployment-related problems servicemembers and their families are experiencing. This leads us to believe that the incidence of children of deployed servicemembers suddenly being treated as nonresidents of school districts where they have previously been considered residents may be isolated to no more than a few school districts, and that to the extent it exists, this problem may be better addressed at the state level than through federal legislation.

The Department of Defense supports Section 2 of the draft USERRA Health Care Coverage Extension Act of 2004, increasing from 18 months to 24 months the maximum period of employer provided health care plan coverage that an employee covered by USERRA may elect to continue is an important amendment that will align this coverage period with the length of time for which reservists can be mobilized under the current mobilization authority.

We defer to the Department of Labor on Section 3 of the draft bill, which would reinstate the requirement for a comprehensive annual report on the disposition of cases filed under USERRA.

The Department also defers to the Department of Labor on Section 2 of H.R. 4477, The Patriotic Employer Act of 2004, which would require employers to post notice of USERRA rights, benefits and obligations in the place of employment of individuals protected by that Act.

I would again like to thank the committee and its staff for all your efforts on behalf of our servicemembers. The Department of Defense appreciates any opportunity to discuss these important matters with you. And I do have a written statement we've submitted earlier, which I hope will be included.

[The prepared statement of Secretary Duehring appears on p. 159.]

The CHAIRMAN. Secretary Duehring, thanks very much. Without objection, your statement and that of all of our witnesses will be made a part of the record.

Mr. DUEHRING. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you so much. Col. Cox.

STATEMENT OF COL. BRARRY COX

Col. COX. Chairman Smith, members of the committee, I am Colonel Brarry Cox, the Director of Ombudsman Services for the National Committee for Employer Support of the Guard and Reserve, ESGR.

Thank you for the opportunity to come before you this morning. I have furnished a written statement and would like it entered into the record as if read, and I will keep my remarks brief.

ESGR is a Department of Defense volunteer organization whose mission is to gain and maintain support from all public and private employers for the men and women of the National Guard and Reserve as defined by demonstrated employer commitment to employee military service.

We accomplish this mission through a three-pronged approach. First, we strive to increase public awareness of the important mission of our National Guard and Reserve. We do this through public relations and media events such as the Rose Bowl parade and our current partnership with NASCAR. More importantly, we aim to convey the importance of employer support to the national defense. In the long term, I think we are all well aware that the Guard and Reserve could not continue to be successful partners in the global war on terror without the continued support of our nation's employers.

The second way that ESGR accomplishes its mission is through activities that help employers manage their Guard and Reserve employees. Ultimately, we want employers to create a work environment that is friendly to Guard and Reserve employees. We help them to do that by encouraging the creation and sustainment of human resource policies that not only consider military service but support it. In some cases, we even arrange activities so that the employer can visit their employees during military training.

I can say that employers I have spoken with consistently walk away from these activities thoroughly impressed with the professionalism of the Guard and Reserve members and are more committed to do their part to ensure that their military employees serve with the minimum amount of disruption in their civilian careers.

We have found that overall support from civilian employers has been exemplary. But we do occasionally have problems. ESGR focuses the third prong of its approach in this area. We call this the ombudsman service of ESGR. For nearly 28 years, the ombudsman service has functioned to provide information and informal mediation service between military service members and their employers. In fiscal year 2003, the ombudsman service worked almost 22,000 inquiries nationwide regarding military service. These inquiries were answered through a 1-800 hotline, customer service center staff, and a nationwide volunteer network.

Most of these inquiries were simply requests for information form both employees and employers. Nonetheless, a significant number represented workplace conflicts between servicemembers and their civilian employers. In these cases, we aim to resolve the conflict in a low key and informal manner, and at the lowest possible level, and short of formal enforcement action. Historically, our success rate exceeds 90 percent.

I believe that in most cases we are successful by simply providing information about federal law regarding the rights and responsibilities of both the servicemember and the employer. In general, ESGR will defer questions of public sector enforcement to the experts that you have testifying before you today.

ESGR is only the informal first step in employment problem resolution. However, I believe that we could only achieve marginal success if there were not a real threat of formal proceedings at some point. To that end, we appreciate the focus and attention that your committee has given this important topic today. But enforcement is key.

I would note before closing that ESGR is unique in that the greatest part of our mission is accomplished through the efforts of over 4,000 volunteers in 55 committees found throughout the states, the territories, the District of Columbia, and now a committee that we have established in Europe. These volunteers should be commended for their work in support of our servicemembers and employers. Many of these volunteers are employers, retired military members, attorneys, and civilian personnel managers who devote their personal time because of a deep patriotic belief in the ESGR mission. I would like to extend our gratitude to their enduring efforts.

Finally, I would again like to thank the committee and its staff for your foresight and proactive efforts on behalf of the Guard and Reserve. The Uniform Services Employment and Reemployment Rights Act states that "it is the sense of Congress that the federal government should be the model employer in carrying out the provisions of this chapter."

Mr. Chairman, the fact that we are here today is testimony to your continued commitment to that statement. ESGR appreciates this opportunity to address these vital issues.

Thank you.

[The prepared statement of Colonel Cox appears on p. 167.]

The CHAIRMAN. Thank you very much, Col. Cox, and thank you all for your testimonies and for your tremendous work. I just want to point out that Secretary Duehring's wife, Theresa, and nephew, Nathan, who is visiting from Minnesota, are here. If they wouldn't mind being acknowledged, and thank you for seeing government in action and certainly seeing your husband doing the fine job that he's doing, and your uncle.

Let me just ask a couple of questions if I could. I noticed, Capt. Iglesias, that you mentioned on page 5 of your testimony that 12 claims against states that were a group were dropped. What was the legal issue, and why did they not go forward?

Mr. IGLESIAS. Sir, if memory serves me, these 12 all came from one Guard unit in Ohio, and these guardsmen had been gone from their civilian jobs between 9 and 18 years. And the purpose of USERRA is to protect noncareer military members. And their claims predated in some cases USERRA's cap of five years of service. **So, DOL recommended that this was not the kind of case that we wanted enforced,* and I believe DOJ also took that position, sir.

NOTE: The *Department of Labor recommended representation in these cases.* The Department of Justice declined representation.

The CHAIRMAN. I appreciate that clarification. Mr. Ciccolella, could you inform the committee about the status of implementing regulations for USERRA?

Mr. CICCOLELLA. Yes, Mr. chairman. Thank you. The regulations are now complete. This is really a very good news story. It took about a year to get the regulations done. They are very comprehensive. They're written in very easy to understand language, question and answer. They are about 200 pages long. We have certainly incorporated into the regulations much of what we have learned as a result of the mobilization, particularly on the issues that I talked about, the merit, seniority-based issues that employers and employees are concerned about.

The regulations are currently at the Office of Management and Budget. They should be in the Federal Register, or at least, are scheduled to be the Federal Register for public comment on 1 September.

The CHAIRMAN. Thank you. Col. Cox, your agency has had, as you explained, a particular role with USERRA in encouraging employer support for the law and in facilitating resolution of cases before enforcement enters the picture.

We do receive very positive comments about your work. What types of USERRA issues and problems are present in the post-9/11 cases which are coming to your agency?

Col. COX. Sir, if I could characterize, before 9/11, most of the types of calls we were taking involved the short-term absences of going to a training assembly during a weekend or to the two-week annual training that's required with employers and employees asking about can they make me take my vacation? When do I—can I reschedule their days off to accommodate them on the weekend? But the very short-term types of issues.

Now as the Department of Labor, Mr. Ciccolella mentioned earlier, we see them as long-term. Those are the types of questions that we get. What about my 401(k)? What about my merit promotion? I missed an evaluation and my employer says because I was not here to be evaluated, I will not receive my pay increase this year.

Well, that impacts long-term. If they don't get that one raise for that one-year or two-year period, that impacts all future raises. Those are the kinds of questions that we're seeing, sir.

The CHAIRMAN. Mr. Ciccolella, you might have heard me ask the previous panel, how are federal agencies are doing, the poorest what you're doing, the best relative to USERRA?

Mr. CICCOLELLA. Thank you, Mr. Chairman. We don't track the agencies in terms of, you know, which agencies have what number of complaints. Obviously the larger agencies would have the majority—more complaints. But that may or may not be proportional. If the Chairman would like that information, we could probably do something to break it down. The larger agencies are very obviously TSA, the U.S. Postal Service and the Defense Department because it has all of the services and you have a lot of department of military civilians in those services.

The CHAIRMAN. Consider yourself asked. I think that would be very helpful to this committee in our oversight capacity. And I think it would have a positive impact on the agencies themselves.

You know, again, we heard from a witness earlier about the VA not doing its job. That's very disconcerting. So I would request that you provide that, and I thank you for that in advance.

Let me just ask one question for the whole panel, any of you who would like to answer it, DOL, DOJ, all of you have some overlapping jurisdiction roles in USERRA, both in the compliance area and enforcement. Should the current setup be somehow streamlined or simplified? Do you have any recommendations that would change the model as to how we're operating, or is it working?

Mr. IGLESIAS. It's working. It would be helpful maybe to create internal deadlines, dates by which claims have to be processed from ESGR to DOL and then DOL to DOJ. We believe we timely process the vast majority of cases, but occasionally there are some that do languish. It would be helpful if there were internal deadlines.

Mr. CICCOLELLA. At the Department of Labor, we think it is working pretty well. We do not have problems working across agency lines, and of course that is the way you get things done in government. It may be very helpful, for example, as Mr. Bloch has testified, to bring the Office of Special Counsel into the process earlier, as he has recommended, and as he has done in a case very recently, in the pre-referral stage. That may be very useful, and our attorneys and the Special Counsel are working on those arrangements right now.

So the jurisdictions are important to maintain, but I think we're doing a good job of working through them.

Mr. DUEHRING. I'd like to also echo the comments of Mr. Ciccolella there that we have had a long working relationship with the Department of Labor especially in this area that has worked very smoothly. And we most recently have been talking with the Office of the Special Counsel. Also as they see their role becoming more important, how can we mesh better.

I think this all comes about because we now have hit a point in the mobilization where we have some trends. We have, you know, a large number of people to work with, and we can see where the rough spots in the roads are. And by and large, I have to say, it's a success story because as information is presented to us, it goes rather quickly, you know, through the system, and I think it's very clear to the people who have to use the system that USERRA is there for their use, and it's a powerful weapon to use, very reassuring to them.

And of course our challenge is to continuously get the word out and work the issues, and I think we're doing that fairly well.

Col. COX. Sir, if might add, our folks, the volunteer ombudsmen throughout the nation work very closely with their DOL VETS counterparts out there in the states. We've gotten a lot of positive feedback from that.

And as far as timelines, one of the things that we have attempted to do, and it's basically an informal agreement, but if there's an individual who has been terminated or losing pay, we try to resolve the issue within three days or pass that to DOL VETS. If it's another issue that we are being successful in working with the employer, we'll attempt to work those for ten days and then attempt to pass those directly over to DOL VETS.

The CHAIRMAN. Let me just ask Secretary Duehring one final question. You testified regarding H.R. 3779, that you noted we are not aware that the situation the bill addresses is at all widespread enough to merit federal legislation, and may be isolated to no more than a few school districts.

Earlier I had asked one of the sponsors, Congresswoman Ginny Brown-Waite, what her estimate was, and she said her guess was 1,000 to 10,000. Is that an accurate number? I mean, what we try to do, as you know so well in hearings, is to determine what the facts are and hopefully get opinion and insight so that we move legislation that deserves to be moved. So, your best opinion on that?

Mr. DUEHRING. Sure. Mr. Chairman, I don't really have any numbers at all, and as I tried to make clear in that particular statement, that type of problem really hasn't made it—hasn't surfaced to our level yet, which kind of leads us to believe that it may be isolated. And obviously, people having problems like that very often go straight to their member of Congress, and that's very often the way we get the information is your folks pass it over to us.

But I think the comment that was made about an hour ago about the involvement of the school boards and, you know, working at the lowest possible level, which is actually the formula that we use in USERRA, enforcing USERRA, and our ombudsmen and also with students that have problems, you know, being pulled out of school, we find that 99.9 percent of the time you work at the lowest level, it gets resolved. So we just—we at least offer that as a question. Is it really a big problem that requires federal legislation?

The CHAIRMAN. Appreciate it. For the record, if you could, if you have any information about order of magnitude, I think it would be helpful. Because 10,000 would indicate we have a serious problem. Even 1,000 I think would. So if you could——

Mr. DUEHRING. We'll provide you with whatever information——

The CHAIRMAN. Whatever you can find. That will be helpful. Let me ask you, Mr. Secretary, another question. I and other members are sure that other members of the committee are very concerned about the allegations of predatory tactics by some property management companies who lease to servicemembers. I know there are plenty of good companies doing business with servicemembers, but what can be done about any bad apples in order to protect servicemembers and their families? Is the Army, for example, examining the practices of the company that Ms. Kimmel testified about? And can any official action be taken if abuses are found, and especially if there's a pattern of abuse detected?

Mr. DUEHRING. Sure. In most cases of landlord noncompliance with SCRA and other laws, a call or a letter from a legal assistance authority—attorney, I'm sorry—or the installation housing office is sufficient to resolve the matter.

This has been true even in the Fort Hood area. But when that doesn't work, SCRA cases may be referred to the Department of Justice for an enforcement action or other assistance.

For example, at the request of the Fort Hood legal office, an Assistant U.S. Attorney in San Antonio sent a letter to the attorney of a landlord in the Fort Hood area who had asserted that a spouse's lease obligation was not terminated by the Servicemember

Section 305 termination. The letter made it clear the determination under Section 305 terminated all obligations under a lease signed jointly by a servicemember and spouse.

Also, when a servicemember is involved in private litigation where the SCRA is at issue, the Department of Justice may submit a statement of interest on behalf of the United States. Such a statement can be very helpful in influencing a state court's interpretation of the SCRA.

There have been actually several cases in the Fort Hood area of landlords not complying with the residential lease termination provision of Section 305 of the SCRA. The Fort Hood legal office is aware of the companies involved and is working with the Army's installation management agency to ensure that any landlord that refuses to recognize a proper SCRA lease termination, that uses lease forms inconsistent with Section 305, or that insists servicemembers sign blanket SCRA waivers before or after signing a lease shall not remain on the installation's housing referral list.

Additionally, the legal office has proposed that any landlord engaging in these or similar practices, such as the wrongful withholding of security deposits, be referred to the board responsible for recommending to the installation commander that certain commercial establishments be placed off limits to personnel.

The CHAIRMAN. Thank you very much for that very good statement. Mr. Evans?

Mr. EVANS. No questions.

The CHAIRMAN. Ms. Herseth?

Ms. HERSETH. Just a couple. Thank you, Mr. Chairman. I represent a state, South Dakota, with a very high number of deployments in the National Guard and Reserves, so implementation enforcement of USERRA regulations is very important to me.

And Mr. Ciccolella, if you—in response to a question posed by Chairman Smith about the regulations, you testified that you expect that USERRA regulations since they're at the OMB right now, final stages of review, are to be published and available for notice and comment by September of this year?

Mr. CICCOLELLA. Unfortunately, the rule process says that once they clear the Office of Management and Budget, they go to the Federal Register for public comment. Normally, they're in the public register for 45 days to 60 days, and then we incorporate the comments that we get and then publish what's called a final rule.

Ms. HERSETH. Okay. So the September 2004 date that you indicated, it's my understanding that the Department of Labor has been before the committee before, and we think that the regulations are right around the corner. So how certain are you of that date that you've mentioned?

Mr. CICCOLELLA. Well, OMB has a requirement of no more than 90 days to review those regulations. We hope they can do that sooner, but that would put it on track for publication in the Federal Register on the first of September.

Ms. HERSETH. Okay. And do you feel that the Veterans Employment and Training Service has the necessary resources to meet all its responsibilities with respect to USERRA investigations and enforcement?

Mr. CICCOLELLA. We have the necessary resources. I will say that some of our investigators sometimes meet themselves coming and going doing these investigations and in working across the agency lines. We obviously could not do what we're doing without the good efforts of ESGR and without the cooperation of OSC and Department of Justice.

But we're ideally structured to do these investigations. We have a state director of Veterans Employment and Training in every one of the states, and normally that individual has a staff to help him or her. Earl Shultz, for example in your home state of South Dakota, does a very, very fine job, and if Earl had a problem with too many USERRA cases, we could very easily surge to meet his requirements.

Again, we are structured for success and we can rise to any occasion.

Ms. HERSETH. Thank you. That's all I have.

The CHAIRMAN. Thank you very much. Would anyone on the panel want to add anything before we welcome our fifth panel? If not, I want to thank you again for your extraordinary good work, and we look forward to working with you as we go forward. Thanks.

Before I introduce Panel 5, I do want to mention that the American Bar Association's president, Dennis Archer, wasn't able to be here to testify, but they have submitted a written statement for the record on behalf of the ABA, and without objection, that statement will be made a part of the record.

[The statement of Dennis Archer appears on p. 172.]

The CHAIRMAN. Let me introduce our next panel, Panel 5, beginning with the Honorable Pat Quinn, the Lieutenant Governor of Illinois and a representative of the Council of State Governments. Lieutenant Governor Quinn is a graduate of Northwestern University School of Law and holds an international economics degree from Georgetown University. Recently, Lieutenant Governor Quinn led the successful effort to enact the Illinois Military Family Relief Act, which provides emergency financial assistance to families of Illinois National Guard members and Reservists called to active duty.

My understanding is that he is hard-pressed for time, so we will go to him first and then I'll introduce the remainder of the panel. I understand you have a plane to catch very shortly.

STATEMENTS OF PAT QUINN, LIEUTENANT GOVERNOR OF ILLINOIS; HARRY VAN SICKLE, COMMISSIONER, UNION COUNTY, PENNSYLVANIA AND CHAIR OF THE LABOR AND EMPLOYMENT STEERING COMMITTEE OF THE NATIONAL ASSOCIATION OF COUNTIES (NACO); COL. ROBERT F. NORTON, U.S. ARMY (RETIRED), DEPUTY DIRECTOR, GOVERNMENT RELATIONS, THE MILITARY OFFICERS ASSOCIATION OF AMERICA; KATHLEEN B. MOAKLER, DEPUTY DIRECTOR, GOVERNMENT RELATIONS, THE NATIONAL MILITARY FAMILY ASSOCIATION; AND MARGOT SAUNDERS, MANAGING ATTORNEY, NATIONAL CONSUMER LAW CENTER

STATEMENT OF PAT QUINN

Mr. Pat QUINN. Yes. Thank you very much, Mr. Chairman. Thank you for the opportunity to testify today on behalf not only of my office but the State of Illinois, the Council of State Governments, and also the National Lieutenant Governors Association, and the nearly 400,000 National Guard members and Reservists who have been called to active duty.

Earlier this year, I traveled to Baghdad in Iraq. I visited with soldiers from our country, slept in military tents, ate in the mess hall, traveled in military convoys, flew in Black Hawk helicopters. We were with the ESGR and also about half a dozen NASCAR drivers. I would not advise flying in a Black Hawk helicopter with a NASCAR driver for most people. They like to go fast.

Anyhow, we had a firsthand opportunity to visit firsthand with real soldiers who are in the front line, men and women who are from the Reserves, the National Guard and active duty. Clearly, the need to have a law posting at the workplace for all to see, for both employers and employees, the Patriotic Employer Act of 2004, is very needed.

We had an incidence in Illinois on Veterans Day where the wife of a National Guard member on Veterans Day received a letter of termination from a very large insurance company headquartered in Illinois terminating her husband because he was in the National Guard and his leave from the company had expired. He was in Iraq. He had already served once before during the call up after 9/11. He also had served in Vietnam. The company was seeking to terminate him and two others. My office intervened and had that stopped. But the company was blithefully unaware of their obligations under the federal law.

We have a current instance in Illinois of a police department in Rockton, Illinois near Rockford, where a police officer who had been activated, and upon his return to the United States after serving in Iraq was fired by the police chief because he was a member of the National Guard.

A large department store in Illinois had a Marine reservist who was being trained, was called to active duty, and was told he was fired. I would say my office on a regular basis, almost weekly, perhaps even more frequently than that, receives communications from reservists or Guard members who are having difficulties with their employer with respect to their rights.

We have a web site, Operationhomefront.org, that has gotten over 7.2 million hits from really people not only across our state

but across the world. And a lot of the e-mails we've received are from military men and women who have had difficulties with respect to their employer, or has been mentioned, other matters involving leases and things like that.

So I think this is a very important matter. The ESGR, I have a great deal of regard for, but we must work with all the employers to make sure that they know what the federal law is. In Illinois, we have recently passed through the General Assembly, it's on the Governor's desk, a state statute called The Illinois Citizen-Soldier Initiative 2004. And basically, that would prohibit any kind of discrimination against Guard members and reservists. They would be part of our states human rights law.

Military status would include Guard members and reservists who have not yet been activated but when they're asked by their prospective employers regarding their status in the military, some are hesitant to indicate they are a member of the Reserves or the Guard for fear they won't be hired, or they won't be trained. So that's another issue that we've uncovered on a regular basis in our state.

I think the schoolchildren law, the safeguarding schoolchildren law of deployed soldiers, is a very important statute. I want to point out that we did some checking. Some of the counties in Illinois, if you don't live in districts, the right school district, and you're out of district, you have to pay out-of-district tuition or a fee, and that can rise as high as $7,000 to $10,000. So a boy or girl who is living with another relative when their mom or dad is called to active duty, they have to change their residence, and they may be out of district. A lot of these school districts I think may be seeking to charge excess tuition to those children. We should prevent that from happening.

On behalf of the National Lieutenant Governors Association, we passed a resolution earlier this year supporting what we have done in Illinois. It is a state law called the Military Family Relief Trust Fund. It's set up in our state law. It's not-for-profit trust fund in the state treasury where citizens can voluntarily make donations to a trust fund where all the proceeds are given to provide financial assistance to military families.

We've distributed more than $1.3 million to more than 2,500 families. We've encouraged other states to adopt this law. Two already have, Maine and Wyoming. Another one is pending on the desk of the Governor of South Carolina. There are ten other states that are considering this law, including California, New York and Pennsylvania. And I think that is another area that needs to be explored at the federal level, how to encourage states to adopt trust funds, military family trust funds, at the local state level to allow families to get emergency assistance when they need it.

We have had very sad cases of reservists and Guard members called to active duty in the case of a unit from Freeport, Illinois, some of the members are from Congressman Evans' district, they were at Kuwait waiting to come back from Iraq, and they were called and told their deployment would be extended from April of this year perhaps until August. And as a result, a lot of those families had additional displacements with respect to their jobs and paying utility bills back home and many other things.

So we really have to be sensitive to the citizen-soldiers of our country, the heroic men and women who are on the front line for democracy, combatting terrorism. All of their personal, financial, emotional needs I think we need to attend to. Our state, Land of Lincoln. Abraham Lincoln said during the Civil War that it's the duty of us on the homefront to take care of the families of those who bear the battle on the front lines.

And I appreciate the opportunity to testify today.

[The prepared statement of Lieutenant Governor Quinn, with attachments, appears on p. 176.]

The CHAIRMAN. Governor Quinn, thank you very much for your testimony.

Mr. Evans?

Mr. EVANS. I just want to thank the governor for his work and look forward to working on these issues with you.

Mr. Pat QUINN. Thank you.

The CHAIRMAN. Hope you make the plane.

Mr. Pat QUINN. Oh, I will.

The CHAIRMAN. Thank you very much. I'd like to introduce the remaining members of our fifth panel. Mr. Harry Van Sickle is a County Commissioner in Union County, Pennsylvania and Chairman of the Labor and Employment Steering Committee for the National Association of Counties. He's a graduate of the University of Pennsylvania and has been a small business owner since 1976.

Colonel Robert F. Norton is a retired Army colonel and Deputy Director for Government Relations of the Military Officers Association and a very respected spokesman who frequently comes before this committee and provides us very fine testimony. He has been with MOAA national staff for seven years and is a familiar face, as I said, before this committee.

Ms. Kathleen Moakler is the Deputy Director of Government Relations at the National Military Family Association. She is an Army spouse of over 28 years and has served in various leadership positions in civilian and military community organizations.

And finally, Ms. Margot Saunders is the Managing Attorney of the Washington office of the National Consumer Law Center. Her duties include representing the National Consumer Law Center on electronic commerce issues, predatory mortgages and other financial credit issues as well as water and energy matters.

Mr. Van Sickle, if you could begin.

STATEMENT OF HARRY VAN SICKLE

Mr. VAN SICKLE. Thank you very much, Mr. Chairman, for that introduction. On behalf of county officials throughout the country, I would like to express our support and gratitude for the men and women serving in the military, including those in our civilian workforce called to serve and protect our nation.

We commend and appreciate our military troops for their vital service and sacrifice. County governments are diligently working to ensure smooth transition for these civilian employees into active military service and for their return to county government employment. I am deeply honored to be here today and would like to thank the chairman for the opportunity to testify on behalf of

NACo regarding how county governments are protecting the rights of civilian employees deployed for military service.

As public sector employers, county governments play a critical role in planning, management and implementation of labor and employment laws. In response to the federal laws and recent increases in military deployment, many counties have followed the lead of USERRA and adopted policies and procedures with supplementary rights and benefits in addition to those provided by USERRA.

Since U.S. military deployment significantly increased post-September 11th, 2001, county government employers have dealt with the influx of personnel going to serve and returning home in a number of ways. NACo recently surveyed member counties and has received over 160 responses from 27 states thus far, and I ask that that survey please be included in the record.

The CHAIRMAN. Without objection, it will be.

[The provided material appears on p. 187.]

Mr. VAN SICKLE. Responses indicated that counties are using a number of methods to ensure transition will go as smoothly as possible for reserve employees and the county. While there were reports of a few problems, all those cited were resolved by the county officials in an appropriate manner.

Many county governments surveyed not only retained employees' positions and benefits as required by the federal law, they also continued to provide such employees with their full salary by supplementing the difference between the employee's county salary and military salary if their county pay is higher. DeKalb County, Illinois follows a hold harmless policy of covering the difference in pay for those employees serving.

Other counties provide the option of allowing deployed employees to use their vacation and/or sick time to supplement their pay before placing them on military leave without pay. Some counties have a combination where they pay the difference after such employees use their accumulated leave time.

While the military provides health benefits for service members and their dependents, by federal law, county employers are required to offer medical benefits coverage to employees on a military leave of absence for up to 18 months, which the employee can be required to pay. Thirty-five percent of those surveyed offer continuing health benefits coverage for employees and their dependents beyond the federal law requirements, some even paying the employees' portion of the expenses for these benefits.

Many county government employers keep in touch with their deployed employees. Many counties send monthly care packages to uniformed members and check up on their family members. Others assist family members with home improvement chores. Several counties have ceremonies of appreciation for returning members and their families to recognize the importance of their service.

Counties have faced some challenges, particularly filling the work gaps during the employees' military deployment. Of those surveyed, 74 percent report that law enforcement personnel were the most affected. Losing even one of these vital workers can affect important county services, particularly in rural areas.

Most counties surveyed do not hire temporary workers due to budgetary constraints. Some counties use trainees from fire and police academies on a part-time basis for certain duties. Many counties that hire temporary workers have faced challenges in recruiting those employees.

With regard to reservists returning to county positions, NACo did not learn of any major difficulties with employees returning to the county jobs after the military service. Some counties have faced the reality that many employees are not ready to start their civilian jobs right away. And while federal law provides for a period upon which employees should return, a few counties have adopted policies to allow for continued leave for such employees to make adjustments back to civilian life. Imperial County, California gives employees returning up to one year from the date of honorable discharge to return to county employment.

With regard to the draft language changes to USERRA, while NACo does not have a specific policy on these issues currently, we have considered the changes and understand the importance of H.R. 4477. Also, extending health benefits from 18 months to 24 months would not pose any significant problems for county employers since the employers themselves called for service would be required to cover such health expenses. Furthermore, we have no position at NACo on reinstating reporting requirements for the Department of Labor.

Mr. Chairman, this concludes my testimony, and I thank you and the committee for the opportunity to be here today and would be pleased of course to answer any questions.

[The prepared statement of Mr. Van Sickle appears on p. 182.]

The CHAIRMAN. Thank you very much. Col. Norton.

STATEMENT OF COL. ROBERT F. NORTON

Col. NORTON. Thank you, Mr. Chairman. And I would also like to thank the Ranking Member, Mr. Evans, and the committee for this opportunity to present testimony on behalf of the Military Officers Association of America. We represent 378,000 members.

Due to the size and the unknown conclusion of the war on terror, the laws that protect our servicemembers' reemployment rights as well as their pocketbooks under the USERRA and the SCRA take on greater importance with each passing day.

Mr. Chairman, we are very grateful to you and the committee for taking a leadership role in Congress in reviewing and improving these laws. I also want to say at the outset that a majority of the 35 members of The Military Coalition, including my colleague, Ms. Moakler, from the National Military Family Association, support the recommendations in both of our statements this morning. Collectively, The Military Coalition represents 5.5 million active duty, National Guard, Reserve, family members, survivors and veterans.

The draft bill before the committee today, the USERRA Health Coverage Extension Act of 2004, would help advance a top MOAA legislative goal of passage of laws to provide health care insurance options for members of the National Guard and Reserve forces. The bill would extend from 18 months to 24 months the maximum period an employee could elect to keep coverage under an employer-

sponsored health plan beginning on the date of an absence for active duty military service.

The Defense Department estimates that 12,000 reservists have already completed 24 months active duty since 9/11, and many thousands more will reach that threshold in the weeks and months to come. We estimate that about 40,000 Guard and Reserve troops would be affected by the legislation, with many more to follow.

Ultimately, we are urging Congress to enact legislation that will give reservists the option of the government paying a cost share toward a civilian health plan during a mobilization. As you know, Mr. Chairman, Mr. Blair commented earlier that the vast majority of federal agencies pay the family premium under the Federal Employees Health Benefit Program, and we believe the same support should be offered by the government to reservists for their private sector plans. In the meantime, the proposed change in the USERRA Health Care Extension Act will help reservists meet the challenge of overcoming interrupted health care coverage. MOAA strongly supports the USERRA Health Care Extension Act of 2004.

We also support the provision in the draft bill that would reinstate a federal reporting requirement under the USERRA. As we noted last year in testimony before the committee, we believe that federal agencies with responsibility for USERRA enforcement should report to Congress on the status of cases referred to them. Some of that information was presented to the committee this morning. But numbers alone are not enough in our view. All stakeholders need a clearer picture of cases resolved by the Department of Labor and the final disposition of cases referred to the Attorney General's Office or the Office of Special Counsel.

We also endorse H.R. 4477, Mr. Chairman, the Patriotic Employer Act of 2004. This bill will help fulfill the outreach requirement under the USERRA, and it's a useful step in the right direction. But MOAA strongly recommends that the committee go beyond this step and amend the USERRA to require the Department of Labor to issue and promulgate regulations for the statute and also that they be required to publish a handbook illustrating how the USERRA cases have been decided over the years.

The facts speaks for themselves, Mr. Chairman. We heard this morning that the Department of Labor after many years still has not issued regulations under the permissive authority that's in the USERRA. We believe that the Department of Labor should be required to issue regulations, and in addition should be required to issue a casebook on USERRA that would be extremely useful to all stakeholders—employers, returning reservists, the media, advocates, federal agencies.

Turning now to the draft bill, The Servicemembers Legal Protection Act of 2004, MOAA strongly supports this legislation as being in the best interest of service families. We support all of the provisions in this bill. But I would like to highlight the importance of granting dependent's rights under the residential and motor vehicle lease provisions when there are joint leases involved.

A number of cases have been brought to our attention on this issue, and we strongly support that provision and the other improvements in the underlying legislation.

And finally, Mr. Chairman, we endorse H.R. 3779, The Safeguarding Schoolchildren of Deployed Soldiers Act of 2004. We have worked closely with our colleagues in the National Military Family Association on this issue. NMFA will address the need for the bill in its statement.

Thank you, Mr. Chairman, and I look forward to your questions.

[The prepared statement of Colonel Norton appears on p. 198.]

The CHAIRMAN. Thank you very much. Ms. Moakler.

STATEMENT OF KATHLEEN B. MOAKLER

Ms. MOAKLER. Thank you, Mr. Chairman, and thank you, Mr. Evans and distinguished members of the committee. The National Military Family Association appreciates your interest in the well being of military families and thanks you for the opportunity to present testimony on the importance of ensuring that the legal and employment rights of servicemembers and their families are protected.

NMFA thanks this committee for the provisions that directly impacted military families with the passage of the Servicemembers Civil Relief Act in the last session. Updating the law to reflect the realities of military family life in the 21st century has made it easier for families to cope with the financial difficulties of deployment.

NMFA is also grateful for the provisions in the Veterans Benefits Act of 2003 that increased benefits for the survivors of those who have already served and sacrificed for their country. The increase in monthly education benefits for surviving spouses and children will enhance their educational opportunities and better reflects the cost of education in today's dollars.

We are especially pleased with the restoration of DIC and accompanying benefits for surviving spouses who remarry after the age of 57.

The deployed servicemembers of today look to see that promises have been kept to those who have gone before them. The Veterans Benefits Act of 2003 tells them that they have been and will continue to be kept as promised.

Here is a hypothetical situation. Sergeant Jones, a member of the National Guard, receives notice of her activation for deployment in support of Operation Iraqi Freedom. As a single mom, she has crafted her required family care plan. Her son, Philip, will be staying with his grandparents, who live about ten miles away in a different school district.

Philip, a fourth grader, attends elementary school a short distance from his home, has a teacher he likes and friends he has had since kindergarten. His grandparents will drive him back and forth to school each day. But when Sergeant Jones visits the school to inform the staff about her deployment, she is dismayed to learn that because Philip will be living outside the school district boundaries, he will not be allowed to attend his current elementary school if he lives at his grandparents' home. Not only will he be deprived of his mother, but of a familiar support system, adding a new school to his list of transition issues. That's a lot to handle when you're just ten years old.

As you heard in the testimony of Representatives Slaughter and Brown-Waite, this situation is very real for many families around

our nation today. We thank them for introducing The Safeguarding Children of Deployed Soldiers Act of 2004 that allows children to remain enrolled in their home district when their parents are deployed. Military families are called upon to make unique sacrifices. Disruption of a child's education should not be one of them if it can be helped. School can be the one constant in a time of change and anxiety. This bill is a common sense solution to the problem for these families so children can do their job while mom and dad are off doing theirs.

The adage no good deed goes unpunished could easily apply to the actions of this committee last year when it passed the Servicemembers Civil Relief Act to help ease the economic and legal burdens on military personnel called to active duty status or deployed in a contingency operation. Updating the law to reflect the realities of today's leases, both housing and automobile, certainly seemed that it would help military families cope with financial adjustments. It also rendered the military clause supposedly obsolete.

The ink was barely dry on the new legislation, however, before some landlords tried to shift the financial responsibility for leases from the servicemember to the spouse who had co-signed the lease. One spouse, remarking on her landlord's interpretation of the new law said, "our rental company told me that the new law only protects my husband, and he is the only one they will take off the lease."

The language in the Servicemembers Legal Protection Act of 2004 should clarify that dependents as well as servicemembers are covered by SCRA's residential and motor vehicle lease termination provisions on joint leases. It also refines certain other definitions in the law to leave little room for individual interpretation. This would certainly help families in the situation like Mrs. Kimmel's. Moving from state to state, military families encounter many different tax laws and find that property is treated differently. Under SCRA, a servicemember, if claiming another state as residence, is not required to pay property tax on an automobile or a boat, for example. However, the family is liable for the payment of this tax if the title is in both spouses' names. Couples have joint savings accounts. They own their homes jointly. It follows that they would have both their names on a car or boat title. Payment of this tax could become a financial hardship, especially if the payment is unexpected, a large sum, and not included in the family budget. The couple may not understand the protections of the SCRA and the benefits of having the property in the name of the servicemember alone.

This can be such a burden to families that it surfaced as an issue in the Army Family Action Plan process, a mechanism that the Army uses to identify problems at the grassroots level and elevate them to higher levels for solution. NMFA would like to ask the committee to consider extending relief from personal property tax for property owned jointly by the servicemember and spouse under Section 511(c) of the SCRA.

NMFA commends the USERRA Health Coverage Extension Act of 2004. We are committed to ensuring continuity of care for the

families of deployed reserve component servicemembers, whether the health care is provided through TRICARE or the employer.

Mr. Chairman, thank you for allowing NMFA to present our views on these very important issues. And again, thank you for your continued interest in and concern for our servicemembers, their families and survivors.

I will be happy to answer any questions you may have.

[The prepared statement of Ms. Moakler appears on p. 206.]

The CHAIRMAN. Thank you very much, Ms. Moakler.

And now, Ms. Saunders.

STATEMENT OF MARGOT SAUNDERS

Ms. SAUNDERS. Chairman Smith, Congressman Evans, members of the committee, thank you for the opportunity for the National Consumer Law Center to appear before you today on behalf of our low-income clients.

We are a national back-up center that provides legal assistance to attorneys around the country representing low-income people on consumer or financial issues. I was asked to come here today to provide information from a lawyer's very technical point of view.

We commend you for your work last year updating and expanding the Soldiers and Sailors Civil Relief Act. This new Servicemembers Civil Relief Act is a significant improvement over the former law in many ways. In particular the new ability of servicemembers to terminate vehicle leases and the expanded ability to avoid residential leases are important so that families are not driven to financial ruin as a result of military service.

We also commend the committee for this current endeavor to further improve the Act passed last year. As with any major work, the ambiguities in the new law are still there, and we encourage the committee's effort to address them. We support all of the provisions in the bill. Today I intend to highlight and specifically support several of the provisions and make a few specific suggestions for other improvements, all of which are entirely consistent with the sense of the original Act and your pending bill.

Currently—first I would talk about protection against negative credit reports. In Section 108 of the Soldiers and Sailors Relief Act, there is a prohibition against negative credit reports and other similar adverse actions against servicemembers who exercise their rights under this Act. This protection is extremely important. Servicemembers should not return home to find their credit ruined. However, to be fully effective, we need to broaden that protection in two ways.

First, as has been recognized, the servicemember's dependents need the same protections as the servicemembers have. It does no good to protect the servicemember against bad credit when the bad credit can be threatened against his or her dependents. So we urge you to make Section 108 clear that adverse credit reports are prohibited also against dependents who exercise rights under the Act.

Second, the prohibition against negative credit reports and other adverse actions currently applies only when the servicemember seeks or obtains a stay, postponement or suspension in the Act. We think this language may be somewhat limiting, and we encourage you to broaden it, and we've suggested language to do so.

Third, we don't believe there should be any question that enlisted personnel should receive the same financial protections as those who are called up from the reserves, and the underlying Act does not make this absolutely clear. So we would propose that you add in several sections of the Act the words "enlistment contract."

Secondly, the clarification of how a servicemember can provide a simple and straightforward method to document the servicemember's active duty and location should be included in all applicable sections, and we have suggested language on how you might accomplish that.

Next, the protection against waivers. As you all have recognized in the underlying Act, if a waiver could be embedded in the fine print of a contract, the entire point of the Act would be lost. You propose in the Servicemembers Legal Protection Act to only allow waivers to be in writing, and we support that. We would actually urge you to increase this and specify exactly when the waiver would only be permitted.

Currently, it's only permitted after the servicemember is called up to active duty, but it should be further clarified that it should only be allowed after the orders have been issued for the permanent change of station which is affected by the underlying contract. Otherwise, vehicle and residential leases offered to servicemembers who are on active duty will include clauses waiving the right to cancel, and this would defeat the Congress's purpose in adopting this protection.

Finally, I would point out, and this is not in our written testimony, but the words "in writing" do not any longer mean in writing since Congress passed the Electronic Signatures Act. A requirement for something to be "in writing" can be accomplished by an electronic record, and you may not mean that. So if you mean to require actually a writing, you might want to say "on paper." Because otherwise, a servicemember can be required to sign something electronically, and until we clarify electronic signatures, it will be very easy for an electronic agreement to be forged. That's why we haven't seen more electronic contracts already.

Finally, we have some specific suggestions on adding protections in your court and administrative proceedings section to further clarify what you already intend. We'd be happy to continue working with members of your excellent staff. I've enjoyed helping them and working with them in the past, and I'm happy to continue to do so.

Thank you.

[The prepared statement of Ms. Saunders appears on p. 213.]

The CHAIRMAN. Thank you very much, Ms. Saunders, and we have appreciated very much your input in the past as well as with your current recommendations. Let me just ask you if I could first about your recommendation about waivers. I know if you could in any way quantify how often waivers find themselves into the small print.

We have to look out, just as an aside or a parallel type of issue here in Congress, when we often write very explicit human rights law and other law that relates to how money is spent in the authorizing process, we very often have to check very carefully that in the appropriations process we don't find buried on page 403 of an omnibus bill, notwithstanding any other provision of law, which

completely nullifies in one sentence what you may have spent two years crafting and judiciously putting together for that policy.

It has happened. I've seen it happen. We check those laws or those proposals very carefully for that, and at times we've even missed them, at least years ago. Someone who is signing a lease may not be, you know, aware of—I mean, I've signed enough contracts for homes and before that for leases myself. You know, when you get all of that paperwork, you sometimes almost just, you know, this is standard boilerplate. Therefore, I'll just sign at the bottom line, although you should read every line of it. How often does this show itself, this problem of a waiver of the Servicemembers Civil Relief Act?

Ms. SAUNDERS. I'm afraid I don't have the exact answer to your question regarding servicemembers' specific experience of the waivers. As a lawyer, I've been representing low-income consumers for over 25 years, and I can say that I have seen far many more waivers in contracts than are actually legal, and we often use various laws to challenge the illegal waivers.

So the extent to which you can clarify the difficulty which an industry or business could require a waiver would be better. What the Federal Reserve Board has done in the context of the Truth in Lending Act is that they have required—they have specifically said that the Truth in Lending provisions can only be waived when the waiver is in writing, signed, and handwritten. It must not just be in writing, but also handwritten in the words of the consumer, and signed by the consumer. So the Federal Reserve Board has required an extra burden that the consumer must actually meet to make sure that a waiver can never be in the fine print of the contract. And you might want to consider doing something like that as well.

The CHAIRMAN. Let me ask Mr. Van Sickle, like any congressman on this panel or anywhere else in the House or Senate, we get a lot of concerns expressed to us by municipal governments and county governments about filling in the gaps of their deployed employees—particularly police and firemen.

One question I have about reemployment or promotion has to do with the issue of examinations. During that deployment time, the individual could have missed his or her scheduled test, which is required in many cases to move up in rank. What are you finding is being done to accommodate those who might miss that test and therefore miss an opportunity for promotion to get in the queue to advance their career, get additional pay and all the other good things that go along with it? Are you finding flexibility in testing?

Mr. VAN SICKLE. We didn't hear very much about that, you know, in the survey that we got back. All I can say is, most counties I would assume would follow the law and try to make sure that, you know, whatever happened when the person left for deployment is returned to that position when the people come back to resume their position.

The CHAIRMAN. And the point I'm making is that the opportunity to advance may have presented itself during their deployment, and they wait another six months to take the test, that puts them maybe two years behind where they might have been further on down the line.

Mr. VAN SICKLE. Yeah. I don't have a good answer for that, sir, to tell you the truth.

The CHAIRMAN. Col. Norton, did you?

Col. NORTON. Yes, Mr. Chairman. We're aware of at least two cases in New England, one concerning a state law enforcement officer and the other a firefighter, who have applied for USERRA relief on the basis that they were denied the opportunity to take promotion or licensure exams that would advance their careers.

Apparently in those jurisdictions in New England, there is a set time period under which someone can take the exam. If you miss the gate, you're out of luck. And of course they're on active duty serving in Iraq or Afghanistan. They come back. They ask for relief, and they are told, sorry. You missed the promotion gate, the test gate. You can't be promoted. And as someone commented to you earlier, this has a ripple effect over years in terms of career advancement and income.

We don't have enough information to say that this is specifically a violation of the state employee issues that you're aware of, but we are very concerned about this, and we think that the committee ought to take a very close look at it.

The CHAIRMAN. Appreciate that. So as far as you know, the escalator principle has not been sufficient. Do we need something specific in law to cover this because for so many of these jobs, the prerequisite is that there be a test.

Col. NORTON. That certainly I think is reasonable. I think it fits under the status Rule in the USERRA. They're denied the opportunity to return to a potential promotion that they would have competed for had they not been called to active duty. So we would strongly recommend and support clarification of the escalator principle in those kinds of cases, and we'll provide to the committee additional information when we get it. We are looking at a number of cases right now, Mr. Chairman.

The CHAIRMAN. I appreciate that. And we'll look at whether or not a legislative fix is required here, and I appreciate all of your inputs on that if you think it should be.

Let me ask you, Col. Norton, you suggest in your testimony that USERRA cover the commissioned corps of the National Oceanic and Atmospheric Administration. I can assure you, I'm going to follow up on this. But as you point out, NOAA is a uniform service under Title 10 definitions, and I would add that NOAA is covered by the Servicemembers Civil Relief Act. We'll research whether there is some reason why NOAA should not be included, and we do thank you for pointing that out to the committee.

Ms. Moakler, I'd like to ask you, regarding lease termination problems for spouses, are you aware of this problem arising in other areas with large military populations outside of the Fort Hood area?

Ms. MOAKLER. We have heard anecdotal information about Fort Bragg as well.

The CHAIRMAN. Fort Bragg? Any others? Any information with specifics that you can provide us would be very helpful. You know, sometimes a phone call can help get people to focus on it. But if you could just do that, it will be helpful.

Ms. MOAKLER. Sure.

The CHAIRMAN. Let me just ask Ms. Saunders one question if I could, an additional question. Do you know of actual cases where landlords have made adverse credit reports against dependents who have been co-signers on leases because the lease was terminated under the Servicemembers Civil Relief Act?

Ms. SAUNDERS. I'm afraid I don't know the answer to that. I can find out. We have had many—but we don't track our cases in that way. We certainly have had many cases from low-income servicemembers and many cases of dependents who have incorrect credit reports. I don't know the extent to which this problem has emerged specifically relating to leases, but I will find out.

The CHAIRMAN. That would be very helpful. You know, credit reports are notoriously inaccurate to begin with. My wife and I two years ago refinanced, and when I got the credit report and looked and she did too, we had credit cards we didn't own. We had finances we didn't own, and obviously we worked to correct it, but it was very appalling. I often hear about it, but it happened with us as well. To have an adverse rating and to get something that could stick with you and hurt on a refi or anything else that you seek to do financially would be awful and illegal.

Ms. SAUNDERS. Well, Mr. Chairman, if I could add, we do know that it is a standard problem if two people are married and one spouse goes bankrupt, the credit bureaus routinely report the negative credit of the bankrupt spouse against the other spouse, even if the spouse who didn't go bankrupt is trying their best to pay the bill. So we have no reason to expect that creditors would behave differently in this situation.

The CHAIRMAN. Thank you. Mr. Evans?

Mr. EVANS. No questions.

The CHAIRMAN. Do our panelists have anything they would like to add before we conclude?

[No response.]

The CHAIRMAN. Thank you so much for your written and oral testimonies, and your answers to questions. We will get back to you with some additional questions as well from panelists who could not be with us. And again, I thank you so much.

The hearing is adjourned.

[Whereupon, at 1:15 p.m., the committee was adjourned.]

APPENDIX

I

108TH CONGRESS
2D SESSION

H. R. 4477

To amend the Uniform Services Employment and Reemployment Rights Act of 1994 to require employers to post a notice of the rights and duties that apply under that Act.

IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 2004

Mr. MCGOVERN (for himself, Mr. BRADLEY of New Hampshire, and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend the Uniform Services Employment and Reemployment Rights Act of 1994 to require employers to post a notice of the rights and duties that apply under that Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Patriotic Employer Act
5 of 2004".

1 **SEC. 2. REQUIREMENT FOR EMPLOYERS TO POST NOTICE**
2 **OF RIGHTS AND DUTIES UNDER USERRA.**

3 (a) NOTICE.—Chapter 43 of title 38, United States
4 Code, is amended by adding at the end the following new
5 section:

6 **"§ 4334. Notice of rights and duties**

7 "(a) REQUIREMENT TO POST NOTICE.—Each em-
8 ployer shall post in a conspicuous place in the place of
9 employment for persons entitled to rights and benefits
10 under this chapter a notice of the rights, benefits, and ob-
11 ligations of such persons and such employers under this
12 chapter.

13 "(b) CONTENT OF NOTICE.—The Secretary shall
14 provide to employers the text of the notice to be provided
15 under this section.".

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of such chapter is amended by adding
18 at the end the following new item:

"4334. Notice of rights and duties.".

19 (c) IMPLEMENTATION.—(1) Not later than the date
20 that is 90 days after the date of the enactment of this
21 Act, the Secretary of Labor shall make available to em-
22 ployers the notice required under section 4334 of title 38,
23 United States Code, as added by subsection (a).

1 (2) The amendments made by this section shall apply
2 to employers under chapter 43 of such title on and after
3 the first date referred to in paragraph (1).

○

I

108TH CONGRESS
2D SESSION

H. R. 3779

To amend the Servicemembers Civil Relief Act to prevent the disruption of the education of children who change residence based on the military service of their parents.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2004

Ms. SLAUGHTER (for herself and Ms. GINNY BROWN-WAITE of Florida) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend the Servicemembers Civil Relief Act to prevent the disruption of the education of children who change residence based on the military service of their parents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safeguarding Schoolchildren of Deployed Soldiers Act of 2004".

1 **SEC. 2. RELIEF FOR SCHOOLCHILDREN CHANGING RESI-**
2 **DENCE BASED ON MILITARY SERVICE OF**
3 **PARENT.**

4 (a) UNINTERRUPTED ATTENDANCE AT SCHOOL.—
5 Title VII of the Servicemembers Civil Relief Act (50
6 U.S.C. App. 501 et seq.) is amended by adding at the end
7 the following new section:

8 **"SEC. 707. ATTENDANCE AT SCHOOL OF CHILDREN WITH**
9 **PARENTS IN MILITARY SERVICE.**

10 "(a) ATTENDANCE FOR SCHOOLCHILDREN.—For the
11 duration of the military service on which a child's change
12 of residence is based and at the request of a child's parent,
13 a State educational agency or local educational agency
14 shall, for purposes of enrollment (including tuition, fees,
15 and costs) in elementary or secondary school, treat a child
16 who changes residence based on the military service of one
17 or both of the child's parents as if the child has the resi-
18 dence the child had before the change of residence, and
19 the child shall be deemed, for all other purposes relating
20 to enrollment, to have the residence the child had before
21 the change of residence.

22 "(b) NO PROVISION OF TRANSPORTATION.—No
23 State educational agency or local educational agency shall
24 be responsible for the transportation of a child described
25 in subsection (a) to or from school by reason of subsection
26 (a).

1 "(c) DEFINITIONS.—In this section, the terms 'child',
2 'elementary school', 'local educational agency', 'parent',
3 'secondary school', and 'State educational agency' have the
4 meanings given those terms in section 9101 of the Ele-
5 mentary and Secondary Education Act of 1965 (20 U.S.C.
6 7801).".

7 (b) TRANSITIONAL PROVISION.—Not later than 30
8 days after the date of the enactment of this Act, a State
9 educational agency or local educational agency that serves
10 the area where a child is deemed to reside pursuant to
11 section 707(a) of the Servicemembers Civil Relief Act, as
12 added by subsection (a), shall facilitate the re-enrollment
13 of the child if such re-enrollment is necessary to be in com-
14 pliance with such section.

15 (c) CLERICAL AMENDMENT.—The table of contents
16 in section 1(b) of the Servicemembers Civil Relief Act is
17 amended by adding at the end the following new item:

"707. Attendance at school of children with parents in military service.".

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108TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. BROWN of South Carolina introduced the following bill; which was referred to the Committee on _____

A BILL

To amend chapter 43 of title 38, United States Code, to extend the period for which an individual may elect to continue employer-sponsored health care coverage under the Uniform Services Employment and Reemployment Rights Act of 1994, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "USERRA Health Care Coverage Extension Act of 2004".

1 **SEC. 2. TWO-YEAR PERIOD OF CONTINUATION OF EM-**
2 **PLOYER-SPONSORED HEALTH CARE COV-**
3 **ERAGE.**

4 (a) IMPROVEMENT IN PERIOD OF COVERAGE.—Sub-
5 section (a)(1)(A) of section 4317 of title 38, United States
6 Code, is amended by striking "18-month period" and in-
7 serting "24-month period".

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to elections made under such
10 section 4317 on or after the date of the enactment of this
11 Act.

12 **SEC. 3. REINSTATEMENT OF REPORTING REQUIREMENTS.**

13 Section 4332 of title 38, United States Code, is
14 amended in the matter preceding paragraph (1) by strik-
15 ing "no later than February 1, 1996, and annually there-
16 after through 2000" and inserting "no later than Feb-
17 ruary 1, 2005, and annually thereafter".

[DISCUSSION DRAFT]

108TH CONGRESS
2D SESSION

H. R. _____

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Servicemembers Legal
5 Protection Act of 2004".

1 **SEC. 2. CLARIFICATION OF MEANING OF "JUDGMENT" AS**
2 **USED IN THE ACT.**

3 Section 101 of the Servicemembers Civil Relief Act
4 (50 U.S.C. App. 511) is amended by adding at the end
5 the following new paragraph:

6 "(9) JUDGMENT.—The term 'judgment' means
7 any judgment, decree, order, or ruling, final or tem-
8 porary.".

9 **SEC. 3. REQUIREMENTS RELATING TO WAIVER OF RIGHTS**
10 **UNDER THE ACT.**

11 Section 107 of the Servicemembers Civil Relief Act
12 (50 U.S.C. App. 517) is amended—

13 (1) In subsection (a), by inserting after the first
14 sentence the following new sentence: "Any such
15 waiver that applies to an action listed in subsection
16 (b) of this section is effective only if it is in writing
17 and is executed as an instrument separate from the
18 obligation or liability to which it applies.";

19 (2) by redesignating subsection (c) as sub-
20 section (d); and

21 (3) by inserting after subsection (b) the fol-
22 lowing new subsection (c):

23 "(c) PROMINENT DISPLAY OF CERTAIN CONTRACT
24 RIGHTS WAIVERS.—Any waiver in writing of a right or
25 protection provided by this Act that applies to a contract,

1 subsection (b)(2) of such section is amended by
2 striking "military orders for" and all that follows
3 through "or to deploy" and inserting "military
4 orders—
5 "(i) for a change of permanent
6 station—
7 "(I) from a location in the conti-
8 nental United States to a location out-
9 side the continental United States; or
10 "(II) from a location in a State
11 outside the continental United States
12 to any location outside that State; or
13 "(ii) to deploy".
14 (2) DEFINITIONS.—Such section is further
15 amended by adding at the end the following new
16 subsection:
17 "(i) DEFINITIONS.—
18 "(1) MILITARY ORDERS.—The term 'military
19 orders', with respect to a servicemember, means offi-
20 cial military orders, or any notification, certification,
21 or verification from the servicemember's com-
22 manding officer, with respect to the servicemember's
23 current or future military duty status.

1 "(2) CONUS.—The term 'continental United
2 States' means the 48 contiguous States and the Dis-
3 trict of Columbia.".
4 (c) COVERAGE OF INDIVIDUAL DEPLOYMENTS.—
5 Subsection (b) of such section is further amended in para-
6 graph (1)(B) and paragraph (2)(B)(ii) (as designated by
7 subsection (b) of this section) by inserting ", or as an indi-
8 vidual in support of a military operation," after "deploy
9 with a military unit".

10 **SEC. 6. PREVENTION OF DOUBLE TAXATION OF CERTAIN**
11 **SERVICEMEMBERS.**

12 Section 511(c) of the Servicemembers Civil Relief Act
13 (50 U.S.C. App. 571(c)) is amended by adding at the end
14 the following new paragraph:
15 "(5) USE, EXCISE, OR SIMILAR TAXES.—A tax
16 jurisdiction may not impose a use, excise, or similar
17 tax on the personal property of a nonresident
18 servicemember when the laws of the tax jurisdiction
19 fail to provide a credit against such taxes for sales,
20 use, exercise, or similar taxes previously paid on the
21 same property to another tax jurisdiction.".

Statement for the Record
Honorable Lane Evans, Ranking Democratic Member
House Committee on Veterans Affairs
June 23, 2004

Good morning Mr. Chairman. Thank you for holding this hearing to discuss and examine the many rights and responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA), as well as the legislative measures before us today aimed at enhancing these laws. I am especially pleased that we are focusing on the public sector's compliance and enforcement efforts with respect to both USERRA and SCRA. We have an obligation to do all we can to ensure servicemembers and their families' peace of mind so they can fulfill their important duties protecting the Nation.

Mr. Chairman, the issues before us today are very timely and of the utmost importance. I look forward to working with you and all the Members of the Committee to maintain oversight over the administration of these laws and to make any necessary enhancements or improvements to these protective acts that our servicemembers and their families have earned.

Before we begin I want to welcome all the witnesses and thank you for your testimony today, especially my friends and colleagues, the Honorable James McGovern of Massachusetts and the Honorable Louise Slaughter of New York. I also look forward to hearing the personal testimony of Mrs. Tammy Kimmel, Mr. Jason Burris, and Mrs. Judith Hanover Kaplan regarding these matters. Additionally, I am pleased that a number of federal executive agencies will testify before us, including, the Office of Personnel Management, the Departments of Defense, Labor, Justice, and the Office of Special Counsel, as well as representatives from the National Committee on the Employer Support of the Guard and Reserve and the National Association of Counties. I look forward to hearing from Colonel Robert Norton of the Military Officers Association of America, Ms. Kathleen Moakler of the National Military Family Association and Margot Saunders, Esq., of the National Consumer Law Center. Finally, I want to recognize and welcome the Honorable Pat Quinn, Lieutenant Governor of Illinois, my home state.

I very much appreciate all of the witnesses' testimony and efforts; your insight and experience assist the Committee in developing and establishing policy on these very important matters.

As we all know, the men and women who make up the Armed forces of this country are under tremendous strain. We are involved in conflicts, peace-keeping missions, security and training details around the globe, and of course many of our servicemen and women are engaged in hostile conditions in Afghanistan, Iraq and

throughout the middle-east theater. Not since World War II has the Nation's military – active duty and Reserve forces – undergone such an extensive and massive mobilization effort.

Additionally, our military forces are participating in the largest troop rotation since World War II. According to the Department of Defense, since September 11, 2001, approximately 388,000 reserve forces have been mobilized, some of these National Guard or Reserve members have been called up more than once, and some of our servicemembers have been activated for nearly 24 months due to extensions of their orders or prevented due to "stop loss" from leaving military service at their expected time.

Needless to say, our armed forces are serving under stressful conditions and they and their families are making great sacrifices. Accordingly, laws – federal, state and local – concerning reemployment rights and legal and financial protections for our servicemembers play an integral part in their ability to serve the country. Indeed, if these laws are effectively administered and vigorously enforced, they not only provide comfort to our servicemembers and their families but they can also assist the Pentagon in its recruitment and retention efforts.

With respect to the Uniformed Services Employment and Reemployment Rights Act, I am specifically interested in examining the federal executive agencies' efforts to administer and enforce servicemembers' reemployment rights. The federal government should be a responsible employer and lead by example when it comes to complying with USERRA.

Another issue of concern I have is that even today, it appears that too many employers are ignorant of their responsibilities under USERRA. I was pleased to join Congressmen James McGovern and Jeb Bradley in their efforts to educate the public about this law by cosponsoring H.R. 4477. Additionally, I am very interested in the progress the Labor Department has made with respect to publishing USERRA regulations. I am sure any guidance the federal government could provide on this subject would be appreciated by employers, especially the smaller and mid-size business entities that do not have the resources to retain legal counsel on all matters.

I look forward to the witnesses' testimony on the draft bill to extend servicemembers' option of continuing their employer based health care coverage from 18 to 24 months. This measure appears to be the right thing to do for purposes of continuity and family convenience, especially with the increased incidents of longer activation periods and "stop loss" orders.

Mr. Chairman, I am also very pleased that we are revisiting the Servicemembers Civil Relief Act. The draft bill addresses a number of concerns, which have been brought

to the Committee's attention. I hope that with the guidance we are receiving today, we will be able to finalize a bill for introduction. In particular, the bill would specifically define the term judgment; require that waivers of protections made by the Servicemembers Civil Relief Act be written in at least 12 point type in a separate writing from the obligation to which it applies; specify that the act applies to either a plaintiff or defendant; clarify that dependents of servicemembers have the same right as the servicemember to terminate a lease when the servicemember is deployed or receives a permanent change of station; and prevent multiple taxation of certain servicemembers.

I note that the National Consumer Law Center has recommended a number of additional changes to the bill and hope that we will be able to include these very good suggestions in the introduced bill.

I am a cosponsor of Mrs. Slaughter's bill, H.R. 3779, which will preserve the residence of our children when their custodial parent is called to serve the Nation. We are asking more than enough of our Nation's children when their parent is called away from home. We should not require them to experience the trauma of moving to a new school and having to acquire new friends because of arbitrary residency determinations. The Congress has preserved the residency of servicemembers when they are called to service by providing for various tax and voting requirements. The school children of veterans deserve no less.

Mr. Chairman, we were successful last year in passing a comprehensive restatement of the Servicemembers Civil Relief Act and I look forward to working with you again to make any necessary improvements to that act as we monitor its implementation.

Thank you, Mr. Chairman.

Statement of the Honorable Michael H. Michaud
House Committee on Veterans' Affairs
June 23, 2004

Thank you Mr. Chairman for holding this important and timely hearing. I look forward to receiving the witnesses' views on the proposed legislative measures concerning the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA). I am also pleased that we will be examining the federal government's collective role and duties to administer, educate, and enforce the USERRA, as well as its efforts to lead by example as a "model employer" under the law.

Mr. Chairman, I can think of no other topic for a hearing as relevant or as important as the matter before us today. As we hold this hearing, many brave servicemen and women are selflessly risking their lives in Iraq, Afghanistan and around the globe. Many of these individuals who answered their country's call are leaving behind family who depend on them. These family members must endure not only the emotional strain of knowing a loved one is in harm's way, but in many cases, they are additionally burdened by financial and housing concerns.

In my district in Maine, high unemployment numbers have become all too common. People are struggling to make ends meet. This is the climate in which we are asking many servicemembers to leave their families and their jobs.

USERRA is intended to minimize the employment-related disadvantages that occur to our "citizen-soldiers" and by extension to their families, as they leave their civilian life to put on the uniform of this nation. Congress recognized long ago that the SCRA was needed to relieve our servicemembers and their families of the myriad inconveniences and hardships that can be part of military life. If we as a country wish to continue to encourage men and women to pursue non-career uniformed service, we must ensure that they are not overly burdened or disadvantaged by such service. It is incumbent upon us to remain vigilant on these issues, to maintain oversight over the administering agencies and to encourage cooperation with the private sector in complying with these acts. I am also proud that on a state level Maine has been a leader in establishing relief programs aimed to support the many families of National Guard and Reserve members.

I note that the draft bill concerning the Servicemembers Civil Relief Act contains a number of provisions designed to address problems that have been brought to the attention of the Committee since the passage of Public Law 108-189 that significantly revised the law. I support the change proposed by Mrs. Slaughter to assure that our

Nation's children who give up the time and attention of a parent who is called to serve the Nation will not also be required to give up their school and their classmates.

I want to especially thank Ms. Saunders of the National Consumer Law Center for her detailed technical suggestions to improve the draft bill.

I am very pleased that today we will not only be hearing from government agencies charged with administering these laws but also from individuals who are affected by these laws. I welcome all of you here today and I appreciate your testimony. It will provide valuable insight into how actual servicemembers and families are experiencing these current events.

Finally, I want to state for the record my disappointment that one of the federal agencies that we will be discussing today that did not act in total compliance with USERRA was the U.S. Department of Veterans Affairs. I encourage the VA to review this issue and take strong steps to educate its managers and be proactive with respect to this issue.

Thank you, Mr. Chairman.

The Honorable Darlene Hooley

Panel 2 Opening Statement
Introduction of Corporal Jason Burris

Thank you Mr. Chairman and Ranking Member for holding this hearing today on public sector compliance with the Uniformed Services Employment and Reemployment Rights Act. It is important that we ensure that our service members and their families are treated with the respect that they deserve.

I am honored to be joined today by a fellow Oregonian and constituent, Corporal Jason Burris, who is here to testify on his experience with USERRA compliance at the U.S. Postal Service. Corporal Burris is from Woodburn, Oregon, has been a member of the Oregon Army National Guard since 1998, and is currently assigned to E Troop, 1st of the 82nd Cavalry.

Corporal Burris is a dedicated, hardworking American who worked at the post office located in Woodburn, Oregon and one weekend a month and two weeks a year, trained hard for the defense of his nation, just like hundreds of thousands of other patriotic Americans. In his case, however, that patriotism cost him his job.

I am happy that Corporal Burris is able to join us today and look forward to his perspective on problems with USERRA compliance in the public sector.

Testimony of U.S. Representative Jeb Bradley
H.R. 4477, the Patriotic Employer Act of 2004
House Veterans Affairs Committee
June 23, 2004

Chairman Smith, Ranking Member Evans, members of the Committee: as a member of the Veterans Affairs Committee, I appreciate the opportunity to testify on H.R. 4477, introduced by my colleague Mr. McGovern. H.R. 4477, the Patriotic Employer Act of 2004, relates to an area of great importance given current military operations. Since 9/11, deployments of the majority of guard and reserve units have been a reality. Therefore, it is important that we ensure that our military personnel are aware of their rights and that their private sector careers are not harmed due to their commitment for our country. I commend Representative McGovern and join Ranking Member Evans in advocating for this common sense bill that will help reduce unnecessary frustration and misunderstandings for both guard members and reservists, and employers.

With the percentage of deployed guard and reservists at its highest point in the past fifty years, it has become evident that these men and women and many employers are aware of the rights afforded them under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Although only a small percentage of employers and reservists have significant problems understanding and abiding by USERRA, their situation deserves our attention during this time of increased deployments. H.R. 4477 would seek to intervene before a problem arises by simply providing for the posting of current law in the workplace. I believe this legislation provides a simple, inexpensive answer to a problem we must address in order to best provide job security to our guard and reservists.

The Patriotic Employer Act of 2004 would not create a burdensome clerical requirement for small businesses or the Labor Department. Furthermore, there would be no cost for employers to post the labor laws in the workplace and the cost would be negligible to the Labor Department.

Currently, federally required postings are available free of charge to employers, as the Labor Department provides hard copies of the laws to employers upon request. Additionally, the Labor Department has downloadable versions of the postings available in portable document format (PDF) on their website. Requiring employers to post an additional labor law poster would not burden employers with excessive costs, but may in fact save them from the expense of litigation in defense of violations of USERRA. Although only a small amount of conflicts result in a lawsuit, they are costly to the employer, employee, and the Labor Department and can destroy long standing relationships. Many of these problems are the result of poor communication between employers and employees due to the lack of knowledge of USERRA. H.R. 4477 is a straightforward, inexpensive, and appropriate response to this problem.

Mr. Chairman, I want to thank Representative McGovern and Ranking Member Evans for their leadership and initiative on this issue. Like them, I believe that all guard and reservists deserve job security when they are called on to serve our nation. Fortunately, current law already provides for this security. H.R. 4477 raises awareness for employers and reservists and will make them explicitly aware of this law. I thank the Committee for

the opportunity to testify before you today, and I would be happy to answer any questions you may have on this bill.

The Honorable Ginny Brown-Waite
Testimony before the
House Committee on Veterans Affairs
Wednesday, June 23, 2004
H.R. 3779
Safeguarding Schoolchildren of Deployed Soldiers Act

Introduction:

Mr. Chairman, distinguished Members of the Committee; I am pleased to have this opportunity to discuss legislation I introduced with Congresswoman Louise Slaughter. As the Vice-Chair of the Congressional Caucus for Women's Issues, I have had the privilege of working closely with Ms. Slaughter to pass legislation which will provide meaningful relief to the lives of our soldiers and their families.

H.R. 3779, Safeguarding Schoolchildren of Deployed Soldiers Act will ease the burden of deployment on the families of our soldiers.

As you heard from the Honorable Congresswoman from New York, service to one's country often requires leaving your family behind. As if the emotional strain of separation is not enough, some of our soldiers' children are currently forced into a new environment and new school as a result of their parent's deployment. This causes additional stress on a child who is already adjusting to the temporary loss of their parent. An established routine, familiar peer group, and good friends help a child cope with their parent's deployment. This legislation provides a common sense solution to help the families who already sacrifice so much.

How the bill works:

- H.R. 3779 amends the Servicemember's Civil Relief Act (SCRA) of 1940.
    - Congress has long recognized the need to minimize the hardships to our men and women in uniform. Originally enacted in 1940, this law provides relief to military personnel from many of the economic and legal burdens they have incurred because of their deployments.
- This bill requires schools to treat a child who changes residence based on the military service of one or both parents as if the child has the residence he or she had before the relocation.
    - This will allow the student to continue to attend the same school after their parent is deployed.
- This legislation will not burden the school with the transportation of a child to or from school. Transportation will be the responsibility of the student and his or

her guardian.

Support for the Legislation:

In the FY05 Budget, the Administration recognized the need to mitigate the hardship of deployment on Military Families:

From page 107 of the President's Budget for Fiscal Year 2005:

"Children of military families—who frequently move to new schools—face difficult challenges when the new school has different educational and health-related requirements. The Department of Education and the Department of Defense will work with States on strategies to prevent disruption in the educational progress of children of military families and to ease the stresses on military families."

This legislative is one means of providing continuity to the lives of military families.

Conclusion:

As our men and women in uniform continue to be deployed in support of military operations around the world, it is vital that we do our best to minimize the disturbance to their lives and those of their families. The protection provided by this measure is of great consequence to our children's education and the peace of mind of our soldiers. I urge your support of H.R. 3779 and I appreciate the efforts of the Committee to hold this hearing today to discuss the merits of this bill.

STATEMENT OF
SARAH J. HAYHURST
23 JUNE 2004

Mr. Chairman and Members of the Subcommittee:

On behalf of the members and families of our armed forces all around the world, I am pleased to submit, to the committee, my experience. I hope that my statement will help you understand what a lot of military spouses are going through, all around the world with rental companies. I am Sarah Hayhurst. I was born on May 30th, 1982, and I was raised in Shoals, Indiana. I joined the US Army when I was eighteen. I was stationed at Ft. Hood, Texas, and was in Echo Company 27th MSB, 1st Cavalry Division, for 2 1/2 years. My husband Benjamin Hayhurst is in the Army, too. He is with Charlie Company, 2/5, First Cavalry Division. He is a Sergeant E-5. His unit is in Iraq right now.

Benjamin and I signed a Lease Contract with Folkerson Property Management on May 1, 2003. We paid a deposit of $450.00 plus $100.00 pet deposit for our dog. My husband and I did the Lease Inventory and Condition Report with Doug Folkerson, the owner. We moved into the house on June 3, 2003. I became pregnant with my daughter, Carey Anne, in April 2003. Ben and I decided I would get out of the military on a Pregnancy Chapter, to be a stay at home mom. I was discharged from the military on October 1, 2003. On January 22, 2004, First Cavalry Division received orders for Iraq. Ben would be deploying on March 12, 2004. Ben's First Sergeant and Commander told all the spouses at a Family Readiness Group Meeting that if we had any problems with our house leases to call JAG and they would be able to help us with it. I took his orders and a written notice on February 14, 2004 to the Folkerson's. I told them we would be moving out of the house on March 15, 2004. I gave the notice and orders to the receptionist, Darlene, at the Folkerson office. I told her that I would be moving to Idaho to live with my Mother and Father In-Law, Daniel and Leslie Hayhurst. She told me that Ben was the only one that could get out of the lease, because we had both signed the lease and he was the only one on the lease that was active duty military. She said that the Servicemembers Civil Relief Act only covered the active duty member and not the civilian spouse. I told her that my husband's First Sergeant and Commander had told us that if we had any problems to call JAG. She told me it wouldn't do any good to get JAG involved because they had statements from the Folkerson's attorneys saying that the law covered only the active duty member. In the lease contract, the military clause seemed to cover the active duty military member and his/her spouse and dependents. She also said that JAG knew that the law only covered the active duty member. Darlene said that I would have to pay rent for the house until the lease ended or until it was rented again. When a whole Division deploys and many houses become available, it can be a long time before a rental property is leased again.

Since I knew I was going to have to pay rent even though I was leaving the house, I had debated whether or not to even move to my in-laws, but I knew that if I stayed in Killeen alone it would be very hard with a newborn all by myself. Everyone that I knew was getting deployed or moving away to stay with families and I would have been all alone. So I decided to pray and believe that the house would get rented and move on to Idaho.

My Mother and Father In-Law both helped me clean every room in the house. When my daughter and I left the house, it looked 100% better than when we had moved into it. I had to pay the whole months rent for March even though I would only be living there half of the month. We left Killeen, Texas, on March 13, 2004 and drove to Lewiston, Idaho. On April 2, 2004, the Folkerson's rented the house and said that I had to pay 8 days of rent for April because the people who rented the house wouldn't be moving in until the 8th of April. They also told me that I owed them $663.04, so they were keeping the entire $550.00 deposit and that I should send an additional $113.04. Of the $663.04, 373.71 were for cleaning, pest spraying and painting walls. As I have already stated, the house was cleaner than when we moved in, the walls needed painted when we moved in (as stated on the Lease Condition Report) and the house was pest free as far as we could tell. I agree with the charges of $15.00 for replacement for light bulbs and a new furnace filter. The remaining $274.33 covered the 8 days of April rent, a utility fee of $50.00 to show the house after I left, and a $35.00 mowing and trimming fee. My Father In-Law mowed the yard the day before we left for Idaho. To summarize, I was charged $373.71 for cleaning and maintenance that I don't believe was necessary and $274.33 for the pro-rated April rent and reletting charges. The Folkerson's also said they had forgotten to charge us a reletting fee of $300.00. Our Lease Contract stated the reletting fee is $200.00. They said if I paid the $113.04 they wouldn't charge the reletting fee. I paid the $113.04 for the eight days rent because I wanted to put an end to it. I didn't want to have to pay another $300.00. I felt that they were making me feel that if I kept asking questions they were going to try to charge me the extra money.

On April 5, 2004 I received a call from CPT Downing, the Charlie Company Acting Commander. He said that Ben had been injured. He said that he was shot on April 4, 2004, in his left shoulder. He had been sent to Germany where he was undergoing surgery. CPT Downing said I would be hearing from Ben within the next couple of days. I was so grateful for my in-laws and the support they gave to me and Carey Anne. It made it a lot easier being with my husband's family when I got the news that he had been injured. I know if I had been in Killeen, that I would have been alone, with no support and an almost 3 month old baby. I was glad that I had moved to Idaho and had the support of my family. Ben was sent to Andrews Air Force Base, and then sent back to Darnell Army Hospital, where he was released. He has fully recovered and is going back to Iraq on or around the 20th of June.

It was very hard trying to cope with the fact that my husband was getting deployed to Iraq and having to deal with the landlords about our lease. Military families need to be able to terminate a lease when a service member is deployed. I hope that you understand a little more that this is a problem that needs to be addressed. I don't want to see another military spouse have to go through unnecessary problems because they can't terminate a lease when their spouse has deployment orders.

Thank you for your time. I appreciate your attention to this matter at hand, and allowing me to submit my statement about the Servicemembers Civil Relief Act.

Testimony of U.S. Representative James P. McGovern
H.R. 4477, the Patriotic Employer Act of 2004
House Committee on Veterans Affairs
June 23, 2004

Chairman Smith, Ranking Member Evans, members of the committee, I appreciate this opportunity to testify before the House Committee on Veterans Affairs today as it considers legislation that pertains to the Uniformed Services Employment and Reemployment Rights Act (USERRA). Specifically, I am here to discuss legislation I introduced, H.R. 4477, which promotes the rights and responsibilities of employers and employees under USERRA. I am pleased that Ranking Member Evans and Representative Bradley join me as original cosponsors of this legislation.

Since September 11, 2001, over 373,000 National Guardsmen and Reservists have been placed on active duty. Not since World War II have so many National Guardsmen and Reservists been called to active duty. They and their families face many burdens in service to their country.

One burden faced by the men and women of the National Guard and Reserves is their employment status upon return from active duty. The uncertainty of their activation and period of time away from their jobs also severely affects their employers, a situation that has been compounded by extended deployments. The U.S. Chamber of Commerce has estimated that 70% of military reservists called to active-duty work in small or medium-size companies.

In an effort to assist National Guardsmen, Reservists, and their employers, the National Committee for Employer Support of the Guard and Reserve (ESGR) was established to address potential problems arising among the nation's employers. Trained ESGR employers manage to solve roughly 95% of the cases where problems have arisen

when a Reserve or Guard member returns to his or her workplace through an informal process – without the Department of Labor having to get involved.

What about the other 5 percent? According to the ESGR, many of the problems facing this five percent of cases grew out of a lack of understanding of the rights and responsibilities of employers and their returning employees. H.R. 4477 seeks to address the small percentage of employers who do not fully understand or who are unaware of USERRA.

H.R. 4477 is a simple, straightforward bill. It seeks to promote understanding between employees and employers when it comes to their rights and obligations under USERRA. H.R. 4477 would require the Department of Labor to produce a poster – similar to the Family and Medical Leave poster – for employers to post at work sites. Currently, many posters are available on the Department of Labor's website, (http://www.labor.gov/elaws/posters.htm).

H.R. 4477 would not create additional paper work or burden employers with difficult Labor Department requirements. In fact, H.R. 4477 is an effort to educate employers and keep them from unknowingly breaking existing law.

As this committee is aware, many employers across the country do not know about USERRA, or they are only vaguely aware of it. By not complying with USERRA, however, employers put themselves at risk of facing Labor Department investigations. By educating employers and employees before USERRA could be violated, employers will save themselves costly litigation, potential fines, and public embarrassment. I am quite sure that this committee would agree with my belief that our small and medium-size companies do not need to put themselves at risk of a Labor Department investigation.

Let me briefly share with you how I came to introduce H.R. 4477. I was contacted by a constituent who is a member of the Massachusetts ESGR. He suggested that simply altering USERRA to require its posting would solve many of the problems that he had seen arise between employers and returning Reservists and Guardsmen. He described how many employers are not fully aware of their responsibilities under USERRA, and why many employees are afraid to exercise their rights, even though those rights are protected by USERRA. In posting USERRA and familiarizing themselves with the law, employers and employees will gain a deeper understanding of USERRA and preferably work out any potential conflicts before employees are activated.

Mr. Chairman, I would like to thank both Ranking Member Evans and Representative Bradley for being original cosponsors of this bipartisan legislation. I appreciate their support, and the dedication they have shown to the men and women of the National Guard and Reserves. In fact, Representative Bradley and I share constituents who are members of the 94th Regional Readiness Command, in particular the New Hampshire and Massachusetts Army Reservists assigned to the 94th Military Police Company headquartered in Londonderry, New Hampshire, and I know he cares deeply about the 94th and its families.

I would also like to acknowledge the work done by Geoffrey Collver of the Democratic Staff of the House Committee on Veterans Affairs. He worked closely with me and my staff in investigating this problem, and H.R. 4477 reflects his hard work.

Again, thank you for having me here today. I am grateful for the opportunity to testify on H.R. 4477, and I look forward to the Committee acting affirmatively on this bill.

Written Statement of Mrs. Tammy Kimmel
House Committee on Veterans Affairs
June 23, 2004

I would like to thank the Committee for the opportunity to tell my story and present this statement regarding the Servicemembers Civil Relief Act.

In August of 2003 my husband and I signed an 11-month lease on a property with Colonial Real Estate and Property Management in Killeen, Texas. My husband is SFC James Kimmel Jr. He has been an enlisted service member with the Army for 21 years. He was sent to Fort Hood for UFTP training with the 2d Squadron 6th U.S. Cavalry. This training was expected to last no longer than 1 year and then we would PCS to Illesheim, Germany. The lease that we signed had a PCS clause in it allowing us to get out of the lease for a PCS move and only pay a $45.00 administration fee.

On Wednesday, March 31, I went to the Colonial Office and wrote up a 60 day "Notice of Intent to Vacate" and turned in my husband's PCS orders. Three office staff members starting talking to me all at once they were telling me that I could not be released from the lease. They were all telling me different things I could do and handing me paperwork, so it's difficult to say everything that was said to me. The office staff informed me that because of the new "Servicemembers Civil Relief Act" that was passed in December of 2003 they could no longer let the spouse out of a lease early. The office staff said that only the active duty military member would be released from the lease. I reminded them that we had a PCS clause in our contract. The response was " the new law supercedes all previous laws and contracts". They continued on to say they have tried to find a way to let people out of the lease but there is nothing they can do because their business could be closed if they violate the federal law. I told them I was going to go to the legal office at Fort Hood and they said that JAG had already contacted them regarding other families that they have done this to and they don't care what JAG says because JAG has their own interpretation of the law. Mrs. Cooney gave me a copy of part of the "Servicemembers Civil Relief Act" with parts of section 305 and 308 highlighted and said that those sections pertain to a PCS move. They gave me the following list of things I could do:

1. Go to court and prove that it is a hardship for me not to be able to go with my husband at the time he moves to Germany.
2. They could contact the owner of the property to see if she would let me out of the lease.
3. I could find my own renters for the property and pay a $100.00 administration fee for breaking the lease early.
4. I could pay 85% of the rent for the two months remaining on the lease and then Colonial would start the process of renting the property.

I refused to do any of these because I believed their interpretation of the law was incorrect. I am totally appalled that a law that is meant to protect service members was used against us when we needed it the most. The special provisions in our lease state "$45.00 admin fee will be charged on all ETS, PCS moves. $100.00 admin fee will be charged on all early move-outs except ETS, PCS and when the re-letting fee is charged"

On March 31 I found an article in the April 5th Army Times titled "Law Weaves Stronger Safety Net on Leases, Evictions". I contacted the writer of the article, Karen Jowers, and informed her

of our situation. She said that this is just beginning to happen and the Pentagon was aware of it. She told me to contact our legal department at Fort Hood and see how they could help me. Karen did a story about our situation in the next issue of the Army times. Karen contacted both the rental office and their attorney regarding their policy about PCS moves.
On Tuesday, April 6th, Karen contacted Colonial Real Estate who referred her to their company attorney, Mr. Cleff. The attorney told Karen that Colonial DOES let families out of leases for a PCS move. Karen informed Mr. Cleff of my situation and he said he would look into it. On Wednesday, April 7th, Karen called me again to see if I had heard from Colonial. I told her that I had not. She asked me to call Colonial and see if anything had changed. I called Colonial at 09:00 and was told that nothing had changed and I would not be released from the lease early. I relayed this information to Karen who said she would contact the attorney again for his input. At 10:00 Mrs. Cooney left a message on my voicemail that she was very happy to tell me that they found a way to let me out of the lease and I shouldn't worry about anything that everything was in order and I would be released the same as my husband. I was never told the reason why they decided to let me out of the lease. That afternoon I was able to meet with CPT Samuel Gregory in III Corps Legal. I informed CPT Gregory that Colonial had left a message that they found a way to let us both out of the lease. CPT Gregory informed me that JAG has extensive complaints on Colonial and that they have many ongoing problems and was trying to put them "off limits to soldiers". CPT Gregory also said that Colonial often times changes inspection times so that the soldier/spouse isn't available for the move out inspection. He told me to make sure to put it in writing a few weeks before the appointment and send them a confirmation letter regarding the inspection time. He told me to make sure I document everything that happens with Colonial regarding the move out.

From June 1st through June 8th Colonial changed our move out inspection date and played numerous games regarding our inspection. On June 8th my husband's First Sergeant, Eric Hagan and CPT Deirdre Brou of III Corps Legal attended our move out inspection. The inspector, Mary, was very hostile towards us while doing the inspection and she tried to make our witnesses leave. The inspector went back to the house (without us) a third time on June 9th with a contractor who is claiming that we did damage to the walls, doors, and floors and then repaired that damage. Everything they said is already written up in our move in inspection, yet Mary claims it is all new damage.

All of these problems have created a financial and emotional stress on our family. It is already very stressful for a family to complete a military move. This move to Germany is our third in four years. I hope that the law can be clarified so that no other families have to go through this type of stress and financial strain.

Colonial Real Estate Property Management Sales & Investments
576 E. Central Texas Expressway
Indian Trail Plaza
Harker Heights, TX 76548
254-698-4113
Management: Mrs. Cooney
Office Manager: Teresa James

Testimony of Mr. Jason Burris
House Committee on Veterans Affairs
June 23, 2004

Chairman Smith and Members of the Committee,

Thank you for inviting me to testify regarding my experience with the compliance/noncompliance of USERRA. Let me first introduce my self. My name is Jason B. Burris and I have been a soldier with the Oregon Army National Guard since December of 1998, currently a Corporal (E-4) assigned to E Troop 1/82nd Calvary, Woodburn, Oregon.

My experience with USERRA compliance/noncompliance:

In the fall of 2000 I was employed with the United States Postal Service (USPS), Woodburn Office, as a Casual Clerk (Seasonal Employee). After approximately 30 days of employment I attended my normal Drill weekend with the military unit I was and am still currently assigned to (E Troop 1/82nd Cavalry). During the course of the training weekend I injured my shoulder in an Annual Physical Fitness Test (APFT). The injury was later confirmed by a medical professional.

When I attempted to call into the Post Office in which I was currently working I was unable to reach anyone since I had not been provided with a direct phone number for employees. Since I was unable to contact anyone I drove down to the Post Office and personally informed them of my injury and inability to perform my duties. I then went home and proceeded to recuperate from my injury. The following day I was again unable to report to work due to my injury. Having been provided the direct line number the previous morning I called in to report that I would not be able to report. Later that day I received a telephone call from my immediate supervisor at the Post Office in which I was employed. He had called to inform me that my employment was being terminated due to failure to report to work. And in later documentation it was stated by the USPS that my employment was terminated due to "Non-Postal service injury."

The first action I took after the phone call was to call my Unit Readiness NCO and inquire if what they (USPS) had done was legal, as I had never been informed of USERRA, and the protections it provides, by either the military or the USPS, prior to the incident. The response I received from the Readiness NCO was that "No, they can't do that," he then referred me to the local Veterans Affairs Office, who in turn referred me to the US Department of Labor- Veteran's Employment and Training Service (USDOL-VETS).

My next course of action was to confer with my father who is currently the Postmaster of Grand Ronde Oregon. Although he has been in the Postal

service for over 20 years he was not familiar with USERRA before my case was pursued to its current extent. His advice was to document everything and let any investigation run its course.

After contacting the US Department of Labor at the Veterans' Employment and Training Service and meeting in person with Ronald Cannon, Assistant Director, Salem Oregon, I began the process of filling out the necessary forms and documentation to file a formal complaint/grievance. After several months of investigation by the UDOL-VETS they determined that they would not recommend litigation if I were to continue the pursuit of the matter and requested that my case be referred to OSC. I determined that my best course of action would be to refer my case to OSC in the hopes that there could be a resolution to this matter that would recognize that there is a lack of training regarding USERRA within the USPS.

An extensive amount of time (almost 2 years since the incident occurred) had passed before I was contacted by the OSC to resume my involvement in the investigation and review of the case. Several more months passed as I was updated periodically and requested to read, affirm, confirm, and sign documents regarding the case. Settlement negotiations began on this matter late last year and the USPS has already verbally agreed to settle the case outside of the court systems. OSC is currently negotiating the settlement on my behalf and are seeking Corrective Action in the form of Intensive USERRA Training, sponsored by VETS, to each of its supervisors in the Portland District, (Oregon), as well as conspicuously posting USERRA rights information in USPS Employee common areas in the Portland District.

In closing, constructive criticism should not be punitive in nature but corrective in substance. It is in my hopes that the USPS will not stop at just the Portland District being trained in USERRA Rights and regulations, but will continue to provide superior training to all its supervisors throughout all its regions so that another incident such as mine or similar doesn't occur in the future. In regards to the OSC they have done an exemplary job in investigating and interpreting the information provided them by the USPS, USDOL-VETS and myself. The fact that the USPS is willing to settle this issue outside of the court room is proof enough to me that they are willing to take the necessary steps to correct its own actions.

Thank you again Chairman Smith and Members of the Committee for allowing me to come and testify at your proceedings today.

STATEMENT OF
JUDITHE HANOVER KAPLAN
PH.D, J.D., M.S.N., RN, CAC
JUNE 23, 2004

Mr. Chairman and distinguished members of the House Veterans Committee:

Thank you for the opportunity to address you pertaining to my USERRA case. USERRA protection and veterans' employment/re-employment rights are absolutely critical in this time of war with military activations, deployments, and employment returns of Reserve and National Guard military service members.

Background: I am a former Colonel in the United States Air Force Reserve. I joined the Air Force Reserve on August 20, 1990 and was separated from the service on March 31, 2003 by mandatory age mandate. I served 12 ½ years and loved every minute of my military career. I am a disabled veteran resulting from serving during the Gulf War as a battlefield/aeromedical staging nurse. Additionally, I was recalled to active duty to serve post 9/11 for eight months at Keesler Air Force Base in Mississippi. During my service I received many awards including the Meritorious Service Medal and two Air Force Commendation Medals. As a civilian, I am a nurse with a career spanning 37 years including 10 years as a college/university professor, approximately 10 years as a manager/administrator, and the remaining years as an eclectic health/mental health professional. I have been a successful, high performing professional throughout my civilian and military career.

Precipitating situation: On October 26, 1999, I was employed by the Veterans Affairs Medical Center, San Diego as a Title 38, staff nurse/performance improvement consultant, in the Performance Improvement Management Service (PIMS) department. On December 7, 1999, a memo was written for my termination, the day following my presentation of military orders to my supervisor. I was terminated January 14, 2000. This termination was totally unexpected; no verbal nor written warning/counseling was given to me. In essence, six weeks passed between initial employment and termination. The reason given for my termination was "unavailability" – failure to request leave appropriately (military leave) and volunteering for projects without consulting with immediate supervisor (VA choir practice during lunch and offering to teach, if approved by my supervisor, a course entitled "Coping with Grief-Loss-Death, an area in my nationally recognized area of expertise). The reason for my unavailability was military service.

Prior to my employment, my future supervisor and I discussed my military service and obligations. There was a mutual agreement to try to work with the agency regarding my military responsibilities, even though USERRA does not require such an agreement. In a good faith effort on my part, by December 1999, I had begun implementing a transfer to military IMA (Individual Mobility Augmentee) status and was being assigned to Headquarters Air Force (Pentagon), Office of the Surgeon General at Bolling Air Force Base, Washington, D.C. This was done in an attempt to prevent scheduling conflicts

between my military career and my VA employment. This reassignment would remove me from critical mobility status to planned military duty. My supervisor and I discussed, prior to hiring, pending military orders for a national military medical conference that I had already received. We agreed that I would start employment prior to the conference and my supervisor approved the orders and my attendance at the conference. I was eager to start the job because I had searched for an equivalent position for 18 months. Thus, at the beginning of employment, there was one week of military service in which I would be away from the job.

Prior to December, my military and leadership position was at March Air Reserve Base, California and entailed responsibility for the Suicide and Violence Prevention Program and teaching of more than 3,000 Reservists. I attended Reserve training two weekends per month and missed one day from work for preparation and wrap up. This was a bit more mandatory time away from work required until I could transfer my responsibilities to another Reservist; which was projected to take place in January, 2000. We (my supervisor and I) tried to accommodate this scheduling by a compressed work week that did not conflict with military duty.

The incident that triggered my immediate termination was my receipt of orders for an unexpected, critical, and military essential mission in which I was selected to replace an aeromedical staging nurse at Hickam Air Force Base, Hawaii. The orders were from12 to 18 December 1999. I was a specifically and specially trained skilled nurse and there was no one else available to fill the need. All Reserve ASTS medical units had been asked for a volunteer and there were none. I volunteered, conditional upon my supervisor's approval. I tried to reach her by telephone and she was out of state and unavailable. The decision had to be made by the end of that Reserve duty day. Without further input from me, the Air Force Reserve changed my status from volunteer to mandatory because I was available.

I presented the orders to my supervisor on December 6, 1999. She was furious and told me I could not go, which is in itself a USERRA violation. I called Headquarters to try to revoke the orders. This was my effort at good faith cooperation with my agency. When revocation was not possible, because of criticality of the mission, she approved the leave. However, the next day, December 7, she wrote the memo requesting my termination. This was unfortunate because within a month or so the work/military conflict would have been resolved. Despite the absences, I managed to complete all assignments; often on my own time after work or on weekends. At no time did my quality of work with the agency suffer nor did my quality of service with the Air Force.

The termination was especially tragic because my supervisor was a Navy Reserve Officer. I expected her to have tolerance and understanding of my military responsibilities, call to duty, and mobilization; especially with my intent and subsequent action to transfer from the Ready Reserve to IMA status. This transfer meant a loss of income as well as status, yet I was willing to make the change to save my job.

Upon return from active duty, I was scheduled for immediate surgery due to a life threatening medical condition resulting from my service in the Gulf War. This did not effect the termination decision, it had already been made. The day I returned from surgery rehabilitation, January 10, 2000, I was given my letter of termination. I was terminated on January 14, 2000.

Appeal process. Reservists were given briefings on USERRA and employment rights during military training. Immediately after termination, I contacted our military base JAG officer, and he recommended that I contact the Veterans' Employment and Training Service (VETS) within the Department of Labor. In turn, upon advisement, I filed a complaint on January 26, 2000, which VETS investigated. At the conclusion of the investigation, my package was sent to the Office of Special Counsel with the recommendation to prosecute the case because a violation of USERRA had occurred. I was appointed an attorney from the Office of Special Counsel to represent me. My case has taken 4 years to arrive at this settlement point. The wait has caused me to feel like nothing would ever happen. I, in fact, I had given up hope of any type of recovery or resolution. Equally important in my settlement to the monetary award is the restoration of my personnel record; replacement of the termination with a "resignation" to make me whole again. Currently, I am greatly harmed by the current designation. I am also grateful that there will be USERRA training of all leadership personnel at the VA San Diego so this tragedy will not happen again.

I can only state how helpful the attorney with the Office of Special Counsel, Francisco Ruben, has been throughout this time. He has kept me informed of the progress of my case and provided wise counsel. I can only praise his diligence and persistent effort. I must stress how important it is to have legal support when you know you have been wronged by a Government agency, especially one whose mission is to take care of veterans!

Consequences. I walked into a good job that would have used my education and skills. I was committed to do my very best. I wanted to do the good job I always do. Instead, my career was severely damaged. I lost an excellent job, was degraded and shamed, and my employment record kept me from any consideration for a future Federal Government job. Until recently, I was not able to find an equivalent job; necessitating working night shift or as a per diem staff nurse position. I lost self-confidence and suffered from depression. Fortunately, I began to recover and from 2001-2003, I was employed as an Associate Professor of Nursing at Central Connecticut State University. I am currently unemployed due to a geographic move from Connecticut to Virginia as part of my husband's employment. He, a retired Air Force Colonel, has been outraged at what happed to me. Now, facing job interviewing, I am terrified of finding myself supervised by another person with similar leadership characteristics. Positions similar to the one I lost are extremely difficult to find. I believe have been professionally and personally harmed by this employment situation, outcomes, and the four year period before resolution and closure.

Summary. This was a tragic situation. I lost my career and the VA lost a very qualified and skilled nurse leader and clinician. USERRA was critical in protecting me. Legal precedents such as mine are essential to assure continuing employment rights for our Reserve and National Guard military personnel as they are called to service and return to face employment issues. In closing this statement I would like to quote testimony of the VA San Diego Education Service Specialist in the EEO complaint related to my USERA case on June 22, 2000: "I believe that Judithe is one of the most quality people that I've been afforded the pleasure of meeting since I've been here in San Diego, and I believe her loss was a loss to the facility as a whole when she left."

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the committee may have.

STATEMENT OF

THE HONORABLE SCOTT J. BLOCH
SPECIAL COUNSEL
UNITED STATES OFFICE OF SPECIAL COUNSEL

JUNE 23, 2004

Before the

VETERANS' AFFAIRS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

Concerning

THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Introduction

Mr. Chairman, and distinguished members of the Committee, I am honored to speak with you today about the vital role played by the Office of Special Counsel (OSC) in enforcing the Uniformed Services Employment and Reemployment Rights Act (USERRA) and to assure you that OSC is dedicated to enforce the law expeditiously and decisively so that no one's reemployment rights are denied and no one suffers invidious discrimination because of military service.

The country is in the midst of an historic and unprecedented mobilization and forthcoming demobilization of National Guard and Reserve forces. As of June 9, 2004, there were more than 168,000 members of the Air and Army National Guard and Reserve Forces on active duty to fight the global war on terrorism. Those brave and talented servicemen and women have temporarily left their civilian vocations and joined career servicemen, such as my 20-year old son, Marine Lance Corporal Michael Bloch, serving in the First Battalion 7th Marine Regiment, who has been stationed in Iraq once and is soon to be deployed again to Iraq.

The Federal government is the country's largest employer of guardsmen and reservists. Indeed, my Deputy and several other OSC employees are members of the National Guard or Reserve.

God willing, each of the thousands of guardsmen and reservists who are proudly and valiantly defending our freedom will return safely home to their families, friends, and civilian jobs and careers.

In light of their dedication and service to our country, I am truly honored to be among those public servants asked to provide you with information about the important law that was enacted to protect their employment and reemployment rights.

Moreover, I am grateful to be here because today's hearing provides a timely occasion and an appropriate forum to dispel any false impression regarding my agency's commitment to protecting the employment rights of those brave military service members who have served, are currently serving, and who will serve in the uniformed services.

Before becoming Special Counsel on January 5, 2004, there had been criticism of OSC's enforcement of USERRA. I examined therefore that critical commentary in light of OSC's past policies and practices. I concluded that some of the criticism was born of a lack of prompt action on USERRA cases.

Mr. Chairman and Committee members, be assured that regardless of what occurred or did not occur prior to my taking office, OSC, under my leadership, is steadfastly committed to enforcing USERRA. As you know, the statute states that it is the sense of the Congress that the Federal government should be a model employer in fulfilling its statutory obligations under USERRA. I assure you that as head of the independent agency with authority to prosecute violations of USERRA, I share completely in Congress' sense. Indeed, I have given USERRA matters a new found priority so that it now receives the attention it justly deserves.

OSC's Role in Enforcing USERRA

Pursuant to Section 4324 of Title 38, OSC is authorized to act as the attorney for an aggrieved person and initiate legal action against the involved Federal employer before the U.S. Merit Systems Protection Board (MSPB). The OSC is the Federal sector's "special prosecutor" of meritorious USERRA cases. As special prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either via litigation against, or full corrective action settlements with, the involved Federal employer.

Under USERRA, a person who has sought relief through the U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS), may request that OSC review his or her USERRA claim to determine whether it has merit and, if so, represent the person in USERRA litigation before the MSPB.

When such a request is made, OSC receives from the DOL's Regional Solicitor (RSOL) the VETS investigative file and the RSOL's legal analysis of the claim. As special prosecutor, OSC objectively reviews the facts and laws applicable to each claim. Where the Office of Special Counsel is satisfied that a claimant is entitled to relief, then we may exercise our prosecutorial authority and represent the claimant before the MSPB and, if required, on appeal to the U.S. Court of Appeals for the Federal Circuit.

From fiscal years 2000 through 2003, OSC has received more than 50 referrals from VETS. During that time, full corrective action was successfully negotiated on every USERRA claim that OSC determined had merit.

Prior to today, OSC had never filed a USERRA action before the MSPB. Mr. Chairman, unfortunately I had to instruct my staff to file a case this morning with MSPB because an Agency was not willing to provide adequate relief for a service member. I assure you that under my leadership there will be no hesitation to commence litigation against a Federal agency where the evidence shows that such agency has failed to comply with any provision of USERRA.

Improving the Process

As mentioned, I have carefully examined USERRA's referral process since becoming Special Counsel. I have determined that the process creates unnecessary inefficiency.

For example, it is unclear whether OSC has the authority under USERRA to investigate claims or pursue disciplinary action against offending supervisors as we do in other federal

employment violations we enforce. Instead, the investigative function is performed by VETS. Hence, if deemed necessary during our review of a USERRA claim, OSC will request that the involved Federal agency voluntarily provide additional information. Additionally, pursuant to the February 7, 2001, Memorandum of Understanding (MOU) between OSC and VETS, OSC may request VETS investigative assistance. Indeed, pursuant to that MOU, VETS recently assisted OSC in obtaining additional relevant evidence that is important to our current review of a particular case.

While those methods are adequate for OSC to collect additional evidence, the bifurcation of the investigative and prosecutorial steps is not as efficient as OSC's authority to investigate and prosecute allegations of prohibited personnel practices under Title 5.

I agree with British Prime Minister William Ewart Gladstone that "justice delayed is justice denied."

Already, I have made changes to reduce inefficiency by eliminating duplication and delay. First, through our experience in investigating and analyzing prohibited personnel practices such as whistleblower reprisal cases, we have learned that the closer our attorneys are involved in the investigation, the more efficiently we resolve cases. For example, the merger of investigative and analytical functions lessens the chances of "over-investigating" cases that are without merit and increases the chances of identifying cases warranting prosecution. As to the latter, the sooner we find meritorious claims, the sooner OSC can move toward obtaining corrective action on behalf of the aggrieved person.

Thus, at my urging and with my approval, OSC and DOL are drafting amendments to our MOU concerning the referral process. The changes under consideration aim to have OSC's investigative and legal expertise involved at a much earlier stage than under the current referral

process. In particular, we have asked VETS to identify, as soon as practical, difficult cases that would benefit from OSC's early involvement. By alerting our office to such cases, there will be a reduction in duplication of effort.

I appreciate Department of Labor Solicitor Howard Radely and his staff for working closely with OSC in bringing about this change, and I have already seen the benefits of having OSC's enforcement role triggered sooner. In fact, soon after this idea was presented, an RSOL invited OSC's involvement in a USERRA matter prior to referring the matter to us. The OSC contacted the agency and we obtained an extension of the agency-set deadline for the claimant to accept a settlement offer that DOL had procured. The OSC thereafter obtained additional information from the agency and, along with the information obtained by VETS, was able to guide the claimant to a successful resolution of his USERRA claim. But for DOL's cooperation in allowing OSC to be involved earlier than usual, the settlement offer would have expired, and the claimant may not have secured a favorable resolution.

Moreover, OSC has changed the manner in which USERRA referrals are handled internally. Since becoming Special Counsel, I have established a Special Project Unit (SPU). SPU's overriding function is to maximize OSC's efficiency in fulfilling its many crucial missions. The SPU can be likened to a SWAT team that can be quickly deployed to address any deficiency in OSC's ability to fulfill its various missions. When such an issue arises, OSC personnel having particular expertise in the given area are detailed to SPU. For example, SPU is examining new ways to eliminate permanently OSC's chronic backlogs.

Experienced attorneys with specialized knowledge of USERRA have been detailed to SPU and, at my direction, all USERRA referrals are assigned to SPU. By assigning all USERRA referrals to SPU, the matters receive priority attention and consideration. Additionally, OSC is

prepared to detail additional attorneys and investigators to SPU to handle any surge in USERRA referrals as the result of the record number of guardsmen and reservists being demobilized and returning to the Federal workforce.

In summary, OSC has taken steps to speed up the referral process such that meritorious USERRA claims can be more quickly identified and prosecuted. I further pledge to devote whatever additional resources are needed to ensure that the law is vigorously enforced.

Educating the Public

I sense another problem affecting the referral process: lack of awareness among the Federal workforce about OSC's role in enforcing USERRA. Regardless of the merit of a USERRA claim, a person has the right to ask that his or her unresolved claim be referred to OSC. Yet, in fiscal year 2003, OSC received only seven USERRA referrals while the total number of Federal sector complaints is in the hundreds.

That low number of referrals may be the result of either: a) people knowingly choosing to bypass OSC as an avenue of redress, or b) people lacking accurate information about how OSC can protect their employment and reemployment rights. As to the latter, we want the public to know that OSC is here to assist persons who have had their reemployment rights violated and who have suffered discrimination because of their military service. We have already taken steps to send that message.

First, I have changed OSC's prohibited personnel practice outreach program so that it now includes information about OSC's role in enforcing USERRA. Now, each time OSC visits a Federal agency to provide prohibited personnel practice training, Federal employees will be informed of OSC's role in protecting the employment and reemployment rights of guardsman and reservists.

Second, we have also been working closely with the Department of Defense's Employer Support for the Guard and Reserve (ESGR) to ensure that accurate information about OSC is being disseminated more broadly. I extend my appreciation to ESGR for helping get the word out about OSC's vital role under USERRA.

Finally, OSC's USERRA Coordinator —a GS-15 Supervisory Attorney with USERRA expertise— maintains OSC's telephonic and electronic USERRA "hotlines" and regularly provides information and assistance to persons and employers about their respective rights and responsibilities under USERRA.

We are encouraged that these efforts will lead to a greater public awareness of our role, and we will continue to look for additional ways to get out the message that OSC will aggressively enforce the law and protect veterans, reservists, and guardsmen.

As for the seeming reluctance of persons to seek OSC's assistance, allow me to make the most of my appearance here today by setting the record straight:

I say to the brave guardsmen and reservist risking their lives for our freedom, I am completely and passionately committed to the protection of your employment and reemployment rights. Your sacrifices merit no less than OSC's 100% commitment to enforcing USERRA.

I state emphatically before this committee to the heads of every Federal agency that one USERRA complaint is one too many. As Special Counsel, I:

1) will not tolerate discrimination against persons because of their service in the uniformed services;

2) will not permit anything less than the prompt reemployment of persons upon their return from military service; and

3) will prosecute aggressively the failure to comply with any provision of USERRA, and I will not hesitate to file an action before MSPB if necessary.

With that in mind, I challenge every Federal agency to be a model employer under USERRA by protecting fully, vigilantly, and enthusiastically the employment and reemployment rights of its employees and applicants for employment. It is an ambitious goal, but one that is within reach – and it is the right thing to do.

Indeed, it is a goal that Federal agencies must strive to attain; and, to every Federal agency trying to do so, OSC pledges its assistance. As for complacent agencies, be advised that OSC shall not waiver from its commitment to enforce USERRA aggressively, diligently, and zealously.

Conclusion

Mr. Chairman and members of the Committee, regardless of what may have been the past policy, under my leadership; OSC takes its role as the sole prosecutorial enforcer of USERRA seriously. As you can see, we have already moved away from past practice and have given USERRA cases the priority they deserve.

Shakespeare wrote:

> *There is a tide in the affairs of men, which taken at the flood, leads on to fortune. Omitted, all the voyage of their life is bound in shallows and in miseries. On such a full sea are we now afloat. And we must take the current when it serves, or lose our ventures.*

As the Federal government is facing an historic and unprecedented number of guardsmen and reservist returning to their federal careers, OSC will soon be afloat upon a full sea. Consequently, we are properly focused, and newly invigorated to fulfill our vital role under USERRA. We will navigate the current with unwavering commitment to enforce USERRA law expeditiously and

decisively. We will welcome any legislative changes that enhance our ability to enforce this important law.

Mr. Chairman and members of the Committee, I thank you for the opportunity to testify today.

Statement of
The Honorable Dan G. Blair
Deputy Director
Office of Personnel Management
Before the
Committee on Veterans' Affairs
United States House of Representatives

Good morning Mr. Chairman and members of the Committee. I appreciate the opportunity to appear before you today to discuss the proposed legislation expanding health insurance coverage for our deployed service members and the public sector's obligation to veterans under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

President George W. Bush and Office of Personnel Management (OPM) Director, Kay Coles James, are dedicated to ensuring veterans receive the rights and benefits to which they are entitled under all veterans' employment laws, including USERRA. In truth, Director James has both a professional and a personal interest in veterans' rights issues. Her son-in-law recently returned from active duty in the Naval Reserves. So you know her dedication is genuine.

The Federal Government is the Nation's leader in employing veterans. Approximately one out of every four Federal employees is a veteran. The number of veterans in the Federal workforce is roughly 450,000. What's more, the Federal Government employs more reservists and National Guard members than any other employer – about 120,000 in total, of whom nearly 65,000 are military technicians whose civilian Federal employment requires National Guard or Reserve membership.

Today, over 15,000 Federal employees are serving on active duty with the Guard and Reserve. These veterans left their employment and placed their careers on hold to go fight in far-off lands . . . for us. These brave men and women were not forced to serve — it was by choice. They volunteered! These veterans deserve more than our thanks. When they leave the uniformed service, they deserve to know their right to return to public sector employment is protected.

As the leader in veterans' employment, the Director takes OPM's obligation to reemploy these men and women under USERRA very seriously. Again, it is not just the law . . . it is the right thing to do. We administer veterans' entitlements under the United States Code, in both title 5, including veterans' preference in employment and reduction in force, as well as title 38, which covers

USERRA reemployment rights. (Title 38 also governs veterans' entitlement to benefits administered by the Department of Veterans Affairs (VA)).

Health Benefits Extension

First, I will speak to the proposed legislation to expand health benefit premium payments for reservists called up for active military service.

OPM is the Government's chief personnel office, which includes responsibility for administering the Federal Employees Health Benefits (FEHB) Program for Federal employees and annuitants. OPM is committed to finding ways to provide health benefits for our called-up employee reservists who bravely commit themselves to defending our Country.

Before 1994, Federal law allowed employee reservists to continue their FEHB enrollment for up to 365 days while on military duty. USERRA extended the 12 month period to 18 months by amending section 8906 of title 5 to provide up to 6 months additional coverage for reservists called to active duty. USERRA also empowered agencies to pay both the enrollee share and the Government share of the FEHB premium for called-up reservists for up to the entire 18 months.

On May 13, 2002, OPM Director James issued a Memorandum for Heads of Executive Departments and Agencies stating that OPM strongly encourages agencies to assist employees called-up to active duty by paying both shares of the FEHB premium. Director James specifically asked agencies to pay both shares of the premium in support of these reservists supporting Operation Iraqi Freedom, the September 11 terrorist attacks, Kosovo, other ongoing operations and future operations under title 10 of the United States Code.

Last year, we asked agencies how much of the FEHB premium they pay for these reservists. I am pleased to report most agencies pay both shares. Of the 114 agencies surveyed, 96 pay the full premium. We have learned the Postal Service recently indicated they will pay both shares of the premium, retroactive to 2003.

OPM will continue to support our called-up employees in every way possible. If the extension of FEHB coverage to 24 months becomes law, we will again strongly encourage agencies to pay both shares of the health benefits premium for the entire 24-month period. Based on the number of reservists now called to active duty and assuming up to 20 percent are extended to 24 months we estimate the cost to the agencies of the additional premium to be $9.6 million.

USERRA Reemployment Rights

Now, I would like to discuss reemployment rights under USERRA as it applies to the public sector.

Basically, USERRA:

- Prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services;
- Prohibits an employer from denying any employment benefit based on an individual's membership or application for membership, or performance of, application for, or obligation for service in the uniformed services;
- Applies to all executive branch agencies, including the U.S. Postal Service; and
- Provides the right of called-up Reservists and National Guard members, as well as individuals who left their jobs to enlist in the Armed Forces, to be reemployed in their jobs when their military service obligation is over.

OPM is responsible for, and may order the placement of, a returning military service member in a different agency if it is impossible or unreasonable for the original agency to reemploy the returning veteran, if, for instance, the original agency was abolished.

Any Federal employee, permanent or temporary, who performs duty with a uniformed service whether voluntary or involuntary, is entitled to be restored to the position he or she would have attained had the employee not entered the uniformed service, provided the employee:

- Gave the agency advance notice of departure, except where prevented by military circumstances;
- Was released from uniformed service under honorable conditions;
- Served not more than a cumulative total of 5 years, with certain exceptions; and
- Applies for restoration within statutory time limits.

Pursuant to OPM's regulations in part 353 of title 5 of the Code of Federal Regulations, agencies must tell their employees who enter the uniformed service about their entitlements, obligations, benefits, and appeal rights. Also, we note that under the proposed H.R. 4477, *all* public and private employers with employees having USERRA rights, would be required to post a notice, with text to be provided by the Secretary of Labor, of those rights and benefits.

Those employees completing their military service obligation must apply for reemployment within specific timeframes, depending on how long they served. Agencies must reemploy these employees as soon as possible after receiving the reemployment application but no later than 30 days after receipt.

Generally, returning employees must be treated as if their employment had not been interrupted by military service. They must be reemployed in the

position for which they would have been qualified. If they are not qualified for that position and cannot become qualified through reasonable employer efforts, the employee is entitled to be placed in the position he or she left.

Employees reemployed under USERRA are treated like they never left for most purposes including seniority, pay increases, retirement (a deposit to the retirement fund is usually required to cover the military service period), and leave rate accrual. Reemployed veterans are protected from not-for-cause separations (for example, by reduction in force) for 1 year after their return for those who served more than 180 days and 6 months for those who served more than 30 days but less than 180 days.

Applicants or employees who believe that an agency has not complied with the law or with OPM regulations governing USERRA restoration rights may file a complaint with the Department of Labor's local Veterans' Employment and Training Service (VETS) or, if VETS is unsuccessful in resolving the complaint, appeal to the Merit Systems Protection Board.

OPM Actions for Veterans

Director James has directed OPM to take a number of steps to guarantee that the rights and entitlements of our veterans are not compromised as they return to their Federal jobs. We provide guidance to Federal agencies and departments as well as directly to veterans.

- On September 14, 2001, 3 days after the tragedy of September 11, we published extensive guidance to agencies on the rights and benefits of employees called to active duty.
- On October 29, 2001, we published a set of Frequently Asked Questions on military leave.
- We update "VetGuide" on OPM's Web site to ensure it remains the most comprehensive site for veterans' information.

As a part of our general oversight authority, which we execute through Human Resource Operations audits and Delegated Examining Unit (DEU) audits, OPM ensures that veterans are protected against discrimination. Each year, we conduct approximately 20 operations audits and 125 DEU audits Governmentwide. We notify agencies of our coverage of veterans' issues and programs before each review and discuss key OPM initiatives.

Through the newly created OPM Veteran Invitational Program (VIP), we are providing veterans with timely, accurate, and useful information to inform them of their rights and employment opportunities with the Federal Government. The VIP provides assistance to military personnel who are transitioning to civilian life through various informational tools and publications. In this regard, OPM works with Transition Assistance Program offices on military bases to recruit and

assist veterans. We distribute posters, pamphlets, and wallet size information cards as well as inform veterans through an accessible Web link. OPM has also produced the DVD *"What Veterans Need to Know About Veterans' Preference,"* a comprehensive 40-minute video seminar of veterans' preference rights and eligibilities.

In addition to the VIP, Director James and the OPM Team:

- Have developed outreach material to distribute at military bases' Transition Assistance Programs (TAP); Veterans Affairs Regional Offices; Veterans Service Organizations at the national, State and local levels; the U.S. Department of Labor's Veterans Employment and Training Service; and at recruitment fairs, including our recent Nationwide *Working for America* Recruitment Fairs.
- Have improved our USAJOBS Web site to make it more veteran-friendly by adding several veterans' links and additional veterans' employment information.
- Continue to explain veterans' rights at national conventions, conferences, workshops, and service officer training sponsored by the Veterans Service Organizations (VSOs). Also, we have reestablished quarterly meetings with VSO representatives for updates on issues of interest and provide an opportunity for them to share their concerns with OPM. I personally chair these meetings in which we invite leading experts on veterans' employment issues to share information.
- Actively participate as a member of the National Committee for Employer Support of the Guard and Reserve (ESGR), which is a Department of Defense-sponsored organization that seeks to minimize issues and misunderstandings that may arise between Reservists serving on active duty and their employers.
- Are actively involved with and a member of the National Task Force on Disability (assisting with the employment of Disabled Veterans) and the President's National Hire Veterans Committee, on which I personally serve.
- Work with the Department of Labor and the Department of Veterans Affairs to facilitate the employment of veterans, and share program information with the human resources community and others.
- Have staffed booths during the recent series of OPM-sponsored nationwide recruitment fairs to provide information concerning the VIP and other veterans' employment benefits and protections, such as that offered under USERRA. We also conducted workshops at each fair to provide veterans with information on employment preference, special appointment authorities, and complaint procedures.

OPM has been at the forefront of efforts to preserve and protect veterans' rights in Federal employment. We share the view held by Veterans Service Organizations that our Nation owes a debt of gratitude to its veterans. Veterans' preference laws provide a measure of compensation for those brave young men and women who left their families and homes to answer our Nation's call to arms.

Recently, Director James convened a meeting of the Chief Human Capital Officers Council and the leaders of America's Veterans Service Organizations at Walter Reed Army Medical Center. She took advantage of this opportunity to remind attendees that there are no longer any excuses for not using the many hiring authorities available to Federal agencies to bring veterans into the Federal service.

At a recent visit to Walter Reed, Director James stated that OPM will continue "aggressive" audits to ensure veterans' preference law is upheld. The day-long event included a personal message of thanks from Director James on behalf of the nation's 1.8 million civil servants, as well as training seminars and informational workshops for the soldiers conducted by OPM experts. OPM staff offered seminars including one which explained veterans' preference, appointing authorities, basis of preference, and veterans' preference types and benefits. Other seminars and workshops covered navigation of the USAJOBS.opm.gov Web site, resume writing, interviewing skills, and the Federal application process. Staff also met one-on-one with military personnel about the opportunities and benefits within the Government and the processes for obtaining a Federal job.

OPM recently hosted a special Veteran Employment Symposium on veterans' preference and recruitment. The all-day event, attended by agency human capital leaders, human resources specialists, and program managers, focused on advancing existing policies and strategies to recruit veterans into the Federal workforce, and to reiterate that veterans' preference is the law and not a courtesy. As Director James told the audience of over 250 attendees:

"Today's veteran brings the same level of dedication to the job as previous generations of veterans, but in addition they bring many of the high-tech skills needed in the current Federal work force. The Federal Government has a responsibility to help these men and women as they transition back to civilian life. As members of the best trained and volunteer military in the world, veterans have demonstrated an appreciation and competence for excellence and teamwork, and I cannot think of a better source of talent for the Federal Government than those who have completed their service in uniform."

And just yesterday, as part of our VIP, OPM staff conducted an outreach effort at the Department of Veterans Affairs Hampton Rehabilitation Medical Center in Hampton, Virginia. OPM experts provided employment information to veterans seeking careers in the Federal civil service, including training on

maximizing our USAJOBS.opm.gov website in Federal job searches and writing resumés.

Conclusion

The Federal human resources community understands our veterans are a valued resource who have earned, through their very life's blood, hiring preference and reemployment rights we should be so very *honored* to provide. We must never forget disabled veterans have paid a very personal price for our freedom. Veterans are assets to any organization. They bring strength, courage and commitment in a way that cannot be fully imagined by those who have never stood in harm's way for the cause of their country.

I would be glad to answer questions you might have.

Department of Justice

STATEMENT

OF

DAVID C. IGLESIAS
UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO
DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

THE UNIFORMED SERVICES
EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

PRESENTED ON

JUNE 23, 2004

Statement of
The Honorable David C. Iglesias
United States Attorney for the District of New Mexico
Department of Justice

Before The
House Veterans Affairs Committee
United States House of Representatives

Concerning the Uniformed Services
Employment and Reemployment Rights Act

June 23, 2004

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss the Department of Justice's ("DOJ's") representation of service members pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). USERRA provides the fundamental right to reinstatement to civilian employment (under specified conditions) following non-career military service. USERRA also includes a broad anti-discrimination provision, prohibiting discrimination or acts of reprisal against an employee or prospective employee based upon past, current, or future military obligations. The Committee's interest in this important area is especially timely in light of the large number of Reserve and National Guard members serving on active duty in the Persian Gulf and elsewhere.

In this statement, we address first the procedures we follow in handling USERRA claims. Next, we provide pertinent data on the number and disposition of claims we received during

FY 2002, FY 2003, and the first half of FY 2004. Finally, we identify the steps the Department of Justice has taken recently to provide guidance to our attorneys handling USERRA cases and to publicize to employers their obligations under the law.

I. Procedures

Members of the uniformed services alleging a violation of USERRA may obtain representation by DOJ, provided that the member first submits a complaint to the Department of Labor's ("DOL's") Veterans Employment and Training Service ("VETS") and VETS is unable to successfully resolve it.

Where DOL is unable to resolve a complaint and the service member requests referral of his or her claim for consideration of representation, DOL, through its Regional Solicitors ("RSOL"), refers the claim to DOJ's Civil Division. Each referral includes the VETS investigative file, a memorandum prepared by VETS, and a letter or memorandum to DOJ from the RSOL analyzing the merits of the claim based upon the facts and the law and providing a recommendation as to whether DOJ should or should not represent the claimant.

DOJ's Civil Division serves as the gateway for DOL's USERRA referrals. Based upon its review of the investigative file, the VETS memorandum, the RSOL's memorandum, and its own analysis, the Civil Division either forwards the case to a United States Attorney's Office ("USAO") for appropriate action or declines representation and returns the matter to the RSOL because the claim lacks merit. When we return a claim, DOL informs the service member of our decision against representation and reminds the claimant that he or she remains free to pursue the claim through private counsel. Our determination not to provide representation nearly always accords with DOL's conclusion that the claim lacks merit.

When the Civil Division refers a claim to a USAO, the United States Attorney assigns the matter to an Assistant United States Attorney ("AUSA"), who reviews the investigative file and the VETS and RSOL memoranda and then interviews the claimant and potential witnesses. The AUSA may recommend that the United States Attorney decline to represent the service member because further review and investigation demonstrates that the claim lacks merit. If the AUSA determines that the claim is meritorious, and the United States Attorney agrees, the USAO represents the service member. Where representation is provided, the AUSA will typically contact the employer and attempt to resolve the matter without litigation. If this proves impossible, the AUSA will file a complaint against the employer in Federal district court.

Once suit is filed, a USERRA case proceeds much like any other litigation. After the complaint is filed, discovery may be undertaken, dispositive motions may be filed, and a trial and subsequent appeal may occur. Alternatively, a settlement may be negotiated at any stage of the litigation.

One type of case is somewhat unusual: a suit against a State. Recent case law curtailed employee suits against State governments based upon Federal law because of the immunity provisions of the Eleventh Amendment to the Constitution. *E.g.*, Velasquez v. Frapwell, 160 F.3d 389 (7th Cir. 1998) (affirming dismissal of USERRA claim brought by employee against State employer as barred by Eleventh Amendment), *vacated in part*, 165 F.3d 593 (7th Cir. 1999). In response, Congress amended USERRA in 1998, to allow DOJ to sue States in the name of the United States on behalf of State employees. (Alternatively, USERRA allows a service member represented by private counsel to sue in his or her own name in State court, in accordance with the laws of the State.) As set forth below, DOL referrals involving claims

against States represent a relatively small percentage of total referrals in recent years, and in many of those cases DOL recommended against representation.

II. Statistics

FY 2002 and 2003.

The number of USERRA claims DOL referred to DOJ annually has increased approximately 20 percent since September 11, 2001. During FY 2002, DOJ received 52 cases; 14 were referred to USAOs and 38 were returned to DOL because the facts were insufficient for action. During FY 2003, DOJ received 53 cases; 12 were referred to USAOs and 41 were returned to DOL due to a lack of merit. By way of comparison, during FY 2001 and 2000, DOJ received 45 and 43 cases, respectively.

Of the 105 cases DOJ received during FY 2002 and 2003, 16 (or approximately 15 percent) involved claims against States. We declined representation in 12 of the 16 cases because we agreed with DOL's conclusion that the claims lacked merit. Of the 4 claims against States referred to USAOs, DOJ agreed to represent 3 of the claimants and has since settled 2 of those 3 claims without litigation. The fourth case was returned to DOL by agreement between DOL and the USAO.

Of the 26 cases the Civil Division referred to USAOs during FY 2002 and 2003 (including the 4 involving States), the USAOs agreed to represent the claimants in 12 cases and declined representation in 11 cases. 2 cases are under review at the USAOs and no representation decisions have yet been made. The remaining case was returned to DOL by agreement. In the 12 cases where representation was provided, the USAOs settled 4 of the claims without litigation and 4 after filing suit; 3 cases are pending and 1 was closed due to the

claimant's failure to cooperate with the USAO. In the 11 cases where representation was declined, 7 declinations were due to a lack of merit, 3 due to the claimant's failure to cooperate, and 1 due to mootness. A summary of the status or disposition of the 26 cases referred to USAOs during FY 2002 and 2003 is attached. Attachment A.

First Half of FY 2004. During the first six months of FY 2004, DOJ received 31 USERRA claims (12 of the 31 claims presented a similar legal issue and they were referred as a group). The Civil Division referred 5 claims to USAOs and declined representation in 26 because they lacked merit (the 26 declinations included the 12 claims referred as a group). Of the 5 cases referred to USAOs, the USAOs declined representation in 3 and the remaining 2 are presently under review. 14 of the 31 FY 2004 referrals – almost 50 percent – involved claims against States. The percentage is skewed because the 12 referred as a group were against States. Of the 14 claims against States, the Civil Division declined representation in 13 and a USAO declined 1.

One factor which may affect the number of referrals to DOJ is USERRA's new provision permitting the district court to award (in addition to other relief) attorney fees, expert witness fees, and other litigation expenses to a service member who prevails in the litigation and is represented by private counsel. This may provide greater incentives for the private bar to provide representation and also motivate private employers to comply voluntarily to avoid additional costs. On the other hand, members incur no cost when being represented by the Department of Justice. The fee provisions may encourage litigation that could otherwise be avoided. Claimants may choose to retain private counsel and institute lawsuits, rather than seek the assistance of

DOL, which historically has had a high rate of success in resolving these disputes amicably and obtaining employers' voluntary compliance with the law.

III DOJ's Recent Proactive Efforts

DOJ recognizes the important role it plays in enforcing USERRA. We are committed to working closely with DOL in these matters and to representing vigorously USERRA claimants with meritorious claims. In addition to promptly processing USERRA referrals, the Civil Division and the United States Attorneys have taken the following recent steps in this area:

* The most recent edition of DOJ's *Federal Civil Practice Manual* (February 2003) includes a new chapter on USERRA.
* In April 2003, because of the mobilization of Reserve and National Guard members, the Military Issues Working Group of the Attorney General's Advisory Committee sent to all United States Attorneys a memorandum on USERRA to highlight the importance of USERRA cases and provide guidance in handling such claims.
* In June 2003, in a collaborative effort, lawyers from DOJ (both the Civil Division and the United States Attorneys) and DOL presented a Justice Television Network program entitled "A Practical Legal Guide to USERRA for AUSAs." The program was broadcast to United States Attorneys' offices nationwide from our National Advocacy Center.
* In September 2003, a Civil Division lawyer participated in the "USERRA Compliance Assistance" program at DOL headquarters The program was held for

DOD and DOL employees, as well as private employers interested in learning about USERRA.

* Several United States Attorneys have conducted press conferences, lectured at Chamber of Commerce meetings, written articles and, in general, got the word out to the business community and the Guard and Reserve communities that DOJ is taking this issue very seriously.

Summary of Status or Disposition, By Category, of 26 USERRA Cases Referred to USAOs during FY 2002-2003

As of June 9, 2004

Category		Number of Cases
Representation granted		12
a) settled without litigation	4	
b) settled after filing complaint	4	
c) pending (pre-filing)	3	
d) closed due to failure to cooperate	1	
Total:	12	
Representation declined		11
a) due to lack of merit	7	
b) due to failure to cooperate	3	
c) due to mootness	1	
Total:	11	
Under review (no representation decision made)		2
Returned to DOL by agreement		1
Total Cases:		**26**

STATEMENT OF CHARLES CICCOLELLA
DEPUTY ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING
U.S. DEPARTMENT OF LABOR
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON VETERANS' AFFAIRS

June 23, 2004

Chairman Smith, Ranking Member Evans, and other distinguished members of the House Veterans' Affairs Committee, the Department of Labor is pleased to have this opportunity to provide comments on compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA). As you know, USERRA has been very much in the news for nearly three years now. Within days after the attacks of September 11, 2001, the President authorized a partial mobilization, under which up to one million members of the Ready Reserve could be activated for up to 24 months. Since this historic mobilization began, over 385,854 of these citizen-soldiers have been called, of whom 156,667 currently remain on active duty. This includes 76 employees of the Department of Labor, 16 of whom currently remain on active duty.

USERRA is particularly important now as it provides reemployment rights to those men and women called from civilian jobs to serve in the nation's defense. In addition, the law prohibits employer discrimination against veterans and reservists because of their military service or obligations.

HISTORY

USERRA's roots go back to 1940, when the Congress was considering the nation's first peacetime draft. At the same time, the lawmakers resolved to provide newly inducted service members the right to return to their pre-service employers. To achieve this, what came to be popularly known as the Veterans' Reemployment Rights (VRR) law was enacted.

By the early 1990s, the VRR law had become a complex and often difficult patchwork of legislative amendments and court decisions. It was severely tested by the mobilization and subsequent return of some 265,000 Guard and Reserve members from Operation Desert Shield/Desert Storm in 1991. USERRA revised and restructured the VRR law, continuing or clarifying most of its provisions. It also made some substantive changes.

The legislative history of USERRA makes it clear that pre-USERRA case law developed under the VRR remains useful in interpreting the statute, to the extent it is consistent with USERRA. For example, in fulfilling our obligations to administer and help enforce USERRA, we are ever mindful of the two principles laid down by the United States Supreme Court in its first reemployment rights case, *Fishgold v. Sullivan Drydock.* Those principles are as valid today as they were in 1946 – first, that the law is to be construed liberally to the benefit of those it protects; and second, that upon completion of service, the returning servicemember is to be reemployed in the position he or she would have occupied had employment continued during the period of service – this is known as the "escalator principle."

USERRA is experiencing its greatest test due to the current war, as well as Operations Noble Eagle and Enduring Freedom. The Department of Labor believes that USERRA has worked extremely well in the face of its current challenges. I would like to turn now to our USERRA experiences and activities since September 11, 2001.

CURRENT DATA

Since USERRA was enacted in October 1994, the Veterans' Employment and Training Service (VETS) has reported periodically to this Committee on our activities related to the administration and enforcement of the statute. For Fiscal Years 1995 through 2001, which ended September 30, 2001, we reported a steady decline in the number of USERRA cases opened year-by-year. We opened nearly 1,400 cases in FY 1995, but by FY 2001 the number had declined to 895. In the wake of the mobilization that began in September 2001, this trend has reversed.

I should say here that while we have experienced an increase in cases opened, it is not proportional to the enormous number of men and women who have been called to duty. The nation's employer community is overwhelmingly supportive of employees who have been activated under the ongoing mobilization.

During FY 2002, we opened 1,195 new USERRA cases, an increase of less than 35 percent over the previous fiscal year. For FY 2003, the number of cases opened increased again, but at a lower rate. For that year, we opened 1,315 new USERRA cases, an increase of 10 percent over the previous year. As of mid-June, we had opened 979 new cases for FY 2004,

which, on an annualized basis, would yield a further increase of about 10 percent over FY 2003.

I can report with pride that the VETS' staff has been up to the challenge of dealing with the increased USERRA caseload. Despite the increase of USERRA claims filed, our case handling statistics have remained generally consistent with prior years. As of mid-June, we have closed 954 cases during FY 2004. We closed 86 percent of these cases within 90 days after opening and 93 percent within 120 days. Of the cases closed, slightly more than one-third of the claims filed were found to be without merit or the claimants were found to be not eligible for USERRA protection, and about another 25 percent were closed because the claimant withdrew or did not pursue the complaint. One-third of the claims were successfully resolved in favor of the claimant, either because the claim was granted, or a mutually agreeable settlement was achieved. About 7 percent of cases closed were referred for further legal action. Of those cases, about nine in ten were referred to the Department of Justice because they involved a non-Federal employer, and the remaining cases were referred to the Office of Special Counsel because they involve Federal executive agencies.

The percentage of USERRA complaints that are filed against governmental employers has remained fairly consistent in recent years. Since FY 2001, 30 to 35 percent of cases opened each year have involved public employers. Federal cases have made up 10 to 14 percent of the total, while State or local governments have accounted for around 20 percent.

With respect to the types of issues arising under USERRA, we have found that two issues have recurred with the greatest frequency. Those issues involve discrimination of employees, due to their status as either current or former members of the armed forces, and

reinstatement of demobilized service members seeking to return to their civilian employment. Here, the term "reinstatement" refers not only to those employees who were not reemployed in their former positions, but may also include cases in which the employees were improperly reinstated in positions that were not commensurate with the status or pay grade to which they would otherwise be entitled. Thus far, in fiscal year 2004, discrimination accounts for thirty-one percent of issues raised in USERRA cases, and reinstatement accounts for twenty-three percent of the issues raised in those cases.

COMPLIANCE ASSISTANCE EFFORTS

While our staff has been extremely effective at resolving complaints, a major focus for the Department remains the resolution of problems before complaints arise. Secretary Chao has made compliance assistance a priority with respect to all the laws administered and enforced by the Department, including USERRA.

Since September 2001, VETS' staff nationwide have responded to more than 23,000 requests for USERRA information from employers, members of Congress, Guard and Reserve component members, the media and the general public. In addition, we have delivered USERRA briefings and presentations to more than 147,000 people nationwide. Most of these briefings were for members of mobilized Guard and Reserve units, but we have also reached many employers and employer groups. Just a few examples – Web casts for the U.S. Chamber of Commerce, the Society for Human Resource Management, the H.R. Policy Association (formerly known as the Labor Policy Association) and others; two appearances as a featured guest on the national FEDtalk radio broadcast; an appearance on a television broadcast to all the offices of the United States Attorneys and a nationwide

network of National Guard units; a television broadcast co-presented by the Department of Veterans Affairs that addressed USERRA entitlements for disabled veterans; and an interactive conference call with employer members of the Equal Employment Advisory Council.

In fulfilling our statutory obligations to provide help and educational outreach, we have received tremendous support and assistance from colleagues both inside and outside the Department of Labor. The Department's Office of the Solicitor has provided support in all areas, particularly by participating in briefings and helping us respond to technical questions. They also helped draft proposed USERRA regulations, which I am pleased to report are in the final stages of review and I expect the regulations to be available for public comment in September 2004.

Additionally, we have received numerous briefings and invaluable technical assistance support from the Employee Benefits Security Administration. The Employment Standards Administration has helped us develop interpretations of the relationships between USERRA and other laws, such as the Family and Medical Leave Act and the Fair Labor Standards Act. Our web site's resource guide for the general public was revised in March 2003 to update and clarify VETS position on pension issues. And, VETS participates in DOL's Internet based Employment Laws Assistance for Workers and Small Businesses (elaws) Advisor program, whereby the Department provides interactive Advisors for USERRA and other laws. The e-VETS Resource Advisor, a portal site to numerous web sites with information and resources helpful to veterans, has been released and is available through the VETS homepage as well as through the elaws Advisor program on the DOL web site.

In July 2002, a joint memorandum was issued on the "Protection of Uniformed Service Members' Rights to Family and Medical Leave." The memorandum was signed by the Solicitor of Labor, the Assistant Secretary for VETS, and the Administrator of the Wage and Hour Division. The memorandum is posted on the VETS' web site.

Outside of the Department, I would like to mention the extraordinary efforts by our colleagues at the National Committee for Employer Support of the Guard and Reserve (ESGR) headed by General Bobby Hollingsworth, its Executive Director. Their small national staff and more than 4,000 volunteers nationwide perform prodigious service in promoting understanding between employers and their reservist-employees and in helping to informally resolve disputes when they arise. We would be hard pressed to do what we do without ESGR. Additionally, the Office of Personnel Management (OPM) remains a steadfast partner in helping to distribute information to federal agencies on the employment rights of the Reserve and National Guard. The Federal Government is the largest single employer of members of the Armed Forces Reserves, and we are proud of their dedication and commitment. You may be interested to know that Federal agencies have the authority to pay both the employee and government health benefit contributions for up to 18 months when employees are called to active duty. OPM took the lead in promulgating guidance and encouraging Federal agencies to pay the employees' portion of the health benefit premiums. Finally, the Department of Justice and the Office of Special Counsel provide valuable assistance with respect to referred cases and providing technical assistance and outreach on USERRA.

LEGISLATION

I am also pleased to present the Department's views on two introduced bills and a draft bill, which pertain primarily to protecting the employment rights of service members.

Safeguarding Schoolchildren of Deployed Soldiers Act of 2004

H.R. 3779, the "Safeguarding Schoolchildren of Deployed Soldiers Act of 2004," would amend the Servicemembers Civil Relief Act to prevent the disruption of the education of children who change residence based on the military service of their parents. The Department defers to the Department of Defense for comment.

Patriotic Employer Act of 2004

H.R. 4477, the "Patriotic Employer Act of 2004," would amend USERRA to require employers to post a notice of the rights and duties that apply under that Act. The Department is always interested in finding new and effective ways to convey the rights and responsibilities of employers under USERRA. As part of its ongoing compliance assistance efforts, the Department continues to reach out to employers and, as such, is not opposed to this bill.

USERRA Health Care Coverage Extension Act of 2004

Section 2 of the draft bill, "USERRA Health Care Coverage Extension Act of 2004," would extend the period of USERRA continuation coverage from 18 to 24 months for service members who elect such coverage, which would align this coverage period with the length of time reservists can be mobilized under the current mobilization authority. The bill

provides that the 24-month period applies to all continuation coverage elections occurring on or after the date of enactment.

The Department supports the intent of this bill and would be pleased to work with the Committee on any technical issues.

In Section 3, the bill would reinstate the requirement to report on certain cases and complaints in consultation with the U.S. Attorney General and the U.S. Special Counsel. In the past, the Department found this requirement to be useful. As such, the Department has no objection to the reinstatement of these reporting requirements. The Department would defer to the Attorney General and the Special Counsel for their respective views on the implementation of this provision.

CONCLUSION

We remain committed to informing employers about USERRA and continuing our mission of protecting the reemployment rights of our service members, including the 76 service members employed by this Department. Mr. Chairman and members of the Committee, this concludes my statement. I will be happy to answer any questions.

TESTIMONY
OF
CRAIG W. DUEHRING
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE
RESERVE AFFAIRS

BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

THE SERVICEMEMBERS LEGAL PROTECTION ACT OF 2004
DRAFT BILL

THE SAFEGUARDING SCHOOLCHILDREN OF DEPLOYED SOLDIERS ACT OF 2004
H.R. 3779

THE USERRA HEALTH CARE COVERAGE EXPANSION ACT OF 2004
DRAFT BILL

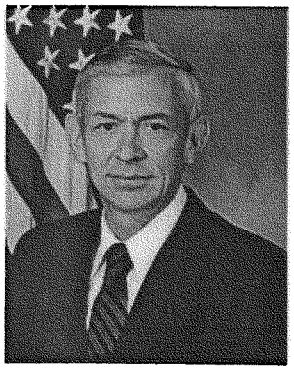
THE PATRIOTIC EMPLOYER ACT OF 2004
H.R. 4477

JUNE 23, 2004

FOR OFFICIAL USE ONLY
UNTIL RELEASED BY THE COMMITTEE

Craig W. Duehring

Principal Deputy Assistant Secretary of Defense for Reserve Affairs



Mr. Duehring is the Principal Deputy Assistant Secretary of Defense for Reserve Affairs. He also performs the duties of acting Assistant Secretary of Defense for Reserve Affairs in the absence of the ASD/RA. He was selected effective July 23, 2001.

As the Principal Deputy, Mr. Duehring serves as the senior deputy to the Assistant Secretary of Defense for Reserve Affairs in policy development and overall supervision of the Reserve forces of the armed forces of the United States. He is the chief staff advisor to the assistant secretary for all functional areas and responsibilities assigned to the office.

Previously, Duehring served on the Bush-Cheney Transition Team and the Department of Defense Transition Team. He was the executive director of the Patrick Henry Center for Individual Liberty, a non-profit 501 (c)(3) educational and charitable foundation located in Fairfax, Virginia. Duehring was the endorsed Republican candidate for the Minnesota 2nd Congressional District in 1998. He is a 28-year military veteran, retiring as a colonel in the U.S. Air Force in February 1996. His final military assignment was as the U.S. Air Attaché to the Republic of Indonesia.

He is a decorated combat pilot, completing over 800 missions during the Vietnam War as a Forward Air Controller. Duehring has flown more than a dozen types of aircraft, amassing over 1,200 hours in the A-10 Thunderbolt II. His military awards and decorations include the Silver Star, the Defense Superior Service Medal, two Distinguished Flying Crosses, three Meritorious Service Medals, 27 Air Medals, two Air Force Commendation Medals, the Vietnamese Cross of Gallantry (individual award),and the Vietnamese Staff Service Honor Medal (1st Class). Duehring is also a recipient of the Air Force's highest individual award for leadership in the senior officer category, the Lance P. Sijan (SIGH-john) Award.

Duehring holds a bachelor of science in History and Sociology from Minnesota State University at Mankato, and a master of science in Counseling and Guidance from Troy State University.

He is a native of Mankato, Minnesota.

Mr. Chairman and members of the Committee, thank you for giving me the opportunity to come before you this morning to discuss several proposed improvements to the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The Department of Defense supports enactment of the Servicemembers Legal Protection Act of 2004, which would amend several provisions of the SCRA to reflect our experience with the SCRA during its first six months. Each proposed amendment in the draft bill addresses a problem that has been encountered by servicemembers and brought to the attention of the Department through the legal assistance programs of the Military Services. Legal assistance attorneys play a key role in ensuring that servicemembers are able to fully exercise the rights and protections afforded by the SCRA, and we have been attentive to their experiences during this initial shakedown period under the new law. The Department passed on its concerns and recommendations to your staff, and you have responded expeditiously with this draft bill and this hearing. I commend and thank the Committee and its staff for this impressive responsiveness to the needs of our servicemembers.

Section 2 of the draft bill would amend the SCRA by defining the term "judgment" to include any judgment, decree, order, or ruling, final or temporary. Defining this term, which is used in several key provisions of the Act, will ensure that servicemembers are not excluded from any of the Act's rights or protections, such as the section 201

protection against default judgments, by a narrower State definition of the term "judgment."

Section 3 of the draft bill would require that written waivers of SCRA rights or protections be executed as an instrument separate from the obligation or liability to which they apply and that any such waiver that applies to a contract, lease, or similar legal instrument be in at least 12-point type. This amendment would protect servicemembers from fine print embedded in, for example, residential and motor vehicle leases that would waive the right under section 305 of the SCRA to terminate those leases under certain circumstances.

Section 4 of the draft bill would simply clarify that the right to request a stay of proceedings under section 202 of the SCRA applies to servicemembers who are plaintiffs in civil proceedings as well as those who are defendants. The applicability of the stay provisions to both plaintiffs and defendants was clear in the predecessor Soldiers' and Sailors' Civil Relief Act, and this amendment would provide the same clarity in the SCRA.

Section 5 of the draft bill has several purposes. First, it would clarify that when a servicemember terminates a residential or motor vehicle lease under section 305 of the SCRA, any obligation of a dependent who is jointly liable under the lease is also terminated. This clarification is essential if the full intent of this lease-termination

provision is to be realized and military family members are to have the flexibility they need when a servicemember is deployed. For example, this amendment will ensure that if a servicemember's spouse chooses to return to his or her hometown and the family support network there, he or she will not be deterred from doing so because of a residential lease obligation.

Second, section 5 would also extend the ability to terminate a motor vehicle lease upon a permanent change-of-station to servicemembers stationed in States or Territories outside the continental United States, such as Alaska, Hawaii, and Puerto Rico. This amendment would simply correct the unintentional exclusion of these servicemembers resulting from the current wording of section 305 of the SCRA.

Third, section 5 would define the term "military orders" to mean official military orders, or any notification, certification, or verification from a servicemember's commanding officer with respect to the servicemember's current or future military-duty status. This amendment recognizes that, in the case of deployments, servicemembers are usually not issued official orders that could be provided to a lessor as required by section 305 of the SCRA when terminating a residential or motor vehicle lease. Under this broad definition of "military orders", a servicemember could satisfy this procedural requirement by presenting the lessor with, for example, a letter from his or her commanding officer confirming the particulars of an upcoming deployment.

Fourth, section 5 would clarify that the deployments that trigger a servicemember's ability to terminate a residential or motor vehicle lease under section 305 of the SCRA include not only deployments with a military unit, but also deployments by individuals in support of a military operation. This amendment recognizes that some servicemembers deployed in support of a military operation do not deploy with a unit, but as individuals.

Section 6 of the draft bill would amend section 511 of the SCRA to state that a tax jurisdiction may not impose a use, excise, or similar tax on the property of a nonresident servicemember when the laws of the tax jurisdiction fail to provide a credit against such sales, use, exercise, or similar taxes previously paid on the same property to another tax jurisdiction. This amendment is needed to protect servicemembers from double taxation, which is possible under the current wording of section 511, as interpreted by the Supreme Court (Sullivan v. United States, 395 U.S. 169 (1969)) when it considered identical language in the Soldiers' and Sailors' Civil Relief Act.

With respect to H.R. 3779, the Safeguarding Schoolchildren of Deployed Soldiers Act of 2004, we note that we are not aware that the situation that the bill addresses is at all widespread or merits Federal legislation. In fact, it has not come to our attention through legal assistance or reserve component channels. Since the Global War on Terrorism and the ongoing reserve mobilization began, these channels have proved extremely effective in identifying deployment related problems servicemembers and their families are experiencing. This leads us to believe that the incidence of children of deployed servicemembers suddenly being treated as nonresidents of school districts where they have previously been considered residents may be isolated to no more than a few school districts, and that to the extent it exists, this problem may be better addressed at the State level than through Federal legislation.

The Department of Defense supports section 2 of the draft USERRA Health Care Coverage Extension Act of 2004. Increasing from 18 months to 24 months the maximum period of employer-provided health care plan coverage that an employee covered by USERRA may elect to continue is an important amendment that will align this coverage period with the length of time for which reservists can be mobilized under the current mobilization authority.

We defer to the Department of Labor on section 3 of the draft bill, which would reinstate the requirement for a comprehensive annual report on the disposition of cases filed under USERRA.

The Department also defers to the Department of Labor on section 2 of H.R. 4477, the Patriotic Employer Act of 2004, which would require employers to post notice of USERRA rights, benefits, and obligations in the place of employment of individuals protected by that Act.

I would again like to thank the Committee and its staff for all of your efforts on behalf of our servicemembers. The Department of Defense appreciates this opportunity to discuss these important matters with you.

STATEMENT OF BRARRY COX COL, ARNG
DIRECTOR OF OMBUDSMAN SERVICES
NATIONAL COMMITTEE FOR EMPLOYER SUPPORT
OF THE GUARD AND RESERVE

BEFORE THE
HOUSE
COMMITTEE ON VETERANS' AFFAIRS

THE SERVICEMEMBERS LEGAL PROTECTION ACT OF 2004
DRAFT BILL

THE SAFEGUARDING SCHOOLCHILDREN OF DEPLOYED SOLDIERS ACT
OF 2004
H.R. 3779

THE USERRA HEALTH CARE COVERAGE EXPANSION ACT OF 2004
DRAFT BILL

THE PATRIOTIC EMPLOYER ACT OF 2004
H.R. 4477

JUNE 23, 2004

FOR OFFICIAL USE ONLY
UNTIL RELEASED BY THE COMMITTEE

Colonel Brarry A. Cox
Director
Military Member Support and Ombudsman Services
National Committee for Employer Support of the Guard and Reserve

After serving nearly ten years as a Non-Commissioned Officer, COL Brarry A. Cox was commissioned from the West Virginia Military Academy's Officer Candidate School. He earned a Bachelor of Arts degree from the University of Charleston and he holds a Master of Science degree in Management. His military education includes: the Engineer Officer Basic and the Ordnance Officer Advanced Courses, Command and General Staff Officer Course, the U.S. Army War College Defense Strategy Course. He is a 1999 graduate of the resident course at the U.S. Army War College, Carlisle, Pennsylvania. COL Cox has completed these additional military courses: U.S. Army Command and General Staff College Battalion Pre-Command Course; Army Logistics Management College Manpower and Force Development Course; US Transportation Command Joint Deployment Systems Course; Army Management Engineering College Manpower Staffing Standards and Organizational Efficiency Review Techniques Courses; C&GSC Force Development Officer Course; NBC Defense Officer Course and the Maintenance NCO Advanced Course. In 1978, while serving as an E6 in the 3664th Maintenance Company, COL Cox was selected as the WVARNG Soldier of the Year.

COL Cox served fourteen years in the WVARNG in a variety of NCO and commissioned officer positions. He held a full-time Administrative Supply Technician position in the 3664th Maintenance Company prior to attending Officer Candidate School. Since entering the National Guard Bureau Title 10 program in 1986 he has completed assignments as a Reserve Officer Training Command Assistant Professor of Military Science at the University of Wisconsin, Stevens Point, Wisconsin; Manpower Support Officer, National Guard Bureau, Edgewood, Maryland. Overseas assignments include Army National Guard Contingency Planner, V Corps, Frankfurt, Germany and Plans, Policy and Training Officer, 1st Armored Division, Bad Kreuznach, Germany. COL Cox served for three years in the Pentagon as Chief, Army National Guard General Officer Management Office, Washington, DC. He was selected to participate in the NGB Command/Leadership Program and commanded the 1st Battalion, 77th Brigade Troop Command, West Virginia Army National Guard. Upon completion of his command tour he assumed the duties as Chief, ARNG Staff Management Office and was assigned as the Director of Training, Office of the Secretary of Defense/Reserve Affairs from July 2001 through June 2003.

Among his decorations are the Defense Meritorious Service Medal, Meritorious Service Medal (with 2 Oak Leaf Clusters), Army Commendation Medal (with 4 Oak Leaf Clusters), Army Reserve Component Achievement Medal (7th Award), National Defense Service Medal, Humanitarian Service Medal (2nd Award), Armed Forces Reserve Medal (2nd Award), Non-Commissioned Officer Professional Development Ribbon (with Numeral 3 Device), Overseas Service Ribbon (with Numeral 2 Device), Army Service Ribbon, Army Reserve Overseas Training Ribbon (with Numeral 2 Device), the Office of the Secretary of Defense Identification Badge, the Department of the Army Staff Badge and the US Army Excellence in Competition Badge (Bronze – Rifle).

Chairman Smith and members of the Committee: I am Col Brarry Cox, the Director of Ombudsman Services for the National Committee for Employer Support of the Guard and Reserve (ESGR). ESGR is the Department of Defense (DOD) organization whose mission is "to gain and maintain support from all public and private employers for the men and women of the National Guard and Reserve as defined by demonstrated employer commitment to employee military service."

The Uniformed Services Employment and Reemployment Rights Act (USERRA) states that, "It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter." Mr. Chairman, the fact that we are here today is testimony to your continued commitment to that statement.

Background:

ESGR consists of a small national staff and more than 4,000 volunteers, in 55 Committees, for each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. We recently established our 55th Committee in Europe.

The National Committee for Employer Support of the Guard and Reserve (NCESGR) is a Department of Defense volunteer organization. NCESGR provides free education, consultation, and if necessary mediation with employers of Guard and Reserve employees. Support is provided through outreach and education to employers and military members and through our Ombudsman services. Employer support is critical to an individual's decision to remain in the Reserves under normal conditions. Lengthy and recurring mobilizations exacerbate the issue. When employees are absent from their employers for extended periods of time it is crucial that communication is clear, concise and timely. Employers want predictability: when will my employees go and when will they return from military service?

NCESGR provides community-based programs to encourage employer support of employees who are members of the Reserve components. ESGR has implemented a web-based network to enhance communication with ESGR local volunteers, RC service members and their employers. Our 'Statement of Support,' 'Boss lift,' 'Briefing with the Boss,' and Awards programs build an employer support network comprised of both military, civilian and government-employer leaders who are capable of facilitating communication, education and exchange of information.

Both private and public sector employers need to understand their USERRA responsibilities with respect to their Reserve employees and also the importance of the Reserve components (RC) to the national defense. NCESGR's employer outreach program supports education and awareness of USERRA among Human Resource professionals. The Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA) sponsors NCESGR research studies to determine the specific impact on employers and how the shared manpower assets usage can be efficiently managed.

When it becomes necessary, our Ombudsmen Directorate-supported by a full-time staff of five and about 700 volunteer "Ombudsmen"-performs informal mediation efforts. Each Ombudsman has been formally trained on USERRA. During fiscal year 2003, we (ESGR) handled more than 22,000 inquiries from National Guard and Reserve personnel and their civilian employers. These volunteer Ombudsmen are to be commended for their work in support of our employers and their Guard or Reserve employees. We seek to avoid litigation and to resolve these cases at the lowest level possible. Historically, our success rate exceeds 90%.

History:

Since 1940, persons leaving civilian employment for voluntary or involuntary military service have had the legal right to reemployment in their civilian jobs after satisfactory completion of their service. In its first case construing the reemployment statute, the Supreme Court held that the law is to be "liberally construed for he who has laid aside his civilian pursuits to serve his country in its hour of need." *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 285 (1946).

In recent years, the reemployment statute has been discussed primarily in connection with the National Guard and Reserve, but the law applies equally to both the Regular and Reserve components of the Armed Forces.

USERRA's scope of applicability is unique among Federal labor-management laws. USERRA applies to the Federal Government (as a civilian employer), to the States, to political subdivisions of States (counties, cities, school districts, etc.), and to private employers, regardless of size. So we at ESGR extend our outreach efforts and service to the entire spectrum of employers – public and private.

Under section 4319 of USERRA, 38 U.S.C. 4319, United States employers and foreign entities controlled by United States employers are bound by USERRA all over the world. This provision is one of the reasons we established our 55th committee in Europe, to support our Reserve component members who live and work in Europe.

Enforcement:

I understand that the focus of this hearing is the enforcement of USERRA with respect to public sector employers. Our role is to attempt to resolve issues before enforcement action becomes necessary.

The Department of Labor- Veterans' Employment Training Service (DOL-VETS) has told us that they open about 1,300 USERRA cases per year. As I have stated, we (ESGR) handled about 22,000 inquiries last year. I cannot tell you that there is any direct correlation between our 22,000 inquiries and the 1,300 cases opened by DOL-VETS. Since there is no requirement for complaints to be routed through ESGR prior to going to DOL-VETS, I do not know how many of the DOL-VETS claimants contacted us first and how many went to DOL-

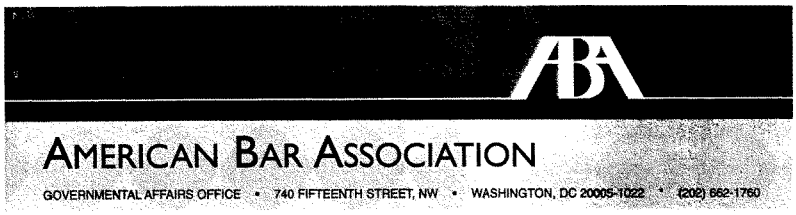
VETS directly. Once an individual makes a formal complaint to DOL-VETS, this becomes a Federal law enforcement matter and we (ESGR) no longer pursue it.

Proposed Amendment to USERRA

Section 4317(a) of USERRA, 38 U.S.C. 4317(a), permits an employee leaving a position of employment for voluntary or involuntary service to elect continued health plan coverage through the civilian job. The employer is permitted to charge the employee up to 102% of the entire premium, including the part the employer normally pays in the case of active employees. After 18 months of absence from the civilian job, the employer is permitted to discontinue this arrangement. The proposed "USERRA Health Care Coverage Extension Act of 2004" increases that period from 18 months to 24 months. This change would bring coverage in line with the period a Guard or Reserve member may be involuntarily called to active duty under the partial mobilization authority. (Section 12302 of title 10)

Conclusion:

The National Committee for Employer Support of the Guard and Reserve will continue aggressive outreach efforts in support of our mission to gain and maintain support from all public and private employers for the men and women of the National Guard and Reserve. The support provided by all employers, both public and private, during this global war on terror has been tremendous. When issues do arise and personal contacts are made, the overwhelming majority of the issues are settled through mediation conducted by ESGR volunteers. Indeed, many employers go beyond the requirements set forth in USERRA. Providing differential pay, extending insurance benefits and forming family support within the organization are commonplace across this great nation. America's employers are inextricably linked to our national security. Mr. Chairman and members of the Committee, this concludes my statement



Statement of

DENNIS W. ARCHER, PRESIDENT

of the

AMERICAN BAR ASSOCIATION

submitted to the

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

on the subject of the

SERVICEMEMBERS LEGAL PROTECTION ACT OF 2004

JUNE 23, 2004

Mr. Chairman and Members of the Committee:

As President of the American Bar Association, I commend you for your continued vigilance in protecting the rights of our servicemembers since the passage of the Servicemembers Civil Relief Act (SCRA) late last year. Since enactment of the SCRA, we have been made aware of continuing and new inequities servicemembers may face as a consequence of their service. Accordingly, we are pleased with the expanded protections and clarifications presented by the Servicemembers Legal Protection Act (SLPA) of 2004.

The ABA, which has over 400,000 members, has a history of partnering with the armed forces that dates back to the 1940s. For example, we have assisted the military in the provision of voluntary legal services, supported uniform procedural methods for the execution and recognition of military wills, and following the terrorist attacks of September 11, 2001, we mobilized nationally to provide legal assistance to reservists who had been called suddenly to active duty. I consider these issues to be a priority of my term as ABA President and to that end created an ABA Presidential Working Group on Protecting Servicemembers Rights. That group is currently engaged in a national survey of state laws and issues concerning our soldiers, sailors and their families, and we anticipate the release of their report by Fall 2004.

The original SSCRA and SCRA were intended give our servicemembers peace of mind by granting special protections to their rights and property interests while they serve our country. Those rights included temporarily suspending or postponing civil proceedings (such as bankruptcy, foreclosure, civil lawsuits and divorce) at which their civil rights might be prejudiced in their absence. They also include relief from enforcement of certain lease provisions against a servicemember or his or her family members. To the extent that the operation of the law does not accomplish this, we support appropriate change to the law. We believe the SLPA would accomplish this in several ways.

For example, when a servicemembers appearance in court materially affects his or her ability to prosecute or defend an action, the ABA supports an automatic stay in such civil proceedings. Currently, SCRA provides this protection to defendants, ensuring that a person's petition does not constitute an appearance or otherwise result in a default judgment. There are similar occasions, however, in which the servicemember may have been wronged and seeking redress. In such instances the servicemember should not be precluded from seeking a temporary stay. We support the expansion of this protection, as proposed in Section 4 of the SLPA.

Also, the SCRA provides a special provision that permits the early termination of leases following a call to active duty or upon deployment or permanent changes of station (PCS) orders. However, in the case of joint leases, lessors have sometimes considered a spouse to remain liable for the lease terms – precisely the same kind of distraction the SCRA was designed to prevent. Accordingly, we support the change enumerated in Section 5 of the SLPA that would extend the same SCRA protections to a servicemember's dependents. Even so, we would encourage the Committee to consider additional relationships that

may be similarly affected, such as in the case of a joint lease with a parent or other family relationship.

We also recognize that the intent of the SCRA is to provide servicemembers certain protections attached to defining events, such as a legal judgment or orders. Given that servicemembers must similarly obey all forms of judgments, including decree, order, or rulings, we support the expansion of those relevant definitions, as indicated in Section 2. Also, military personnel may be ordered to relocate in various ways. Some may be by individual orders naming the individual. In other situations, the individual's unit may be ordered to deploy or relocate and there may be no separate orders naming the individual. By clarifying the definition of "military orders," the intent of the SCRA is fulfilled regardless of the form of the relocation order.

Our nation's military presence in the Middle East, including Iraq and Afghanistan, will continue beyond the anticipated transitions of power. We also face other situations around the world and will continue to draw on our active duty and reserve servicemembers for sometimes extended tours of duty. As we continue to call on millions of young men and women now and into the future to meet these challenges, so too does our obligation to accord them safeguards and protections to give them the peace of mind to focus on their tasks at hand. As they fight on front lines to protect people in foreign lands and Americans they will never meet, we ought to respond with similar sacrifice to ensure that their loved ones will not suffer as a consequence of their service. As these brave men and women are willing to make the ultimate sacrifice in defense of freedom and liberties we know in America, America ought to ensure that they of all people have the opportunity to enjoy those rights free from prejudice.

Thank you for the opportunity to provide these comments on these important issues.

DENNIS WAYNE ARCHER

PRESIDENT, AMERICAN BAR ASSOCIATION

Dennis W. Archer, former Detroit mayor and Michigan Supreme Court Justice, becomes president of the American Bar Association at its annual meeting in San Francisco in August 2003. Archer, an African American, is the first person of color elected to the highest office of the association.

Archer served two four-year terms as mayor of the city of Detroit (1994-2001), and was president of the National League of Cities in 2001. After leaving the mayor's office, Archer was elected chairman of Dickinson Wright PLLC, a 200-person, Detroit-based law firm with offices in Michigan and in Washington, D.C. He sits on the corporate boards of Johnson Controls Inc., Compuware Corporation and Covisint, and North Carolina Mutual Life Insurance Company.

Archer earned his Juris Doctor from Detroit College of Law in 1970. He began practicing law thereafter, working as a trial lawyer and a partner in several Detroit firms, and serving as associate professor of the Detroit College of Law and adjunct professor at Wayne State University Law School.

In 1985 Gov. James Blanchard appointed Archer an Associate Justice of the Michigan Supreme Court. He was elected to an eight-year term the following year. In his final year on the bench, Archer was named the most respected judge in Michigan by *Michigan Lawyers Weekly*.

Archer has long been active in the organized bar. He has served as president of the Wolverine Bar Association in 1979-80, the National Bar Association in 1983-84, and the State Bar of Michigan in 1984-85. He is a Life Member of the Fellows of the American Bar Foundation and the National Bar Association; a Fellow of the International Society of Barristers; and Life Member of the Sixth Circuit Judicial Conference.

Archer has achieved national, state and municipal leadership positions despite humble beginnings. Born in Detroit, he was raised in Cassopolis, Mich., and took his first job at the age of eight, as a caddy for a local golf course. Archer held a series of odd jobs, working his way through college and law school. He earned a Bachelor of Science degree in Education from Western Michigan University, and then taught learning disabled children at two Detroit public schools from 1965-70, while he earned his law degree from Detroit College of Law.

In 2000, Mayor Archer was named Public Official of the Year by *Governing* magazine. He received an Award of Excellence and was named 1998 Newsmaker of the Year by *Engineering News-Record* magazine, a sister publication of *Business Week*. In addition, Archer has been named one of the 25 most dynamic mayors in America by *Newsweek* magazine; one of the 100 Most Influential Black Americans by *Ebony* magazine; and one of the 100 Most Powerful Attorneys in the United States by the *National Law Journal*.

Archer is married to Judge Trudy DunCombe Archer of Michigan's 36th District Court. They have two sons, Dennis W. Archer, Jr., and Vincent DunCombe Archer, both of whom are graduates of the University of Michigan.

STATE OF ILLINOIS
OFFICE OF LIEUTENANT GOVERNOR PAT QUINN
STATE CAPITOL, SPRINGFIELD, IL 62706 217-782-7884 - JAMES R. THOMPSON CENTER, 100 W. RANDOLPH, CHICAGO, IL 60601 312-814-5220

STATEMENT OF
ILLINOIS LIEUTENANT GOVERNOR PAT QUINN
BEFORE
THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS

WEDNESDAY, JUNE 23, 2004

Chairman Smith, Ranking Member Evans, my Chicago neighbor Congressman Gutierrez and other members of the House Committee on Veterans' Affairs, thank you inviting me to address this Committee today on behalf of the Council on State Governments, the National Lieutenant Governors Association and the nearly 400,000 National Guard members and reservists called to active duty since the events of September 11, 2001.

In January of this year, I traveled to Baghdad to spend the holidays with our troops. As the first statewide elected official to tour the combat zone, I bunked in military tents and joined the troops at their mess halls for meals. I witnessed first-hand the difficult conditions they confront daily, as well as their determination and resolve.

I told the Illinois National Guard members and reservists who I encountered about the innovative "Illinois Military Family Relief Trust Fund" set up this year to lend a helping hand to the families of those called to active duty. My message to the hundreds of troops I met with – particularly the citizen soldiers who abruptly left behind families and jobs – was simple: "We've got your back."

The two bills this Committee is considering – *the "Patriotic Employer Act of 2004"* and the *"Safeguarding Schoolchildren of Deployed Soldiers Act of 2004"* – are just two common sense ways for us to assure citizen soldiers that "we've got your back", and I strongly urge your support for these initiatives.

The *"Uniformed Services Employment and Reemployment Rights Act"* (USERRA) is increasingly important as more and more National Guard members and reservists are called up. However, USERRA's protections are limited to citizen soldiers called to active duty status once they are employed.

-more-

Discrimination against National Guard members and reservists who are prospective employees persists, so in the Land of Lincoln we recently approved the landmark *"Illinois Citizen Soldier Initiative of 2004"* which amends our state Human Rights Act to outlaw discrimination against Guard members and reservists in hiring practices, job promotions, housing opportunities and financial lending.

My office has gone to bat for several service members who became victims of employment discrimination when they answered the call to duty. One case involved Jeremiah Johnson, an Illinois National Guard member who was a Rockton, Illinois police officer. When his unit was activated, the police chief fired him in clear violation of USERRA. The Illinois Attorney General and my office have intervened, and Officer Johnson has gone to federal court to be reinstated to his job.

Another case was that of SFC Anthony Markucaitis, a 56-year old Vietnam vet from a Chicago suburb, whose employer notified him on November 11, 2003 - Veterans' Day - that he had been terminated since his tour of active duty had extended beyond the company policy of nine months. SFC Markucaitis was in Iraq on active duty at the time, so my office worked with his employer - a major insurance company - to rescind the termination.

Employers who value and protect any citizen soldiers in their workforce are to be commended. But every employer, supervisor and floor boss in the United States is hereby put on notice that discrimination against National Guard members and reservists will not be tolerated.

The "Patriotic Employer Act" reinforces that message loud and clear. Rights are often violated by frontline supervisors who just don't understand the law. House Bill 4477 ensures awareness of the law. Employers already post information about job safety, equal employment opportunity laws, rights of the disabled and other protective statutes, so this initiative should earn widespread support.

The anxiety, loneliness and tough financial times often experienced by the children of citizen soldiers are sometimes compounded by a change of residence due to the military service of one or both of the child's parents. Perhaps a child is forced to move to another town or state to live with relatives when the parent is called up. The *"Safeguarding Schoolchildren of Deployed Soldiers Act of 2004"* (House Bill 3779) requires local public school districts to waive residency requirements and fees for such cases. In one Illinois county, for example, the non-resident fee is $7,000! House Bill 3779 remedies this.

At least 40 percent of National Guard and reservists families suffer financially when the breadwinner is called to active duty due to the disparity between military salary and civilian pay.

-more-

In Illinois, we've spearheaded the effort to set up the innovative Illinois Military Family Relief Fund to aid the families of National Guard members and reservists. More than $1.3 million has been distributed to 2,500 families to help with rent, utility bills and other expenses.

We've been working with other lieutenant governors and public officials - Republicans and Democrats alike - to set up our model Military Family Relief Fund in other states across the nation. Two states – Maine and Wyoming – have already enacted their own versions of the Military Family Relief Fund, a similar bill awaits the Governor's approval in South Carolina, and legislatures in ten other states are now considering it. Also, the National Lieutenant Governors Association unanimously passed a resolution endorsing the concept of state Military Family Relief Funds.

This is a national grassroots movement, and to learn more about "protecting those who protect us", I invite you all to visit a website set up by my office (www.OperationHomefront.org) which informs military personnel of their rights and describes how everyday citizens can help the troops. Having registered more than 7.2 million hits, the site is among the most frequented military sites in government.

As Congressmen Evans and Gutierrez know, President Abraham Lincoln reminded us of our duty as citizens to *"...care for them who have borne the battle."* The legislation before you today helps us carry out his message, and signals our citizen soldiers in Iraq, Afghanistan and other war zones that 'we've got your backs.'

###

Status of Military Family Relief Bills Across the Nation
As of June 22, 2004

***MAINE:** passed both House and Senate and was signed by the Governor on 5/11/04.

***WYOMING:** SF0059 was signed by Governor on March 9, 2004. They have paid out $35,000 to 15 families as of 6/8

***SOUTH CAROLINA**: Bill S0767 Passed the Senate and House.

***CALIFORNIA**: Bill 1928 passed the House and went to the Senate. 5/13 bill was referred to the Revenue and Taxation Committee. The original bill was amended to exclude the Reserves. Passed out of Rev. and Tax on 6/9 and referred to appropriations. Appropriations hearing date is 6/28.

***CONNECTICUT**: Raised Bill No. 317 Establishes the Connecticut National Guard Relief Account, and places a check-off on Tax return. On 3/09/04 bill was referred to appropriations committee.

***IOWA**: Senate file 428 and Hse file 522 both in committee.

***MICHIGAN**: Introduced HB5953 in the House, will go to committee on 6/22

***MINNESOTA**: House Bill HF2817 was introduced on 3/8/04 to establish a tax check-off to fund grants for NG and Reserves on active duty. 3/10/04 Bill referred to committee on Taxes.

***MISSOURI**: SB1336 passed the Senate and is in the House.

***NEW YORK**: Sen. Larkin introduced S6627 with 22 cosponsors in the Senate. Referred to committee on Rules House bill has PASSED.

***NORTH CAROLINA**: House bill 1481 to establish tax check-off box to fund Soldiers and Airmen Assistance Fund.
May 17 referred to Rules committee.

***PENNSYLVANIA**: HB2509 introduced in the House and referred to finance committee.

***RHODE ISLAND**: Bill H7834 Passed out of House and Senate finance.

RESOLUTION URGING ADOPTION BY STATE LEGISLATURES OF "MILITARY FAMILY RELIEF FUNDS" TO HELP THE FAMILIES OF NATIONAL GUARD MEMBERS AND RESERVISTS CALLED TO ACTIVE DUTY IN THE FIGHT AGAINST TERRORISM

Whereas, since September 11, 2001, more than 350,000 National Guard members and reservists have been called to active duty from across the nation, and

Whereas, a higher percentage of the United States' fighting forces are National Guard members and reservists than ever in our history, and

Whereas, many families of reservists and National Guard members face serious financial hardships since the military pay of a soldier - typically the family's breadwinner - is far less than their civilian salary, and

Whereas, the families of these "citizen soldiers" make enormous sacrifices while their loved ones are away, and

Whereas, President Abraham Lincoln noted our duty as citizens "...to care for them who have borne the battle," and

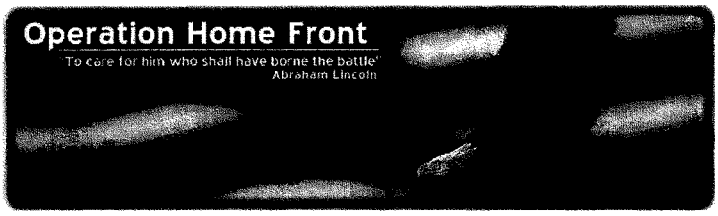
Whereas, a model program has been set up – the "Illinois Military Family Relief Fund" – to enable taxpayers to directly contribute to a fund on their state income tax forms to help military families with such expenses as rent and groceries, and

Whereas, a "Military Family Relief Fund" is an efficient and voluntary method for citizens on the homefront to express their appreciation for National Guard members and reservists on the frontlines,

Therefore be it resolved, that the National Lieutenant Governors Association supports the concept of a "Military Family Relief Fund" to lend a hand to the families of National Guard members and reservists called to active duty, and urges adoption of such a fund in every state.

On January 23, 2004, offered by:

Lt. Gov. Pat Quinn (D-Illinois)
Lt. Gov. Andre Bauer (R-South Carolina)



Illinois Military Family Relief Fund

The Illinois Military Family Relief Fund, signed into law in 2003 by Governor Rod R. Blagojevich, provides monetary grants (see below) to families of Illinois National Guard members and Illinois residents serving in the U.S. Armed Forces Reserve components who were called to active duty as a result of the September 11, 2001 terrorist attacks.

Illinois Military Family Relief Fund grants (listed below) are intended to help families defray the costs of food, housing, utilities, medical services, and other expenses that become difficult to afford when a wage-earner has temporarily left civilian employment to be placed on active military duty.

Beginning in 2004, donations were accepted through a voluntary check-off on Illinois individual income tax forms.

- **Status-based grant: $500**
- **Need-based grant: $2,000 (maximum)**
- **Casualty-based grant: $1,000**

For further information go to our website www.OperationHomeFront.org

Statement of
The Honorable Harry Van Sickle
Commissioner
Union County, PA

and

Chair of the Labor and Employment Steering Committee
National Association of Counties

Before the
Veterans' Affairs Committee

United States House of Representatives

On behalf of the
National Association of Counties

Re: Protecting the Rights of Those Who Protect Us: Public Sector Compliance with the Uniformed Services Employment and Reemployment Rights Act

June 23, 2004

440 First Street, NW
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RECYCLED

Chairman Smith, Ranking Member Evans and other distinguished members of this committee; my name is Harry Van Sickle and I am a county commissioner from Union County, Pennsylvania. I am also the Chair of the Labor and Employment Steering Committee for the National Association of Counties (NACo), the only organization representing America's counties in Washington, DC. NACo has more than 2,000 member counties, representing 85 percent of the nation's population.

County officials throughout the country strongly support the men and women serving in the military, including those in our civilian workforce called to duty during times of heightened conflict to protect our nation. On behalf of county officials, I would like to express to you the extreme gratitude we feel towards those who have left their families and civilian jobs to serve for our country. We commend and appreciate our military troops for their vital service and sacrifice. Given the serious sacrifice these men and women have made and are making, county governments are striving to be the model workplace environment for these men and women serving on our behalf. County governments are diligently working to ensure smooth transition for these civilian employees into active military service and return to county government employment upon their safe return home.

I am deeply honored to be here today and would like to thank the chairman for the opportunity to testify on behalf of NACo regarding how county government employers are protecting the rights of civilian employees deployed for military service. As public sector employers, county governments play a critical role in planning, management and implementation of labor and employment laws. County governments strive to be the model workplace by upholding federal, state, and local workplace rules and by providing all employees with work friendly environments and benefit plans and packages that are responsive to the needs and desires of county employees. The benefits provided by county governments reflect the values of the community such as competitive salaries, enhanced health care, adequate pension and retirement systems, employee assistance programs and other services that meet individual employee needs including those of reservists.

County governments are diligently working to ensure that the rights of those civilian employees deployed for military service are protected. In response to the federal laws and recent increases in military deployment many counties have followed the lead of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and adopted policies and procedures with supplementary rights and benefits in addition to those provided by USERRA. This is to ensure the transition into active military service and return to county government employment goes as smoothly as possible for these employees, their families and in turn the county. The Uniformed Services Employment and Reemployment Rights Act was established to encourage non-career service in the military by preventing discrimination and minimizing disadvantages to service and civilian employment as well as disruption to such employees, their families and employers. USERRA protects employment and re-employment rights of qualified employees and their employment benefits. Across the breadth of this country, there may

be examples of less than full compliance in state and local jurisdictions, but USERRA, state and local laws adequately address such complaints.

I will share with you some of the policies and procedures counties have adopted on their own in response to their civilian employees being deployed for military service and will highlight some of the challenges counties meet and practices counties employ to handle these challenges. I will also briefly address HR 4477, The Patriotic Employer Act of 2004, which would require employers to post notices of rights and duties under USERRA and other draft changes for the Act.

Since U.S. military deployment significantly increased post - September 11, 2001 county government employers have dealt with the influx of personnel going to serve and returning home in a number of ways. NACo recently surveyed member counties and received over 150 responses from 27 states. Responses indicated that counties are using a number of methods to ensure transitions go as smoothly as possible for such reserve employees. While there were reports of a few problems, all those cited were resolved by the county officials in an appropriate manner.

County Policies and Benefits

USERRA requires employers to retain employment and benefits for civilian employees called to military duty. Many county government employers surveyed not only retain these positions; they also continue to provide such employees with their full salary. Specifically, some counties supplement the difference between the employee's county salary and military salary if their county pay is higher, usually until their release from active military service by proper authority. DeKalb County, Illinois follows a state *"hold harmless"* policy of covering the difference in pay for those employees serving.

Other counties provide the option of allowing deployed employees to use their vacation and or sick time to supplement their pay before placing them on military leave without pay. Other counties have a combination where they pay the difference in their county and military salary after such employees use vacation leave built up. Keep in mind all employees called to serve receive a military pay while actively serving, regardless of the additional options the county employer may provide.

While the military provides health benefits for those civilians called to serve and their dependents, by federal law counties are required to provide the option of medical benefits coverage to those on a military leave of absence for up to 18 months, which the employee can be required to pay. Several counties surveyed offer continuing health and medical benefits coverage for employees and their dependents. Some counties even pay the employees' portion of expenses for these benefits along with employer part during the time such employees serve in the military. Many civilians opt for continued coverage under their county government benefits to provide continuity in services for their family members.

Imperial County, California adopted policy and procedure for military leave of absence which provides the County sponsored health and life insurance plan for covered

employees and their dependents. At the employee's option they may choose to continue present health, dental or life insurance plans, however any additional costs shall be paid by employee or by County pursuant to existing bargaining unit agreement or county policy.

Other County Support
Unofficially, there are many county government employers that keep in touch with their civilian employees deployed for service. Many employers send monthly care packages to uniformed members and check up on their family members. Other county employers even assist family members with home improvement chores such as cutting the grass and keeping the sidewalks clean to ensure family members left behind are not forgotten. Several counties have ceremonies of appreciation for returning service members and their families to recognize the importance of their service.

Challenges for County Government Employers
Counties have faced some challenges during this time of increased military deployments. Filling the gaps during the employees' military deployment has been the primary challenge for county governments, particularly in the areas of public safety including police, sheriffs, firefighters and other emergency personnel. Already stretched due to heightened homeland security concerns losing even one of these vital workers can affect important county services, particularly in rural areas. Most counties surveyed do not hire temporary workers due to budgetary constraints. Most counties that have lost sheriffs and police officers cope without hiring additional personnel due to county budget constraints and additional training costs. Some counties use trainees from fire and police academies on a part-time basis for certain duties.

Many counties that hire temporary workers have faced challenges in recruiting employees due to the temporary status of the employment. Temporary workers who have been employed longer than a year sometimes move on due to lack of permanency guarantees by county governments. Since counties can face quick turnovers in temporary workers they must deal with the cycle of hiring again and retraining.

For other counties, it has been difficult financially to supplement differences between military and civilian pay when tours for such employees are significantly extended. They also face the dilemma of whether to hire temporary workers. Depending on the numbers of their civilian workforce deployed calculating the salary adjustments have initially been challenging for some, but counties understand the importance of getting the information correct and are carefully handling such changes.

Employees Returning
Regarding reservists returning to county positions, NACo did not learn of any major difficulties with employees returning to their county jobs after military service. Some county employers have faced the reality that many employees are not ready to start their civilian jobs right away. While federal law provides for a period upon which employees should return, a few counties have adopted policies to allow for continued leave for up to a year for such employees to make adjustments back to civilian life. Imperial County,

California gives employees returning up to one year from the date of honorable discharge to return to county employment. Also, in cases where counties hired temporary workers most have to be let go and the returning employee may need extensive re-training to get up to speed on their job duties.

Some counties have also reported that supervisors may change while employees are deployed and may not be familiar with USERRA, so there is some education that human resources departments do in such cases. For example, in Henrico County, Virginia an employee deployed for over a year who was reinstated upon his return was scheduled for a merit increase, but the new supervisor was unaware of it. The HR department caught the omission and the employee was given a salary increase with retroactive pay as well. HR departments are educating and re-educating supervisors who may not know or recall rules and rights under USERRA.

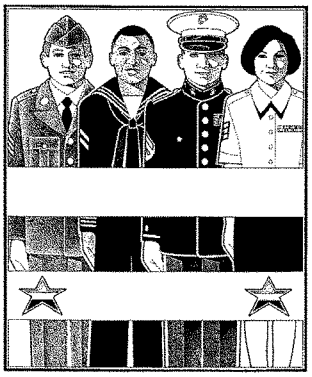
Draft Changes to USERRA

With regard to the draft language changes to USERRA, while NACo does not have any specific policy on these issues currently, we have considered the changes and understand the importance of HR 4477. Also, the potential health benefits extension from 18 months to 24 months would not pose unbearable problems for county employers since the employees themselves called for service would be required to cover such health expenses. Furthermore, NACo has no position on reinstating reporting requirements for the Department of Labor, unless it would somehow adversely affect county government employers.

Mr. Chairman, this concludes my testimony. I thank you and the committee for the opportunity to be here today, and would be pleased to answer any questions.

Has the Deployment of Reserves Affected Your County?

A Survey Report



June 2004

National Association of Counties

Founded in 1935, the National Association of Counties (NACo) is the only national organization in the country that represents county governments. With headquarters on Capitol Hill in Washington, D.C., NACo's primary mission is to ensure that the county government message is heard and understood in the White House and in the halls of Congress.

NACo's purpose and objectives are to:

- Serve as a liaison with other levels of government;
- Improve public understanding of counties;
- Act as a national advocate for counties; and
- Help counties find innovative methods for meeting the challenges they face.

This survey was a joint effort by NACo's Research Division/ County Services Department and the Legislative Affairs Department.

Has the Deployment of Reserves Affected Your County?

Executive Summary

The National Association of Counties recently conducted a snapshot survey titled "How has the Deployment of Reserves Affected Your County?" This survey was conducted in response to a request from Congress about how counties have been affected by this issue. The survey was distributed to members of the Large Urban County Steering Committee and the Rural Action Caucus by email on Thursday, June 10. As of Thursday, June 17, 164 responses have been received from 27 states representing the surveyed population ranges.

Responses by population*	
Below 10,000	51
10,000 to 24,999	53
25,000 to 49,999	48
50,000 to 99,999	0
100,000 to 249,999	0
250,000 to 499,999	1
500,000 to 999,999	5
1 million +	5
total	164

*Please note: Counties surveyed include the largest urbanized counties and the rural counties.

Responses by State

AL	3	IN	1	NE	14	TX	6
AR	1	KS	23	NM	3	UT	3
CA	7	ME	1	NV	2	VA	14
CO	5	MN	6	NY	1	WA	1
GA	18	MO	7	OH	4	WI	12
ID	8	MT	6	OR	1	WY	2
IL	4	NC	8	PA	3		

Effects of Deployment

Counties were asked if county employees who are members of the reserves been called up for duty. Of the 164 responding counties, **43 percent** report that employees have been called up. Of these counties that have had employees called up, **76 percent** have had less than five employees called to the military. **Twelve percent** have had between 5 to 10 employees called up and **8 percent** have had more than 20.

Departmental Distribution

Counties were asked to list the departments that were most affected by the call up. **Seventy four percent** report that police/sheriff departments were affected. This was followed by **28 percent** stating other departments and **18 percent** reporting fire and emergency medical departments and public works departments were also affected. **Nine percent** report that transit and transportation as well as administration departments were among those affected.

Benefits for the Military

Counties were asked about the benefits their county employees received while serving on active duty in the military. **Forty three percent** report that benefits stopped in accordance with the time period required by federal law. However, **35 percent** of the responding counties indicate that they have established policy that continues benefits to the military beyond those required by federal law. **Sixteen percent** of responding counties report continuing to extend benefits to the military based on state law.

Hardships Caused by Deployment

Counties are coping with missing employees in several ways. **Fifty nine percent** are reallocating other staff to fill the positions of missing employees, while **46 percent** have hired temporary staff. More than **14 percent** indicate that they have had to cut back on service delivery while these employees are deployed.

Counties are making do with **52 percent** reporting that their counties have not experienced a hardship while these employees are on active duty. Examining this response by population size however, paints a different picture. **Sixty nine percent** of counties with populations below 10,000 report that the deployment has created a hardship for them.

Of the **48 percent** of counties reporting hardships caused by the current deployment, several provided the following brief **anecdotes**:

We have a very tight budget and hiring temporary help has placed an additional burden on the county. We have had a large murder trial in the last month that has taxed the Sheriff's Office and they have needed all personnel.

Absence was in detention! Hard area to cover shift while holding position open.

Temporary employees are not certified as police officers so they are still under staffed.

It is difficult to recruit, hire and train Juvenile Probation Counselors when you don't know how long they'll be hired - Training is expensive and takes about 2 years.

With 1 of 7 deputies on staff, the other 6 had to take up his shifts because we couldn't find another deputy since we were paying his salary and benefits in his absence.

Our Zoning Administrator has a wealth of knowledge and experience that we have lost; especially since the deployment is so long.

Replaced with part time personnel, who does not have the level of expertise that this full time team leader employee provided to our county.

Difficult to fill jobs on a temporary basis.

The gentleman was the computer expert in the department in addition to his duties as a prosecuting attorney. We could cover the legal duties but the loss of his computer skills has been difficult.

Especially for 24/7 operations such as Sheriff Deputies, we have to pay overtime to backfill the shifts while picking up the pay difference for the employee.

Manpower shortage of small agency.

Had to hire and train another jailer.

Somewhat of a hardship in that we have saved money on insurance, but has cost more in overtime and not being as productive.

The Sheriff's Dept. has had to reduce service in some instances when part-time staff could not fill the empty slot.

We have been forced to use overtime to compensate for the absent staff. Additionally, this has caused us to prioritize duties and not accomplish some that we would normally desire to accomplish.

Sheriff's office has had to adjust using lesser-trained personnel.

When you are short a deputy sheriff it puts a greater burden on the other law enforcement officials by working longer hours, which may cause more accidents.

Had to take Deputy from corrections to work road with other Deputies.

Vance is a low-wealth County. The loss of our Tax Administrator for one year cost us $87,000. In addition, there was an adverse impact on tax collections of about $100,000.

Cut back on services due to vacancies.

80 percent are either security officers or correction officers.

Lost personnel with expertise in their field and reduced staff are now not able to provide services adequately.

We must maintain staffing levels. We don't know when the reserve will be coming home. We won't hire permanent replacements. This results in overtime going up.

The temporary help that was hired had to be trained and the quality of personnel is not as good. They know that they are only temporary.

We have been without an extension agent for seven months and have not been able to provide a quality level of service to our citizens.

How Has the Deployment of Reserves Affected Your County?

Please respond by Wednesday, June 16, 2004

County _____ State _____
Name of person completing the survey _____
Phone _____ Fax _____ Email _____

The National Association of Counties has been asked to testify before Congress about the impact that the continuing deployment of reserves in the military may be having on county governments and their employees. If you could take just a few minutes to answer the following questions, it would be very helpful to us in our preparations for this testimony. The survey can also be found at Reserves Survey

Impact on your County

1. Have any of your county employees who are members of the reserves been called up for duty?

   Yes__43%__
   No__56%__

   If no, thank you for completing the survey.

2. If yes, how many?

   Less than 5__76%__
   5 to 10 __12%__
   10 to 15 __0%__
   15 to 20 __4%__
   More than 20 __8%__

3. What county departments were affected by the call up of reserves? (*Check all that apply*)

   Police/Sheriff__74%__
   Fire/EMT __18%__
   Public Works __18%__
   Health and Human Services __12%__
   Administration__9%__
   Finance __2%__
   Schools __15__
   Elections__0%__
   Transit and transportation__9%__
   Parks and Recreation __4%__
   Courts __8%__
   Other (explain)_____28%__

4. Does your county continue to extend benefits to employees and the families of those serving in the reserves?

No, stopped after meeting federal law requirement __43%__
Yes, following state law ___16%_
Yes, based on county policy __35%_

5. How has your county coped with the absence of these employees?

Reallocated other staff ___56%_
Hired temporary staff ___46%_
Cut back on service delivery ___14%_
Other
(explain)_____0_

6. Has this absence created a hardship for the county?

Yes ___46%_
No ___52%_

7. If yes, explain:

8. If no, would the continuation of the tour of duty for these county employees create a hardship?

Yes __21 responses__
No __27 responses__

9. If yes, explain:

Thank you for completing this short survey.

If you have any questions, please contact Daria Daniel at ddaniel@naco.org or 202-942-4212 or Jacqueline Byers at jbyers@naco.org or 202-942-4285. **Please fax all responses to 202-737-0480.**

Responding Counties

Escambia	AL
Pike	AL
Washington	AL
Randolph	AR
Alameda	CA
Alpine	CA
Contra Costa	CA
Los Angeles	CA
Sacramento	CA
San Francisco	CA
Sierra	CA
Alamosa	CO
Hinsdale	CO
Jackson	CO
Routt	CO
Teller	CO
Baldwin	GA
Barrows	GA
Berrien	GA
Candler	GA
Coffee	GA
Dodge	GA
Dooly	GA
Effingham	GA
Grady	GA
Greene County	GA
Jackson County	GA
Jasper	GA
Jeff Davis	GA
Oconee	GA
Pickens	GA
Pierce	GA
Talbot	GA
Ware	GA
Benewah	ID
Boise	ID
Custer	ID
Elmore	ID
Gooding	ID
Oneida	ID
Shoshone	ID
Valley	ID

Effingham	IL
Grundy	IL
Kane County	IL
Lake	IL
Fountain	IN
Bourbon	KS
Brown	KS
Cloud	KS
Edwards	KS
Elk	KS
Ford	KS
Geary	KS
Grant	KS
Greenwood	KS
Hamilton	KS
Jackson	KS
Lane	KS
Lyon	KS
Marshall	KS
McPherson County	KS
Neosho	KS
Pottawatomie County	KS
Republic	KS
Rooks	KS
Russell	KS
Seward	KS
Stanton	KS
Washington	KS
Waldo	ME
Freeborn	MN
Hennepin	MN
Lyon	MN
Renville	MN
Rock	MN
Winona	MN
Cooper	MO
Crawford	MO
Macon	MO
Maries	MO
Ozark	MO
Warren	MO
Wayne	MO

Anaconda Deer Lodge	MT
Carbon	MT
Dawson	MT
Golden Valley	MT
McCone	MT
Petroleum	MT
Alleghany	NC
Greene	NC
Northampton	NC
Pasquotank County	NC
Perquimans County	NC
Person	NC
Vance	NC
Wake	NC
Adams	NE
Chase	NE
Clay	NE
Cuming	NE
Garfield	NE
Greeley	NE
Hamilton	NE
Jefferson	NE
Kearney County	NE
Knox	NE
Nuckolls	NE
Perkins	NE
Phelps	NE
Stanton County	NE
Curry	NM
San Miguel	NM
Union	NM
Elko County	NV
Eureka	NV
Seneca	NY
Clark	OH
Cuyahoga	OH
Gallia	OH
Hamilton	OH
Crook	OR
Elk County	PA
Forest	PA
Jefferson	PA

Brown	TX
Chambers	TX
Hopkins	TX
Irion	TX
Madison	TX
Morris	TX
Duchesne	UT
Summit County	UT
Tooele	UT
Bath	VA
Bland	VA
Cumberland	VA
Dickenson	VA
Floyd	VA
Gloucester	VA
James City County	VA
King and Queen	VA
Powhatan	VA
Prince Edward	VA
Pulaski	VA
Shenandoah	VA
Smyth	VA
Wise	VA
Stevens	WA
Calumet	WI
Clark County	WI
Forest	WI
Grant	WI
Iowa	WI
Kewaunee	WI
Lafayette	WI
Marquette	WI
Oconto	WI
Rusk	WI
Shawano	WI
Vernon	WI
Converse	WY
Fremont	WY

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STATEMENT

of

the Military Officers Association of America

on

Uniformed Services Employment and Reemployment Rights Act (USERRA) and Servicemembers Civil Relief Act (SCRA) Improvements

before the

House Committee on Veterans' Affairs

June 23, 2004

Presented by

Colonel Robert F. Norton, USA-Ret.
Deputy Director, Government Relations

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One Powerful Voice.®

Biography of Robert F. Norton, COL, USA (Ret.)
Deputy Director, Government Relations, MOAA
Co-Chair, Veterans' Committee, The Military Coalition

A native New Yorker, Bob Norton was born in Brooklyn and raised on Long Island. Following graduation from college in 1966, he enlisted in the U.S. Army as a private, completed officer candidate school, and was commissioned a second lieutenant of infantry in August 1967. He served a tour in South Vietnam (1968-1969) as a civil affairs platoon leader supporting the 196th Infantry Brigade in I Corps. He transferred to the U.S. Army Reserve in 1969 and pursued a teaching career at the secondary school level. He joined the 356th Civil Affairs Brigade (USAR), Bronx, NY and served in various staff positions from 1972-1978.

Colonel Norton volunteered for active duty in 1978 and was among the first group of USAR officers to affiliate with the "active Guard and Reserve" (AGR) program on full-time active duty. He specialized in manpower, personnel, and quality-of-life programs for the Army's reserve forces. Assignments included the Office of the Deputy Chief of Staff for Personnel, Army Staff; advisor to the Asst. Secretary of the Army (Manpower & Reserve Affairs); and personnel policy and plans officer for the Chief, Army Reserve.

Colonel Norton served two tours in the Office of the Secretary of Defense (OSD). He was responsible for implementing the Reserve Montgomery GI Bill as a staff officer in Reserve Affairs, OSD. From 1989 –1994, he was the senior military assistant to the Assistant Secretary of Defense for Reserve Affairs, where he was responsible for advising the Asst. Secretary and coordinating a staff of over 90 military and civilian personnel. During this tour, Reserve Affairs oversaw the call-up of more than 250,000 National Guard and Reserve component troops for the Persian Gulf War. Colonel Norton completed his career as special assistant to the Principal Deputy Asst. Secretary of Defense, Special Operations / Low Intensity Conflict and retired in 1995.

In 1995, Colonel Norton joined Analytic Services, Inc. (ANSER), Arlington, VA as a senior operational planner supporting various clients including United Nations humanitarian organizations and the U.S. Air Force's counterproliferation office. He joined MOAA's national headquarters as Deputy Director of Government Relations in March 1997.

Colonel Norton holds a B.A. in philosophy from Niagara University (1966) and a Master of Science (Education) from Canisius College, Buffalo (1971). He is a graduate of the U.S. Army Command and General Staff College, the U.S. Army War College, and Harvard University's Senior Officials in National Security course at the Kennedy School of Government.

Colonel Norton's military awards include the Legion of Merit, Defense Superior Service Medal, Bronze Star, Vietnam Service Medal, Armed Forces Reserve Medal, Army Staff Identification Badge and Office of the Secretary of Defense Identification Badge.

Colonel Norton is married to the former Colleen Krebs. The Nortons have two grown children and reside in Derwood, Maryland.

MISTER CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE, on behalf of the Military Officers Association of America (MOAA), I am grateful for this opportunity to express our views on needed improvements to the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA).

MOAA does not receive any grants or contracts from the federal government.

Importance of USERRA and SCRA

Our nation is undergoing the largest protracted mobilization of National Guard and Reserve forces since World War II. Since September 11, 2001, more than 350,000 members of the National Guard and Reserve forces have been mobilized on federal orders to support ongoing military operations in the nation's war on terror at home and abroad.

168,316 Guard and Reserve servicemembers are on active duty today according to the Defense Department. Approximately 40,000 reserve component servicemembers are serving on active duty tours of 24 months or longer.

Given the size, length and unknown conclusion of these mobilizations, the laws governing the reemployment, legal, and economic rights of our nation's citizen-soldiers are extremely important to their morale and families.

H.R. ___ , the "USERRA Health Coverage Extension Act of 2004".

MOAA strongly supports the provisions of the draft legislation under consideration at today's hearing. The draft bill would increase from 18 months to 24 months the maximum period of employer-provided health plan coverage that an employee covered by USERRA may elect to continue, beginning with the date the absence from the position of employment begins. The effective date of the extended coverage period would be the date of enactment.

For the past few years, MOAA has actively sought Congressional support for legislation to provide what we call "continuity of health care" options for members of the National Guard and Reserve forces. The draft bill is consistent with this principle.

A top MOAA legislative objective this year is final passage of a Senate-passed bi-partisan amendment to the FY 2005 National Defense Authorization Act on Reserve health insurance coverage. The Amendment would permit reservists to have the government share some of the cost of their health insurance coverage. Reservists could elect to participate in TRICARE, the military health care plan, on an annual 28 / 72 percent cost-share basis with DoD or elect to have the government share used to pay annual premiums on employer-based or private health plans during periods of active duty. Reservists who are employees of federal agencies are already eligible for the government to offset family premiums under the Federal Employees Health Benefit Program (FEHBP) during extended active duty periods.

In a similar manner, the draft USERRA bill before the Committee would permit reservist-employees to retain their employment-based health plan coverage for up to two years while on active duty. There are about 40,000 members of the National Guard and Reserve forces serving today on active duty tours of 24 months or more. The proposed change to USERRA

will contribute to the goal of "continuity of health care" coverage for Guard and Reserve families, help to reduce the enormous stress on worried families during these difficult times, and demonstrate the unflagging support of their elected representatives in Congress.

MOAA believes the proposed bill also will have a beneficial impact on recruitment and retention in the Guard and Reserve. Senior National Guard and Reserve military leaders have testified before Congress this year on their growing concerns over looming recruitment and retention problems in their commands.

Earlier this year, DoD announced a new policy under which it plans to activate reservists every five or six years for lengthy active duty tours of one year or more. This sea change in the "total force" policy has no precedent in our history as a citizen-soldier nation. Unless the nation is prepared to extend and improve benefits for the reserve forces to match the new realities of their service, it will be enormously difficult to attract and retain high-quality young men and women to serve in the reserve forces.

Favorable Committee action on the USERRA health extension legislation will be seen as an important signal of Congressional support for the men and women who proudly serve in our nation's National Guard and Reserve.

MOAA is pleased to endorse the draft "USERRA Health Coverage Extension Act of 2004" and we pledge our full support towards its final enactment.

Reinstatement of Reporting Requirements under USERRA.

The draft USERRA bill also reinstates a requirement under Section 4332 of Title 38 USC for the Secretary of Labor (DoL) in consultation with the Attorney General and the Special Counsel (referred to in section 4324(a)(1) of Title 38) to report to Congress on USERRA cases reviewed or referred by the federal offices responsible for them.

MOAA, on behalf of The Military Coalition, recommended this change in testimony before the Subcommittee on Veterans Benefits' hearing of July 24, 2003.

With the reinstatement of a reporting requirement, the DoL would be required to report the "nature and status of each [USERRA] case reported on" by DoL, the Attorney General, and the Office of Special Counsel (section 4332(3)).

Veterans' Employment and Training Service (VETS) / DoL data show a substantial 47% increase in new USERRA cases opened between 2001 and 2003:

USERRA Cases Opened (VETS)

DATA CATEGORY	FY 2000	FY 2001	FY 2002	FY 2003
USERRA cases opened*	929	895	1,195	1,315

MOAA is particularly interested in the outcome of cases referred by VETS to the Attorney General's office and the Office of the Special Counsel. In 2003, for example, seventy-nine (79) cases were referred to the Attorney General or Office of Special Counsel. At this point in the process, VETS apparently considers these cases "closed", even if the Attorney General

declines to take legal action. Yet the fact that these cases were not successfully resolved in the VETS process, or that they were based on contested legal issues under the USERRA suggests that the referral process should have a clear government backed outcome or conclusion. A reporting requirement could at least identify the disposition of cases left unresolved in the VETS referral process.

MOAA fully endorses the goal of resolving USERRA cases amicably. In most cases America's employers have gone the extra mile to support their mobilized employees during these stressful times. Because DoD plans to activate Guard and Reserve servicemembers every five or six years for the foreseeable future, we believe that additional resources must be made available to the VETS (DoL) and Employer Support of the Guard and Reserve offices (DoD) so that they may adequately accomplish their missions.

At the same time, we believe the Committee and the stakeholder community – reservist-veterans, employers, and advocates – need to have a clearer understanding of the actions and accomplishments of the Attorney General's office and Office of Special Counsel in prosecuting clear violations of the USERRA.

MOAA supports the reinstatement of reporting requirements under the USERRA.

H.R. 4477, Patriotic Employer Act of 2004.

H.R. 4477 would further amend the USERRA by requiring employers to post in the workplace for persons entitled to USERRA protections a notice of the rights, benefits, and obligations of National Guard and Reserve employees and their employers under the statute. The bill sponsor is Rep. James P. McGovern (D-MA).

MOAA believes H.R.4477 would advance the outreach requirement established in Section 4333 of the USERRA and, accordingly, we support its enactment.

At the same time, MOAA believes that this action alone would not educate employers and reservists on how to interpret the law's provisions in the myriad circumstances involving employment and reemployment situations covered under the statute.

For this reason, ***MOAA continues to recommend amending the USERRA to <u>require</u>, rather than permit, the DoL to develop and promulgate implementing regulations in the Code of Federal Regulations (CFR) for the Act. DoL should also be required to publish a handbook illustrating the types of cases that come up under the USERRA and how they were resolved.***

Other USERRA Issues.

- <u>Escalator Principle and Merit Raise Problem.</u> The escalator principle of the USERRA requires that each returning servicemember actually step back into the seniority escalator at the point the person would have occupied if the person had remained continuously employed. The application of the principle to merit pay increases that are based on annual evaluations is less certain. For example, an employer tells a reservist returning to the workplace that the company will not award a pay increase

because it is based on a performance evaluation of actual work performed. The theory in such cases is that since the mobilized reservist performed no work for the employer during the activation, an evaluation would not have been performed, and therefore a merit pay increase would not be awarded when the reservist returned to the workplace.

MOAA recommends clarifying the escalator principle to ensure that reemployed servicemembers are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. We recommend, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase.

- State Employees. [38 USC Sec. 4323]. In 1998, Congress amended the USERRA to permit the DoL to refer a complaint from a State employee covered by the Act to the Attorney General. In practice, however, unless the Attorney General agrees to take on such cases, reservists returning from active duty to State employment have no legal recourse under the law.

  The United States Supreme Court has ruled in a number of cases interpreting the Eleventh Amendment of the Constitution that individual employees have no right to sue their State employers, unless the State waives its sovereign immunity under various federal laws. As a result, although USERRA specifically provides that a person may initiate an action for relief against a State for its violation of the USERRA, persons harmed by State violations of the statute lack important remedies to vindicate the rights and benefits that are available to all other persons covered by the law. Unless a State chooses to waive sovereign immunity, or the Attorney General brings an action on their behalf, persons affected by State violations of USERRA may have no adequate Federal remedy for such violations. A failure to provide a private right of action by persons affected by State violations of USERRA would leave vindication of their rights and benefits under that Act solely to Federal agencies, which may fail to take necessary and appropriate action because of administrative overburden or other reasons.

  MOAA is working with a number of stakeholders to identify cases that would demonstrate the potential need to further amend the USERRA in order to protect the reemployment rights of State employees returning from active military service. We will provide such information to the Committee as it becomes available.

- Non-functioning role of the Office of Special Counsel. [38 USC Section 4324] Section 4324 provides for the enforcement of rights for Federal Executive Agencies. The statute authorizes the Secretary of Labor to refer a complaint for litigation under the USERRA before the Merit Systems Protection Board (MSPB). If the Special Counsel is satisfied that the servicemember's rights under the USERRA have been violated, the Special Counsel is authorized to represent the servicemember before the Merit Systems Protection Board.

All well and good, but the Office of Special Counsel has never represented a member of the Guard or Reserve before the MSPB, and it apparently has neither the intention nor the resources to do so. Consequently, returning servicemembers who wish to file a claim under USERRA against a Federal Executive Agency employer must hire counsel or represent themselves directly before the MSPB. It is our understanding that the MSPB has ruled on at least 100 cases brought before it by Guard and Reserve federal employees. But that record does not justify the indifference of the Office of Special Counsel, especially in cases where employees may not have the resources to pay for counsel or adequately represent themselves.

MOAA recommends strengthening the right to counsel for National Guard and Reserve servicemembers who wish to pursue a complaint against a Federal Executive Agency employer.

- Inclusion of NOAA Corps Officers in USERRA.

  MOAA recommends inclusion of the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA Corps) in Section 4303, Definitions, of the USERRA. NOAA Corps officers serve on active duty, as defined in Title 10 and Title 37, and receive pay and benefits commensurate with their status as members of the uniformed services, including the U.S. Public Health Service. Like USPHS officers, NOAA Corps officers may be transferred to the Army, Navy or Air Force in time of war or national emergency.

  The NOAA Corps is included in the basic definition of "uniformed services" as set forth in Section 101(a)(5) of Title 10, USC. Accordingly, the NOAA Corps was improperly excluded from the comprehensive revision of employment and reemployment rights laws enacted in 1994 after the first Gulf War.

  MOAA recommends including the NOAA Corps in the USERRA.

H.R.___, Servicemembers Legal Protection Act of 2004.

This draft legislation would amend the Servicemembers Civil Relief Act by clarifying and extending certain legal and economic protections for servicemembers on active duty.

MOAA deeply appreciates the leadership of the Committee and the hard work of the Committee staff in crafting needed improvements to the Soldiers' and Sailors' Civil Relief Act, enacted last year as the Servicemembers Civil Relief Act (SCRA), P.L. 108-189.

The draft legislation before the Committee today makes additional improvements to the statute that recognizes the changed circumstances of military service in our volunteer forces today.

MOAA notes in particular that the draft bill would clarify that dependents as well as servicemembers are covered by SCRA's residential and motor vehicle lease provisions on joint leases. The change recognizes that servicemembers often are deployed into harms way on short notice leaving their dependents to make economic decisions back home. The change provides additional flexibility for military families and MOAA fully supports it.

The draft bill also would amend the lease termination provision to apply when the servicemember has permanent change of station orders from a State outside the continental United States to any location outside that State; for example, from Hawaii or Alaska to the 48 contiguous States or a foreign duty station.

In addition, the lease termination provisions would be amended to clarify that the term "military orders" as used in the SCRA would mean "official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect the servicemember's current or future military duty status." This change is important in today's high personnel and operational tempo environment in which members of the National Guard and Reserve are called to active duty on short or no notice and their "military orders" can and do take many forms.

The draft SCRA bill would include a provision to prevent double taxation of servicemembers when the laws of a tax jurisdiction do not provide a credit against use, excise or similar taxes the servicemember previously paid to another tax jurisdiction.

MOAA strongly supports enactment of the draft "Servicemembers' Legal Protection Act of 2004."

H.R. 3779, the "Safeguarding Schoolchildren of Deployed Soldiers Act of 2004."

H.R. 3779 would amend the SCRA to help the school age children to be treated as residents when the military service of parents causes a change of residence. The bill would treat a child who changes residence based on the military service of a parent and at the parent's request, as if the child held the residence before the change of residence took place, for the purposes of enrollment in elementary or secondary school.

A case in New York State was brought to our attention on this issue. MOAA worked with our colleagues in the National Military Family Association (NMFA) and we are pleased to see that Rep. Louise Slaughter (D-NY) has introduced H.R. 3779, the "Safeguarding Schoolchildren of Deployed Soldiers Act of 2004," to address the issue. Residency changes arising from military service should not cause unintended enrollment and economic problems in military families with schoolchildren.

MOAA fully supports H.R. 3779 and recommends the Committee favorably report the bill.

The Military Officers Association of America appreciates this opportunity to appear before the House Committee on Veterans Affairs on the issue of improving the Uniformed Services Employment and Reemployment Rights Act and the Servicemembers Civil Relief Act. Your work on behalf of our nation's servicemembers and veterans is very important to them and their families and we appreciate your leadership in defending their legitimate reemployment and economic needs as they put themselves in harms way to defend the nation.

Statement of

Kathleen B. Moakler
Deputy Director, Government Relations

The National Military Family Association
Alexandria, Virginia

before the

Committee on Veterans' Affairs
of the
United States House of Representatives

June 23, 2004

Not for Publication
Until Released by
The Committee

The National Military Family Association (NMFA) is the only national organization whose sole focus is the military family and whose goal is to influence the development and implementation of policies that will improve the lives of those family members. Our mission is to serve the families of the seven uniformed services through education, information, and advocacy.

Founded in 1969 as the Military Wives Association, NMFA is a non-profit 501(c)(3) primarily volunteer organization. NMFA today represents the interests of family members and the active duty, National Guard, Reserve, and retired personnel of the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

NMFA volunteer Representatives in military communities worldwide provide a direct link between military families and NMFA's staff in the nation's capital. Representatives are the "eyes and ears" of NMFA, bringing shared local concerns to national attention.

NMFA receives no federal grants and has no federal contracts.

NMFA's web site is located at *http://www.nmfa.org.*

Kathleen B. Moakler, Deputy Director, Government Relations

Kathleen has been associated with the National Military Family Association since 1995 as a member of the headquarters staff. She has served as Legislative Administrative Assistant and Senior Issues Specialist in the Government Relations department, NMFA Office Manager, and since June 2003, as the Deputy Director, Government Relations. Her job requires a broad knowledge of the range of issues relevant to the quality of life of the families of the seven uniformed services. An Army spouse of over 28 years, Kathleen has a vast experience both volunteer and paid. She has served in varied leadership positions in civilian and military community organizations in that time.

Through the years Kathleen has worked with many military community programs including hospital consumer boards, commanders' boards, family readiness groups, church councils and the Army Family Action Plan at all levels. She believes that communication is paramount in the efficient delivery of services and the fostering of a rich community life for military families. She holds a Bachelor of Science degree in Business Administration from the State University of New York at Albany. Kathleen has been awarded the Army Commanders Award for Public Service.

In addition to her work at NMFA, Kathleen participates as a member of the Contemporary Choir at the Chapel at Ft. Belvoir VA and enjoys traveling to historic sites. She has a new role as a military mom. Her daughter is an Army nurse recently returned from a year in Iraq and her second son is an active-duty Army National Guard member involved in homeland defense in New York. Her oldest son is an aspiring actor in Hollywood, California. Kathleen and her husband Marty reside in Alexandria, Virginia.

Mr. Chairman and Distinguished Members of the Committee, the National Military Family Association (NMFA) appreciates your interest in the well-being of military families and thanks you for the opportunity to present testimony on the importance of ensuring that the legal and employment rights of servicemembers and their family are protected. We thank you for your concern for the continuity of health care for deployed reserve component families and the continuity of a supportive school environment for the children of families who find themselves with their single parent or both parents deployed. Your focus on military families at this critical time sends a message to those families that Congress is interested in how they are faring and wants to make sure that their lives are not disrupted any more than necessary.

NMFA thanks this Committee for the provisions that directly impacted military families with the passage of H.R. 100, Public Law 108-189, the "Servicemembers Civil Relief Act" (SCRA), in the last session. Updating the law to reflect the realities of military family life in the 21st century has made it easier for families to cope with the financial difficulties that many have to endure when the servicemember is deployed. The clarification that no interest above 6 percent can accrue for pre-activation credit obligations while on active duty and the permanent forgiveness of the amount above 6 percent will certainly aid activated Guard and Reserve members and their families. While the benefits to the reserve component are more obvious because of the transition from civilian to military pay, active duty families may also experience a reduction in pay when the spouse has to reduce hours or quit their job entirely to compensate for the loss of childcare. The opportunity to terminate a housing lease to move closer to family for support can be an important option for young families. The savings resulting from the ability to cancel an automobile lease for a vehicle not needed during deployment is a great help as well. These and the other provisions will prevent servicemembers and their families from experiencing a negative impact when the servicemember is activated or deployed.

NMFA is also grateful for the provisions in Public Law 108-183, the "Veterans Benefits Act of 2003," that increased benefits for the survivors of those who have already served and sacrificed for their country. The increase in monthly education benefits for surviving spouses and children will enhance their educational opportunities and better reflects the costs of education in today's dollars. The expansion of benefits to children with spina bifida will help those families cope with that condition. We are especially pleased with the restoration of Dependency and Indemnity Compensation (DIC) and accompanying benefits for surviving spouses who remarry after the age of 57. NMFA has joined with other organizations to make sure eligible widows are informed about the one year eligibility window to sign up to regain those DIC benefits. The servicemembers of today, deployed in support of Operation Enduring Freedom and Operation Iraqi Freedom, look to see that promises have been kept to those who have gone before them. The provisions included in the Veterans Benefits Act of 2003 tell them that they have been and will continue to be kept as promised.

This statement is concerned primarily with public sector compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and

improvements to the Servicemembers Civil Relief Act (SCRA). NMFA is specifically concerned with the impact of this legislation on military families. We will first discuss the SCRA and then move on to the provisions of USERRA.

Servicemembers Civil Relief Act

NMFA thanks the Committee for updating and clarifying certain provisions of the SCRA. In our statement we will focus on just three areas – the addition of H. R. 3779, Section 305 and Section 511(c).

Here is a hypothetical situation. Sergeant Jones, a member of the National Guard, receives notice of her activation and will be leaving shortly to be deployed in support of Operation Iraqi Freedom. As a single mom, in preparation she has crafted her required family care plan. Her son, Philip, will be staying with her mother and father, who live about 10 miles from where she lives now but in a different school district. Philip attends elementary school a short distance from his home and is a fourth grader with a teacher he likes and friends he has had since kindergarten. His grandparents will drive him back and forth to school each day. But when Sergeant Jones visits the school to inform the teacher, principal and counselor about her deployment, she is dismayed to learn that because Philip will be living outside the school district boundaries he will not be allowed to attend his current elementary school if he lives at his grandparents' home. Not only will he be deprived of his mother, but of a familiar support system, adding a new school to his list of transition issues. That's a lot to handle when you're just 10 years old.

This hypothetical situation is very real for many families around our nation today. NMFA applauded the introduction of H. R. 3779, the "Safeguarding Children of Deployed Soldiers Act of 2004" by Representative Louise Slaughter (D-NY, 28th) and Representative Ginny Brown-Waite (D-FL, 5th), that allows children to remain enrolled in their home district, even when forced to move to a neighboring district because of their parent's deployment. Military families, especially those of deployed servicemembers, are called upon to make unique sacrifices. Disruption of a child's education should not be one of them, if it can be helped. School can be the one constant in a time of change and anxiety. This bill is a common sense solution to the problem for these families. By allowing children to remain enrolled in their home district, even when forced to move to a neighboring district because of their parent's deployment, it relieves at least one worry that might serve as a distraction from duties for the deployed servicemember.

Many school districts suddenly find themselves with a substantial "military child" student population when local National Guard and Reserve Units are activated. We have received inquiries from these districts asking how they can help these children cope with deployment. This bill would enable these districts to show tangible support for these military children so they could do their "job" while mom or dad are off doing theirs.

NMFA supports the initiative to allow a school to treat military children as a residents of their original school district for the duration of the military service on which a child's change of residency is based. We understand that no transportation

would be provided. Minimizing the disruption in a child's life, when a parent is deployed, should be paramount for all parties concerned with the child's welfare.

The adage "no good deed goes unpunished" could easily apply to the actions of this Committee last year when it passed the "Servicemembers Civil Relief Act" (SCRA) to help ease the economic and legal burdens on military personnel called to active duty status and deployed in a contingency operation. Updating the law to reflect the realities of today's leases, both housing and automobile, certainly seemed that it would help military families cope with financial adjustments that might be necessary because of activation or deployment. It also rendered the "military clause" – the paragraph that stated that the lease could be broken if the servicemember received orders for a new duty station outside a designated mile radius (usually 50 to 100 miles) – supposedly obsolete. The ink was barely dry on the new legislation, however, before some landlords tried to shift the financial responsibility for leases from the servicemember to the spouse who had co-signed the lease. This happened whether the family was preparing to move to a new duty station or the spouse of a deployed servicemember was moving closer to family for support. One spouse, remarking on her landlord's interpretation of the new law said "our rental company told me that the new law only protects my husband, and he is the only one they will take off the lease." For the most part, landlords backed down, thanks to the perseverance and tenacity of several installation legal assistance offices. The language in the "Servicemembers Legal Protection Act of 2004" should clarify that dependents as well as servicemembers are covered by SCRA's residential and motor vehicle lease termination provisions on joint leases. It also refines certain other definitions in the law to leave little room for individual interpretation. Relocation is stressful enough without adding the uncertainty of whether or not your family will be able to terminate a lease. Deployed servicemembers should not be distracted by this concern when they are overseas.

Moving from state to state, military families encounter many different tax laws and find that property is treated differently. Specifically, while the servicemember, if claiming another state as residence, is not required to pay property tax on an automobile or a boat, the family is liable for the payment of this tax if the title is in both spouses' names. Couples have joint savings accounts, they own their home jointly, it follows that they would have both their names on a car or boat title. Payment of this tax could become a financial hardship especially if the payment is unexpected, a large sum, and not included in the family budget. If families neglect the payment, there may be penalties associated with late payment. Often the families are not familiar with local tax laws or may think that they do not apply to them when they live on the installation. There is a great variance from state to state as to how tax liabilities are determined. The couple may not understand the protections of the SCRA and the benefits of having the property in the name of the servicemember. This can be such a burden to families that it surfaced as an issue in the Army Family Action Plan process, a mechanism that the Army uses to identify problems at the grassroots level and elevate them higher levels for solution. NMFA would like to ask the committee to consider extending relief from personal property tax for property owned jointly by the servicemember and spouse under section 511(c) of the SCRA.

NMFA appreciates the clarification to the SCRA provided by the "Servicemembers Legal Protection Act of 2004." Reducing the scope of interpretation of the SCRA and closing loopholes, especially in sections related to leases, will aid servicemembers and their families in handling personal legal issues more effectively. Additionally, NMFA would ask that the committee consider extending relief from personal property tax for property owned jointly by a servicemember and spouse under section 511(c) of the SCRA.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

The extension of deployments and the occurrence of repeated deployments in close succession for certain military specialties have caused hardship for many of our Guard and Reserve families. Those who have elected to continue with their employer sponsored health care during the deployment could face serious consequences. Increasing from 18 months to 24 months the maximum period of employer provided health plan coverage that an employee covered by the USERRA may elect to continue will give peace of mind to those families in a period already wrought with uncertainty.

NMFA commends the "USERRA Health Care Coverage Extension Act of 2004". We are committed to ensuring continuity of care for the families of deployed reserve component servicemembers whether the healthcare is provided through TRICARE or the employer.

Education of employers about the rights of their employees who are members of the reserve component is a tremendous task. NMFA works closely with the Committee for Employer Support of the Guard and Reserve (ESGR) and applauds the work that they do. The "Patriotic Employer Act of 2004" would go a long way in educating employers about their responsibilities toward their reserve component employees. Requiring these employers to post the notice of the rights, benefits, and obligations of employees and employer would reduce confusion and unfamiliarity with the law. NMFA thanks Representative James P. McGovern (D-MA, 3rd), Representative Jeb Bradley (R-NH, 1st) and Representative Lane Evans (D-IL, 17th) for introducing this legislation.

NMFA would recommends that some USERRA provisions be extended to spouses and/or family members when they are called upon to perform extraordinary duties while a servicemember is deployed or in preparation for that deployment. NMFA has heard from many families about the difficulty of balancing family obligations with job requirements when a close family member is deployed. Suddenly, they are single parents or, in the case of grandparents, assuming the new responsibility of caring for grandchildren. The days leading up to a deployment can be filled with pre-deployment briefings and putting legal affairs in order. Families also need the opportunity to spend precious time together prior to a long separation. The need is no less when the servicemember returns. Reintegration and transition requires training not only for the servicemember but for the family as well in order to be most effective. NMFA has heard of a family where, before the deployment, the wife worked the night shift while her

husband stayed home with the children after working during the day. When he was called up, she tried to change her shift to accommodate her new responsibilities. Her employer's response: "You have two weeks to make other child care arrangements!" Protection for military spouses under USERRA might help families in their support of the military mission. This issue also surfaced in the 2004 Army Family Action Plan process as one of particular concern. Military families, especially those of deployed servicemembers, are called upon to make unique sacrifices. Help for the spouse in juggling career and family obligations would offer families some breathing room as they adjust to this time of separation.

NMFA endorses the 'Patriotic Employer Act of 2004" agreeing that education of employers is important for the success of USERRA. NMFA also suggests including family members under the USERRA umbrella to allow for job protection when the family member must perform extraordinary duties because of the servicemember's deployment.

Mr. Chairman, thank you for the allowing NMFA to present our views on these very important issues and again, thank you for your continued interest in and concern for our servicemembers, their families and their survivors.

TESTIMONY

Before the

House Committee on Veterans' Affairs

Regarding

"Protecting the Rights of Those Who Protects Us: Public Sector Compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Improvements to the Servicemembers Civil Relief Act (SCRA)"

June 23, 2004

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Chairman Smith, Ranking Member Evans, members of the Committee, I thank you for the opportunity the National Consumer Law Center[1] has to provide comments to you today.

On behalf of our many low income clients who are current members of the armed forces, we commend you for your work last year updating and expanding the Soldiers and Sailors Civil Relief Act. The new Servicemembers Civil Relief Act is a significant improvement over the former law in many ways. In particular, the new ability of servicemembers to terminate vehicle leases, and the expanded ability to avoid residential leases, are important so that families are not driven to financial ruin by military service.

We also commend the committee for this current endeavor to further improve the Act passed last year. As with any major work, there are some ambiguities in the new law and we encourage the committee's efforts to address them. We support all of the provisions of the draft bill that we have seen. In this testimony we seek to accomplish two goals, first to highlight and specifically support several of the provisions, and second to make specific suggestions regarding improvements – all entirely consistent with the focus and provisions already included in the draft bill.[2]

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[1] **The National Consumer Law Center** is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with legal services, government and private attorneys around the country, representing low-income individuals, and with military attorneys representing low income members of the military, who request our assistance with the analysis of credit and other consumer transactions to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen numerous examples of violations of existing law, difficulties in dealing with the duel pressures of serving in the military and maintaining obligations originated in private life. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. We also publish and annually supplement a series of eighteen practice treatises, including the forthcoming latest edition of *Fair Debt Collections (5th ed. 2004)* in which credit issues facing active duty military are explored fully in Chapter 9. Although this testimony is delivered by Margot Saunders, it is written by her colleague, Carolyn Carter.

[2] While it is outside the jurisdiction of this Committee, we cannot miss this opportunity to encourage all members of this Committee to look for opportunities to address the serious problem of exorbitantly priced credit facing *active military personnel*. As detailed in the recent report, *In Harm's Way – At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans,* National Consumer Law Center, May, 2003, *http://www.consumerlaw.org/initiatives/content/report_military.pdf* active duty military service members are particularly vulnerable to high-cost lending scams. Loans with interest rates in the 400 to 600% range are standard, while a check or the title to a car is kept as security to ensure the loans are repaid. Quite often, the loans are repaid by rolling them over into new loans ten or eleven times, increasing the cost of the original loan exponentially. The lenders providing this high priced credit are deliberately profiting from the lack of sophistication and the financial desperation of America's service members as they struggle to make ends meet.

Military leaders are concerned that widespread financial stress in the ranks, a documented problem many of them partly attribute to scams, may be impacting readiness. The Defense Department's March 2002 *Report on Personal and Family Financial Management Programs* states that more than half of all service members in the lowest six pay grades – the six grades that constitute nearly three-quarters of active-duty military – describe themselves as having at least occasional difficulty (and often worse) making ends

Protection Against Negative Credit Reports

Currently the Act – in Section 108 – appropriately prohibits negative credit reports and other similar adverse actions against servicemembers who exercise their rights under the Act. This protection is extremely important. Servicemembers should not return home from active duty to find their credit ruined. However, to be fully effective the protection should be broadened in two ways.

First, as the Act recognizes in numerous provisions, the servicemember's dependents can use many of the same protections under the Act that servicemembers can. For example, one of the amendments in the draft bill would make it clear that if a servicemember and a dependent have jointly signed a residential lease, and the servicemember is assigned overseas, the lease can be cancelled as to both of them. Section 108 makes it clear that the landlord cannot make an adverse credit report against the servicemember because of the lease cancellation, but it does not explicitly prohibit the landlord from making an adverse credit report against the co-signer. We urge that Section 108 be amended to make it clear that adverse credit reports are prohibited not only against servicemembers but also against dependents who exercise rights under the Act. If creditors were allowed to threaten a servicemember's dependent with a negative credit report, it would deter both the dependent and the servicemember from exercising these important rights.

Second, the prohibition against negative credit reports and other adverse actions currently applies only when the servicemember seeks or obtains "a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability." This language covers many exercises of rights under the Act, but the list itself can be interpreted to be potentially limited to the specific terms included. A creditor could have an argument that *its* negative credit report was not based on one of the listed events. Did Congress intend to allow negative credit reports for the exercise of *some* rights under the Act? We think not, and we urge the committee to amend Section 108 to make this crystal clear.

To address both of these concerns, we suggest that the preliminary language of Section 108 be rewritten to read:

> The exercise by a servicemember or a dependent of a servicemember of any right under this Act shall not itself (without regard to other considerations) provide the basis for any of the following:

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meet. The Defense Department's report describes how many young enlisted members do not understand the consequences of acquiring debt or paying off debts at high interest rates. Easy availability of credit and credit cards make it possible for members to live beyond their means for a while, but the short-term extravagance then creates a crisis to pay off bills, which drives members to the predatory lenders.

To ensure these goals are accomplished fully, we also suggest that "servicemember" be replaced with "servicemember or dependent" in subsections 108(1), (2), (2)(C), (3), and (4).

Clear Coverage of Enlisted Personnel

There should be no question that those who volunteer for military service should be entitled to the same financial protections as those who are called up from the Reserves or National Guard. The current Act does not do this as cleanly and clearly as it should.

The draft bill proposes to amend Section 305, the provision that gives servicemembers the right to break residential or motor vehicle leases if they are shipped overseas, by adding a definition of "military orders." We support the intent behind this amendment, but urge that the intent behind this amendment be furthered in two ways:

First, it should be clear that the Act covers all servicemembers, whether reservists who have been called to active duty, or enlistees. To accomplish this, the words "enlistment contract" must be added to the definition. Second, the clarification of how a servicemember can provide a simple and straightfoward method to document the servicemember's active duty and location should included in all applicable sections. To accomplish this, in addition to amending Section 305, a similar clarification is necessary to be added to Section 207, which addresses the maximum rate of interest on debts incurred before military service.

For example, Section 207(b)(1) and (2) currently require a servicemember to give the creditor "a copy of the military orders calling the servicemember to military service and any orders further extending military service." We urge the committee to add the following definition:

> Sec. 207(b)(3): The term "military orders calling a servicemember to military service" as used in this section means official military orders, an enlistment contract, or any notification, certification, or verification from the servicemember's commanding officer, that documents the servicemember's current or future duty status.

This language makes it clear that the interest rate protection extends to enlistees who have enlistment contracts rather than orders calling them up. The language also reduces the paperwork burden on commanding officers by allowing an enlistee to provide a copy of his or her enlistment contract instead of having to get a certification from the commanding officer.

Protection Against Waivers

The Act's protection against waivers is extremely important. If waivers of rights under this law were allowed, waiver language would be a routine part of the fine print of every contract and lease signed in the United States, and the Act would be a dead letter.

The main protection against waivers is the existing law's requirement that in most cases the waiver must be signed after the servicemember's period of active duty starts. For example, if a reservist buys a home before being called to active duty, the mortgage cannot waive the Act's protections against foreclosure. After being called to active duty, however, the reservist can waive these protections.

The draft bill adds an additional protection by requiring that any waiver be in at least 12-point type and be in a separate document. We support this amendment, because it is an additional protection against an unknowing waiver of these important rights.

We also urge the committee to tighten up the protection against waiver of the right to cancel a residential or vehicle lease. Under the Act, a servicemember who signs a lease while on active duty has the right to cancel it upon receiving orders for a permanent change of station. The Act should allow the servicemember to waive this right not at any time during the period of active duty, but only after the orders for the permanent change of station. Otherwise, vehicle and residential leases offered to servicemembers who are on active duty will include clauses waiving the right to cancel. This would defeat Congress' purpose in adopting this protection. We suggest that the following language be added to Section 107:

> Sec. 107(e): The right to terminate a residential or motor vehicle lease under Sec. 305 because of a permanent change of station may be waived only in a writing that complies with subsection (c) of this section, and only after the servicemember has received orders for a permanent change of station.

Protections in Court and Administrative Proceedings

We support the draft bill's clarification of the meaning of "judgment," so that it is clear that it includes any order or ruling, whether final or temporary. The existing language could be interpreted to give courts and administrative agencies authority to protect servicemembers only from final judgments. Since preliminary rulings can, for all practical purposes, determine the outcome of the case, they can be just as important as the final judgment. In addition, in many administrative proceedings the tribunal issues orders rather than judgments. The use of the term "judgment" in the existing law, without a broad definition, threatens to undercut the rights of a servicemember who is a party to a court or administrative proceeding.

We also support the draft bill's clarification that a servicemember has a right to a stay of a court case under Section 202 of the Act whether the servicemember is the plaintiff or the defendant. Many reservists have been called to active duty on as little as a week's notice. If the reservist is a plaintiff in a lawsuit that is scheduled for trial, the reservist should be able to get the trial postponed. Unfortunately, the current provision for a stay of proceedings (Section 202(a)) states that it applies when the "defendant" is in

military service. A later part of the same section, however, states that a stay may be sought when it appears that the servicemember is unavailable to "prosecute or defend" the action. This language suggests that it was the intent of Congress that the provision apply whether the servicemember is the plaintiff or defendant. We urge the committee to clarify this ambiguity by adopting the proposed amendment.

We also suggest an additional provision to clarify that the intended protections of Title II of the Act are *supplemental to rather in replacement of* existing legal protections under other laws. The protections against evictions, repossession, and foreclosure, explicitly preserve other rights in other laws – which is very important. However, there is no similar assurance that the benefits of other laws apply uniformly to servicemembers who are caught up in court or administrative proceedings when they enter active duty. We urge the committee to adopt an amendment that would make it clear that the rights created by Title II of the Act are in addition to, rather than in place of, any rights the servicemember has under existing state law. For example, Section 201(g) allows a servicemember to ask that a judgment be reopened by filing an application within 60 days after release from active duty, but under general procedural rules in most states a person can ask that a judgment be reopened up to one year after it was rendered. The proposed amendment would make it clear that a servicemember has the option of applying within either the 60-day period or the period of time allowed by the ordinary rules of court. The language we propose is:

> Sec. 201(i) Preservation of Other Remedies and Rights. The remedies and rights provided under this title are in addition to and do not preclude any rights and remedies otherwise available under law to the person claiming relief under this title.

Conclusion

On behalf of our low income clients in the armed services, we very much appreciate the opportunity to provide testimony to you today. We are happy to continue working with your staff and help facilitate the effective use of the Act in any way that we are able.

Questions for the Record
Honorable Christopher H. Smith, Chairman
Committee on Veterans' Affairs
June 23, 2004

Legislative and Oversight Hearing: "Protecting the Rights of Those Who Protect Us: Public Sector Compliance with the Uniformed Services Employment and Reemployment Rights Act and Improvement of the Servicemembers Civil Relief Act."

Q. [Paraphrase – we have received a written QFR from the committee.] Mr. Duehring, you stated in your testimony that the Department of Defense is not aware that the situation H.R. 3779, the Safeguarding Schoolchildren of Deployed Soldiers Act of 2004, is at all widespread or merits Federal legislation. In her testimony, Congresswoman Ginny Brown-Waite estimated that perhaps 1000 to 10,000 children are impacted. Could you check into the number?

In preparing for Mr. Duerhring's testimony, we asked all of the services' legal assistance and reserve component points of contact if they were aware of any children who had experienced residency problems with their local school boards caused by a parent's deployment (the problem that H.R. 3779 is designed to address). No such problems had been reported. After Mr. Duehring's testimony on June 23, 2004, we checked again with all the services. They all confirmed that no reports have come in concerning the problem that H.R. 3779 is designed to address, either before we asked the question the first time, or since then. DoD continues to believe that the incidence of children of deployed servicemembers suddenly being treated as nonresidents of school districts where they have previously been considered residents is very isolated, and that to the extent it exists, this problem may be better addressed at the State level than through Federal legislation.

Hearing Date: June 23, 2004
Committee: House Committee on Veterans' Affairs
Member: Rep. Christopher Smith
Witness: Mr. Duehring

Question: Mr. Duehring, you stated in your written testimony that the Defense Department supports increasing from 18 to 24 months the maximum period of employer provided health care that an employee covered by USERRA may elect.

You noted that this provision would align the proposed two years of health care coverage with the length of time for which reservists can be mobilized under current mobilization authority.

a. Is it correct to conclude from your written statement that the current mobilization authority is for a period of up to two years?

Answer: Yes, the current mobilization authority under 10 U.S.C. 12302 is for a period of up to two years.

b. What are DoD projections regarding the number of reservists who could be mobilized from up to two years?

Answer: Current projection for Reserve members who will attain two years of cumulative service is approximately 20,000.

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