USERRA

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

FY 2014 - ANNUAL REPORT TO CONGRESS

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PREPARED BY: Office of the Assistant Secretary for Veterans' Employment and Training

UNITED STATES DEPARTMENT OF LABOR

The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) are: to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and to prohibit discrimination against persons because of their service in the uniformed services. It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of USERRA.

38 U.S.C. § 4301, ***Purposes and Sense of Congress***

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Introduction

The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 (USERRA), was signed into law on October 13, 1994. USERRA prohibits discrimination in employment based on an individual's prior service in the uniformed services; current service in the uniformed services; or intent to join the uniformed services. An employer is also prohibited from discriminating against a person because of such person's attempt to enforce his or her rights under the Act. In addition, an employer may not retaliate against an individual for filing a USERRA claim or testifying or otherwise providing assistance in any proceeding under the Act. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is entitled to be reemployed with the status, seniority, and rate of pay as if he or she had been continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and State and local governments. It also applies to United States employers operating overseas and foreign employers operating within the United States.

This Fiscal Year (FY) 2014 report was prepared in accordance with 38 U.S.C. § 4332(a), which requires the Secretary of Labor, after consultation with the Attorney General and the Special Counsel, to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year:

1. The number of cases reviewed by the Department of Labor (DOL) under this chapter during the fiscal year for which the report is made.

2. The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve (ESGR) of the Department of Defense (DOD) during the fiscal year for which the report is made.

3. The number of cases referred to the Attorney General or the Special Counsel pursuant to Section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of Special Counsel (OSC) before the Merit Systems Protection Board (MSPB) pursuant to Section 4324 during such fiscal year.

4. The number of complaints filed by the Attorney General pursuant to Section 4323 during such fiscal year.

5. The number of cases reviewed by the Secretary of Labor and the Secretary of Defense through ESGR of DOD that involve the same person.

6. With respect to each of the cases referenced above:

    A. the number of such cases that involve a disability-related issue; and
    B. the number of such cases that involve a person who has a service-connected disability.

7. The nature and status of each of the cases referenced above.

8. With respect to each of the cases referenced above, the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System (SOCS).

9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter together with an explanation thereof.

10. Recommendations for administrative or legislative action that the Secretary of Labor, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

Overview of USERRA Protections

USERRA generally requires U.S. employers, regardless of size or location of operation, as well as foreign employers operating in the United States or its territories, to reemploy eligible veterans returning to their civilian employment after a period of service in the uniformed services. It requires employers, with certain exceptions, to provide training to restore competency in duties, and to restore seniority, status, pay, pensions, and other benefits that would have accrued but for the employee's absence due to military service. Under USERRA, employers are generally liable for funding their share, if any, to the civilian retirement plan(s) of employed service members away on military service.

Eligibility requirements for service members seeking reemployment generally provide that the absence must be due to service; advance notice (oral or in writing) must be given to the employer; the cumulative period(s) of service while employed by the employer must not exceed five years; the application for reemployment must be timely; and the discharge from service must not be disqualifying.

Employers are also prohibited from discriminating on the basis of service in the military, the National Disaster Medical System, and the commissioned corps of the Public Health Service. USERRA also protects anyone—veteran or non-veteran—from reprisal for either exercising rights or assisting in any proceeding under the statute.

DOL, DOD, and the U.S. Office of Personnel Management (OPM) share responsibility for promoting a clear understanding of USERRA among employers and individuals concerning their respective rights and responsibilities under USERRA. DOL's Veterans' Employment and Training Service (VETS) and DOD's ESGR provide extensive public education, outreach, and compliance assistance with the goals of preventing violations caused by ignorance or misunderstanding of the law and ensuring that protected individuals understand their rights and know what assistance is available to help them secure those rights. OPM administers USERRA for the Federal Government, and issues guidance on ways to improve USERRA protection policies and practices. Further, USERRA requires OPM and all Federal agencies to provide USERRA awareness training to human resources personnel.

There are three levels of Federal assistance available to individuals who believe their USERRA rights may have been violated. ESGR Ombudsmen services are the most informal level at which resolution can be sought. If the issue cannot be resolved by the ESGR Ombudsman, or if the individual prefers to bypass informal resolution, VETS formally investigates complaints received and attempts to resolve those complaints. If, following VETS' investigation and attempts at resolution, the claimant is not fully satisfied with the outcome, VETS informs the individual of his or her right to have the case referred for consideration of legal representation at no cost to the claimant. Referrals are made to the Department of Justice (DOJ) in cases involving a private, State or local government employer or to OSC[1] in cases involving a Federal employer. Claimants also have the right at any time to

[1] The U.S. Office of Special Counsel (OSC) is an independent Federal investigative and prosecutorial agency. OSC's primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, including protections included in USERRA.

withdraw their case to pursue enforcement at their own expense, in U.S. District Court or before the MSPB, either on their own or with the assistance of a private attorney.

This report begins by describing the levels of Federal assistance available, starting with outreach and education and continuing through informal dispute resolution, formal investigation and resolution, referral, and consideration of and provision of legal representation, as appropriate. Finally, the report responds to each of the statutorily-mandated reporting requirements described in the introduction to this report.

USERRA SERVICES PROVIDED BY THE DEPARTMENT OF DEFENSE'S EMPLOYER SUPPORT OF THE GUARD AND RESERVE

OVERVIEW

ESGR is an office within DOD that facilitates and promotes a cooperative culture of employer support for National Guard and Reserve service by developing and advocating mutually beneficial initiatives; recognizing outstanding employer support; increasing awareness of applicable laws and policies; resolving potential employment conflicts between employers and their service members; and acting as the employers' principal advocate within DOD.

ESGR has conducted outreach to Reserve Component (RC) service members and their employers since its inception in 1972. Hundreds of thousands of RC service members and employers have benefited from ESGR products and services. With National Guard and Reserve forces making up nearly 50% of our military strength, the support of civilian employers is now more critical than ever to our national defense.

ESGR has a national and local organizational structure that provides support to:

- Operate a proactive outreach program, directed at U.S. employers, employees, and communities, that ensures understanding and appreciation of the role of the Guard and Reserve in the context of the DOD Total Force Policy.
- Assist in preventing, resolving, or reducing employer and/or employee problems and misunderstandings that result from Guard or Reserve service, training, or duty requirements through information services and mediation.
- Assist in educating National Guard and Reserve members regarding their obligations and responsibilities to employers.
- Use the military chain of command to promote better understanding of the importance of maintaining positive working relations between employers and their RC employees, in order to sustain military participation.

Today, more than 4,600 ESGR volunteers serve across the nation in all 50 states, the District of Columbia, Guam-CNMI, Puerto Rico, and the U.S. Virgin Islands; 700 of those 4,600 serve as Ombudsmen. The ESGR Headquarters (HQ) in Alexandria, Virginia, provides guidance and resources to the 54 ESGR State Committees that conduct employer and military outreach programs. These employers and military outreach programs also include participants from the volunteer ombudsmen services program. ESGR Ombudsmen are specifically trained in USERRA on using neutral mediation techniques, resolving employment conflicts between service members and employers, and furthering the understanding of and compliance with USERRA regulations. ESGR

conducts proactive outreach programs and provides responsive Ombudsman Services in support of its mission. In FY 2014, ESGR volunteers influenced 145,270 employers and 414,490 service members, informing both groups on responsibilities and rights under USERRA.

Outreach Programs
ESGR conducts awareness and recognition programs aimed at employers of RC service members to engender positive support for Guard and Reserve service. These programs include the voluntary participation by employers in the Statement of Support Program and recognition of employers who go "above and beyond" the requirements of USERRA.

Employers who participate in the Statement of Support Program pledge that:

1. They fully recognize, honor and enforce USERRA.
2. Their managers and supervisors will have the tools they need to effectively manage those employees who serve in the Guard and Reserve.
3. They appreciate the values, leadership, and unique skills service members bring to the workforce and will encourage opportunities to hire Guardsmen, Reservists, and veterans.
4. They will continually recognize and support our country's service members and their families in peace, in crisis, and in war.

ESGR's Patriot Award is designed to recognize employers for employment policies and practices that are supportive of their employees' participation in the National Guard and Reserve. During FY 2014, ESGR recognized 10,489 supervisors of RC service members with the Patriot Award.

In addition, the Secretary of Defense Employer Support Freedom Award is the U.S. Government's highest honor bestowed on employers, and is presented annually to a maximum of 15 select large, small, and public-sector employers who have demonstrated exceptional support to National Guard and Reserve employees. HQ ESGR received 2,864 nominations for the 2014 Secretary of Defense Employer Support Freedom Award. During the same period, 50,094 employers signed Statements of Support.

Ombudsman Services
The primary means of assisting National Guard and Reserve members with USERRA employment conflicts is through a nationwide ESGR Ombudsman Services Program that reduces, resolves, and helps prevent employer and/or employee misunderstandings and problems. The Ombudsman Services Program provides education, information, and neutral third-party mediation services in order to resolve employee/employer USERRA conflicts. ESGR is not an enforcement agency, and does not participate in formal investigative or litigation processes.

ESGR has a national network of over 650 volunteer Ombudsmen that assist in resolving USERRA compliance issues throughout the nation. ESGR's ombudsmen volunteers receive training on USERRA and dispute resolution techniques. They also serve as a neutral third party between the employer and employee to inform and educate all involved parties on the requirements of the law, as well as to work to obtain a mutually agreeable solution to the dispute. ESGR also collaborates with DOL under an interagency Memorandum of Understanding (MOU) that sustains the organizations' cooperation in managing and resolving USERRA cases and expedites the sharing of information between ESGR and VETS. The MOU between ESGR and DOL stipulates that when a case cannot

be resolved by ESGR within 14 to 30 calendar days, ESGR will close the case and notify the parties that the service member may file a complaint with DOL or retain private counsel.

ESGR operates and maintains a Customer Service Center (CSC) that acts as the initial entry point for USERRA complaints, inquiries and information requests involving DOD. The CSC provides prompt, expert telephonic and email responses to service members and employers on all USERRA-related matters. During FY 2014, ESGR received 16,089 contacts by telephone and email; of which 2,374 contacts resulted in actual USERRA mediation cases. ESGR's mediation efforts covered an array of USERRA issues that included 1,131 complaints involving some type of military discrimination, 855 complaints involving job reinstatement and reemployment problems, and 325 complaints involving possible retaliation or reprisal. There were 550 USERRA mediation cases in which ESGR was unable to obtain an agreement between the employee and employer. In those instances, ESGR Ombudsmen informed both parties that the employee (service member) had the right to file a complaint with DOL or seek assistance through a private attorney.

ESGR and VETS will continue to track questions involving program administration, coordinate issues, and identify trends in future fiscal years as a key part of both agencies' efforts to improve services to the National Guard and Reserve.

DEPARTMENT OF LABOR'S USERRA OUTREACH AND CLAIMS INVESTIGATION

VETS PUBLIC EDUCATION AND COMPLIANCE ASSISTANCE EFFORTS

VETS conducts a robust public outreach campaign to educate service members, employers, and others on their rights and responsibilities under USERRA. Since the terrorist attacks of September 11, 2001, VETS has briefed more than one million individuals on USERRA. In FY 2014, VETS presented USERRA information to more than 10,500 individuals including servicemembers, professional groups, and the general public. Briefings to mobilizing and demobilizing members of the Guard and Reserve are given in collaboration with ESGR. Together, the two agencies strive to ensure that every RC member receives a USERRA briefing upon mobilization and demobilization from active military service.

VETS INVESTIGATIVE PROCESS

USERRA investigations are complaint-driven. An individual who believes that his or her USERRA rights have been violated may file a complaint with VETS online or submit a signed form in person or via mail or facsimile. Some complaints originate with ESGR and are subsequently filed with VETS. Upon receipt of an electronically-filed or signed and completed hard-copy complaint form (the VETS 1010, available to the public online through VETS' web page), VETS immediately opens a formal investigation. A brief notification of process rights, written in easy-to-understand question-and-answer format, is sent to each claimant within five days of VETS' receipt of a complaint.

The assigned investigator collects and reviews pertinent documentary evidence and interviews necessary witnesses, and may use an administrative subpoena to obtain the necessary evidence. To ensure investigations are of the highest quality and are conducted in a uniform and timely manner, VETS investigators are extensively trained in the legal aspects of USERRA investigative techniques and in the agency's rigorous operating procedures. If the evidence compiled in a USERRA

investigation supports the allegations made, the agency will attempt to obtain satisfactory resolution through negotiation or mediation. VETS encourages all parties to resolve disputes promptly and avoid litigation.

VETS has 90 days to complete its investigation, unless VETS obtains an extension of time from the claimant for VETS to continue the investigation and attempt to resolve the case. At any point during the investigative process, the claimant may elect to withdraw the complaint from VETS and pursue the claim with private counsel. A claimant whose case is being investigated by VETS may be concurrently represented by a third party, including private counsel, but VETS will continue its efforts only as long as the third party does not interfere with the investigation. An example of interference would be contacting the employer or potential witnesses.

CASE REFERRAL PROCESS

Upon completion of the investigation, if VETS does not resolve the case to the claimant's satisfaction, VETS advises the claimant in a written closing letter of his or her right to have the case referred to either DOJ or to the OSC, as appropriate, for consideration of legal representation at no cost to the claimant. If a claimant requests that a case be referred, VETS must refer the claim regardless of whether VETS has found merit in the complaint. VETS has 60 days to complete this referral process, unless VETS obtains an extension of time from the claimant.

DEPARTMENT OF JUSTICE ENFORCEMENT

DOJ and DOL work collaboratively to meet the goal of ensuring service members' USERRA rights are protected. If VETS cannot resolve a service member's USERRA claim against a non-Federal employer, the service member may ask DOL to refer the service member's claim to the Attorney General for review. Each DOL referral includes: (1) the VETS investigative file; and (2) a memorandum analyzing the case and providing a recommendation as to whether representation should be provided or declined.

Upon receipt of a referred USERRA claim from DOL, DOJ reviews the complete DOL investigative file and analysis. If the Attorney General is reasonably satisfied that the service member is entitled to relief, the Attorney General may exercise DOJ's prosecutorial authority and commence an action in Federal court on behalf of the service member. If the employer is a State or State agency, the action is brought in the name of the United States. In all other cases, the United States files suit in the name of the service member. If the Attorney General determines that it will not offer representation to the service member, or seek relief on the service member's behalf, it informs the service member of this decision and notifies him or her that he or she has the right to proceed with private counsel. In all cases, DOJ ensures that each USERRA referral receives careful consideration and is processed as expeditiously as practicable.

DOJ continues to ramp up its enforcement of USERRA against private, State and local employers through litigation, facilitated settlements, outreach, and advocacy. Since 2004, DOJ has filed 88 USERRA lawsuits seeking relief for service members, and favorably resolved 140 USERRA complaints through either consent decrees obtained in those suits or by facilitating private settlements.

DOJ has actively participated as *amicus curiae* in appeals involving the rights of service members, including the Supreme Court case *Staub v. Proctor Hospital*, the Second Circuit appeal in *Serrichio v. Wachovia Securities*, and the First Circuit appeal in *Rivera-Melendez v. Pfizer Pharmaceuticals, LLC*.[2] DOJ also intervened and participated as *amicus curiae* to defend USERRA's constitutionality in *Weaver v. Madison City Board of Education* (N.D. Ala.), filed in 2012, and *Ramirez v. State of New Mexico Youth and Family Services* (N.M. App.), filed in 2013.[3]

DOJ also has been working with DOL in training VETS' investigators through both live and remote training sessions in order to ensure that the first line of defense of service member's civil rights under USERRA is fully prepared.

In FY 2015, DOJ will continue to work with DOL to ensure that referrals are promptly and carefully processed and that each meritorious referral is resolved to the satisfaction of the service member and the government. While DOJ will continue to aggressively pursue litigation when warranted, it seeks to resolve meritorious referrals without contested litigation whenever possible, in order to achieve the best possible result for the service member. The United States will also continue to seek out opportunities to participate as *amicus curiae* and file statement of interest on behalf of service members as part of DOJ's enforcement powers under the statute.

OFFICE OF SPECIAL COUNSEL ENFORCEMENT

OSC's enforcement responsibilities apply to Federal-sector USERRA cases. Pursuant to an existing MOU between DOL and OSC, case referrals from DOL to OSC following a VETS investigation are addressed in a manner similar to that used in DOJ referrals discussed above, and also include a written legal analysis from DOL's Solicitor's Office that issues a recommendation as to the merit of the claim.

USERRA IN THE FEDERAL SECTOR

The Federal Government is committed to being a model employer under USERRA. OPM is responsible for administering USERRA policy for the Federal government to ensure it meets that goal. In July 2012, President Obama issued a Memorandum reaffirming the Administration's commitment to the employment and reemployment rights of service members and veterans and reiterating that the "Federal Government, as our Nation's largest employer, has a responsibility to adopt best practices with respect to employing returning service members." The President

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[2] In *Staub*, the Supreme Court held that the employer could be held liable under USERRA by virtue of the supervisor's actions. The case was remanded for a new trial. In *Serrichio*, the Second Circuit affirmed the district court's holding that plaintiff's request for reemployment was valid and not conditional upon employer fixing the issues plaintiff had complained about. In *Rivera-Melendez*, the First Circuit held that USERRA's escalator principle and reasonable certainty test apply both to automatic and non-automatic promotions, [vacated the lower court's decision granting summary judgment for the defendant]. [The case has not yet been decided on the merits by the district court].

[3] In *Weaver*, the Eleventh Circuit held that the defendants were not arms of the state and, thus, were not immune under the Eleventh Amendment from suits under USERRA. [The case has not yet been decided on the merits by the district court]. In *Ramirez*, the lower State Court opinion found that plaintiff's USERRA claim was barred by state sovereign immunity. The case has not yet been decided by the Supreme Court of New Mexico.

established a USERRA Employment Protection Working Group to coordinate and review agency efforts to implement model practices and comply with the statute. DOL, DOJ, OPM, OSC, and other key Federal agencies participated.

The Working Group led Federal agencies in the establishment of training protocols for senior leaders and managers, human resources professionals, legal departments, and service members, so that all front-line agency personnel understand their role in USERRA. On September 10, 2013, OPM issued guidance in response to the President's Memorandum on ways to improve USERRA protection policies and practices. This guidance contains strategies and data improvement suggestions for agencies to use to help strengthen their response to USERRA. A focus on continuous engagement with service members before, during, and after their military service will help ease their transition from active duty to the civilian Federal workforce, which in turn helps further the goals of making the Federal Government a model employer facilitating agency compliance with USERRA. In addition, continued identification and sharing of best practices will ensure that the most effective approaches are used to assist veterans and service members as they search for employment or return to their civilian jobs in the Federal Government. During FY 2014, VETS and OSC professional staff conducted outreach to a number of Federal agencies, teaching and training agency staff on the law and best practices set forth in OPM's guidance. VETS and OSC continue to collaborate in this effort which has earned praise from agencies who received the training.

USERRA DEMONSTRATION PROJECT

VETS and OSC collaborated on implementing and supporting the U.S. Government Accountability Office's (GAO) assessment of a three-year demonstration project, mandated by the Veterans' Benefits Act of 2010, Pub. L. No. 111-275 (VBA of 2010). Under the Demonstration Project, OSC investigated and attempted to resolve all Federal complaints filed by servicemembers whose Social Security Numbers (SSN) ended in an odd digit, in addition to their usual work investigating complaints from service members who alleged a related prohibited personnel practice (PPP) allegation under 5 U.S.C. § 2302(b) (regardless of SSN).[4] VETS investigated and attempted to resolve the remaining Federal complaints (those associated with even-numbered SSNs that had no related PPP allegation) and continued to investigate and attempt to resolve all non-Federal complaints (those against private, State, and local employers). Previously, VETS had investigated and attempted to resolve all Federal complaints filed by service members, regardless of SSN. The Demonstration project, which began on August 9, 2011, and ended on August 8, 2014, compared the performance of VETS and OSC in the investigation of USERRA complaints against Federal government agencies across a number of dimensions, such as timeliness, case outcomes, and cost effectiveness.

[4] USERRA complaints received by OSC under the Demonstration Project were separate and apart from USERRA cases referred to OSC by DOL under 38 U.S.C. § 4324 (*see* "CASES REFERRED TO THE OFFICE OF THE SPECIAL COUNSEL").

During FY 2014, USERRA Demonstration Project cases were distributed as follows:

Demonstration Project Cases	Cases Pending at Start of FY 2014[5]	New Cases Opened in FY 2014[6]	Total Cases Reviewed in FY 2014	Cases Closed in FY 2014	Cases Pending at Start of FY 2015
VETS	14	85	**99**	98	1
OSC	69	146	**215**	153	62

In order to implement the demonstration project, VETS and OSC entered into a MOU establishing how cases were transferred, reported, and how OSC received funding for those cases it received from VETS. VETS' USERRA Information Management System (UIMS), which collects and reports key information on USERRA cases, was modified to collect and show data related to the demonstration project, and the appropriate electronically filed claims were automatically transferred to OSC for greatest efficiency. In addition, VETS established a cost-tracking system specific to its investigations under the demonstration project to enable GAO to compare the costs of Federal USERRA investigations in the two agencies.

To further comply with the VBA of 2010, VETS and OSC developed and implemented a customer satisfaction survey to measure USERRA claimants' overall satisfaction with the investigative process and to offer them an opportunity to comment on the manner in which their claims were handled. VETS and OSC developed a series of questions designed to elicit unbiased information in such areas as professionalism, oral and written communication, courtesy, access to VETS or OSC staff, and the claimants' view of the overall quality of the investigation.

GAO released its Report to Congressional Committees on the Demonstration Project in November, 2014—GAO-15-77—with the following findings and recommendations on the Report's "GAO Highlights" page:

> VETERANS' REEMPLOYMENT RIGHTS
>
> **Department of Labor Has Higher Performance Than the Office of Special Counsel on More Demonstration Project Measures**
>
> **What GAO Found**
>
> **Demonstration Project Performance** Between August 2011 and August 2014, the Department of Labor (DOL) demonstrated relatively higher performance than the Office of Special Counsel (OSC) on three of five performance metrics in the Veterans' Benefits Act of 2010 (VBA).The relative performance was influenced—to a varying extent—by a number of factors, such as the investigative approach.

[5] FY 2013 Annual Report to Congress reported that OSC's "Cases Pending at Start of FY 2014" totaled 71, but that number is reduced to 69 in this Report.

[6] Investigations of certain USERRA Demonstration Project cases begun in one agency that were found to properly belong with the other agency were transferred as appropriate for completion of the investigation, under Project guidelines. For Annual Report tracking purposes, each such case is counted under the agency that completed the investigation.

Case Outcomes (as of July 31, 2014): OSC provided relief to about 26 percent and DOL provided relief to about 20 percent of its claimants. DOL resolved 308 (or 97 percent of the 319) Uniformed Services Employment and Reemployment Rights Act (USERRA) cases, and OSC resolved 366 (or 84 percent of the 434) cases it received. OSC received a greater number of cases due to a requirement to investigate 27 cases involving a prohibited personnel practice (PPP) and to the random assignment of cases from servicemembers with odd social security numbers. GAO did not evaluate the appropriateness of agencies' case outcomes. Although the agencies had 10 months to prepare, OSC officials stated they had limited capacity to investigate and resolve claims during the first six months of the demonstration project. In fiscal years 2013 and 2014, both agencies closed about as many cases as received.

Customer Satisfaction: On a survey sent to claimants and administered by OPM, DOL respondents reported higher average satisfaction on every question than OSC respondents, with pronounced differences in scores on timeliness, access to staff, and overall experience. For example, 66 percent of DOL's respondents (n=100) were satisfied with overall customer service, whereas 34 percent of OSC's respondents (n=151) were satisfied. In light of the low survey response rates, GAO conducted additional statistical analyses to control for potential bias and ensure conclusions could be drawn from survey results. Differences in satisfaction between agencies persisted after controlling for variables such as case outcome and timeliness.

Timeliness: DOL's average investigation time of closed cases was about 41 days and OSC's was about 151 days. GAO examined factors potentially influencing timeliness, such as OSC's responsibility to investigate cases involving a PPP, and whether relief was obtained for claimants. GAO found these factors were not primary contributors to OSC's relatively longer average times. Agencies have different policies for extending case investigation timeframes. Officials from OSC said they allow for open-ended case extensions, whereas DOL does not.

Cost: DOL spent about $1,112 per case, whereas OSC spent about $3,810. The relative difference in agencies' costs was affected by factors such as the number of hours dedicated to case investigations and pay levels, among others.

Capacity: The agencies demonstrated different capabilities to investigate and resolve cases in areas such as staffing, training, and information technology. For example, DOL had 31 staff investigating USERRA demonstration projects, and other nonfederal USERRA or veterans' preference cases. These DOL investigators had an average annual demonstration project caseload of five. OSC had 7 staff investigating demonstration project cases, with an average annual caseload of 28. GAO could not determine relative performance on agency capacity due to the lack of a specific and comparable metric.

What GAO Recommends

GAO recommends that any agency chosen to investigate USERRA claims continue efforts to collect claimants' survey satisfaction information, and to consider efforts to increase the survey response rate. DOL agreed with GAO's recommendations. OSC neither agreed nor disagreed with GAO's recommendations, and disagreed with GAO's findings regarding agencies' relative performance.

MANDATED REPORTING REQUIREMENTS

SECTION 4332 OF USERRA, 38 U.S.C. § 4332, REQUIRES THE SECRETARY OF LABOR, AFTER CONSULTATION WITH THE ATTORNEY GENERAL AND THE SPECIAL COUNSEL, TO PREPARE AND TRANSMIT AN ANNUAL REPORT TO CONGRESS CONTAINING THE FOLLOWING INFORMATION FOR THE PRECEDING FISCAL YEAR:

1. THE NUMBER OF CASES REVIEWED BY THE DEPARTMENT OF LABOR UNDER THIS CHAPTER DURING THE FISCAL YEAR FOR WHICH THE REPORT IS MADE.

DOL reviewed 1,140 new unique cases in FY 2014 (OSC reviewed an additional 146 new unique cases as part of the USERRA Demonstration Project that began on 8/9/2011 and ended on 8/8/2014).[7] Reviewed cases are those cases opened in conjunction with a signed or electronically-filed VETS 1010 complaint form. The table below provides the numbers of new unique USERRA cases handled by the Federal Government in FY 2009 – FY 2014.

Fiscal Year	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
New VETS Cases (Federal and Non-Federal)	1,431	1,438	1,548	1,275	1,144	1,140
OSC Cases (Federal only)	n/a*	n/a*	28	150	137	146
Total New Cases	**1,431**	**1,438**	**1,576**	**1,425**	**1,281**	**1,286**

In FY 2014, DOL also carried over an additional 146 unique cases (open investigations) from FY 2013, and OSC also carried over from FY 2013 an additional 69 unique cases (open investigations, as part of the USERRA Demonstration Project). During FY 2014, DOL reopened nine cases from FY 2013 and one from FY 2012 or earlier. In sum, DOL reviewed a total of 1,296 unique cases in FY 2014, and OSC reviewed an additional 215 unique cases.

2. THE NUMBER OF CASES REVIEWED BY ESGR, ON BEHALF OF THE SECRETARY OF DEFENSE, DURING THE FISCAL YEAR.

During FY 2014, ESGR received 16,089 contacts by telephone and email. Of those contacts, 2,374 resulted in actual USERRA cases which were reviewed by ESGR Ombudsmen.

3. THE NUMBER OF CASES REFERRED TO THE ATTORNEY GENERAL OR THE SPECIAL COUNSEL PURSUANT TO SECTION 4323 OR 4324, RESPECTIVELY, DURING SUCH FISCAL YEAR AND THE NUMBER OF ACTIONS INITIATED BY THE OFFICE OF THE SPECIAL COUNSEL BEFORE THE MERIT SYSTEMS PROTECTION BOARD PURSUANT TO SECTION 4324 DURING SUCH FISCAL YEAR.

In FY 2014, DOL referred 64 cases to the Attorney General and 14 cases to OSC. During the fiscal year, OSC did not represent any service members before the MSPB that resulted in a MSPB decision. The nature and status of these referred cases is reflected in mandatory reporting requirement number seven of this report.

[7] In this report, the term "new unique cases" means cases first received by VETS or OSC in a given year. This count eliminates duplications that result from a claimant filing the same complaint more than once; a case being closed in one State and reopened in another for administrative purposes; or a claimant reopening a claim that was previously closed.

* OSC did not review new unique cases in FY 2009 and FY 2010 because the assignment of such cases to OSC under a demonstration project established by the Veterans Benefits Improvement Act of 2004 ended in FY 2008. However, OSC again began to review unique cases in FY 2011 under the demonstration project established by the VBA of 2010, discussed above.

4. THE NUMBER OF COMPLAINTS FILED BY THE ATTORNEY GENERAL PURSUANT TO SECTION 4323 DURING SUCH FISCAL YEAR.

DOJ filed five USERRA complaints in FY 2014. Two of these cases settled in FY 2014. The remaining three were in active litigation in FY 2014.

5. THE NUMBER OF CASES REVIEWED BY THE SECRETARY OF LABOR AND ESGR THAT INVOLVE THE SAME PERSON.

ESGR provided VETS with the names of 2,264 individuals who had filed the 2,374 cases reviewed by ESGR Ombudsmen in FY 2014, and the date of each case. VETS compared the ESGR data to its own data[8] on cases initially opened between October 1, 2013 and October 31, 2014.[9] This comparison resulted in 239 likely matches; thus, it appears that 10% of FY 2014 ESGR cases were subsequently opened as VETS cases.

6. WITH RESPECT TO THE CASES REPORTED ON PURSUANT TO PARAGRAPHS 1, 2, 3, 4, AND 5—

A. THE NUMBER OF SUCH CASES THAT INVOLVE A DISABILITY-RELATED ISSUE.

i. Eighteen of the new unique cases first reviewed by VETS in FY 2014 (1.6%) involved a disability-related issue.
ii. Eighteen of the ESGR cases first reviewed in FY 2014 (0.8%) involved a disability-related issue.
iii. Of the cases referred by DOL for consideration of litigation in FY 2014, none of those referred to DOJ and none of those referred to OSC involved a disability-related issue.
iv. Of the five USERRA complaints filed by DOJ in FY 2014, one involved a disability-related issue.
v. With respect to the 239 cases reviewed by DOL and ESGR involving the same person in FY 2014, two (0.8%) involved a disability-related issue.

B. THE NUMBER OF SUCH CASES THAT INVOLVE A PERSON WHO HAS A SERVICE-CONNECTED DISABILITY.

i. In FY 2014, VETS asked claimants whether they had a service-connected disability. Among the 1,140 new unique cases VETS received, VETS obtained responses from 1,118 claimants, 22% (250) of whom reported having such a disability. Among these 250 claimants who reported having a service-connected disability, 17 also claimed a USERRA-related disability issue. Among the remaining 868 claimants who responded

[8] Absent more specific data on the employer(s) and specific allegation(s) involved, case matching cannot be made with complete confidence.
[9] October VETS data was included to capture the ESGR cases that were opened late FY 2014 and may have been filed with VETS in October 2014.

but did not report having a service-connected disability, one claimed a USERRA-related disability issue.

ii. No information is available on the number of cases handled by ESGR that involved a person with a service-connected disability.

iii. Of the cases referred by DOL for consideration of litigation, 18 of those referred to DOJ involved a claimant who reported a service-connected disability, and none of the referred cases included a USERRA-related disability issue. Eight of those referred to OSC involved a claimant who reported a service-connected disability, and none of the referred cases included a USERRA-related disability issue.

iv. Of the five USERRA complaints filed by DOJ in FY 2014, three involved a service-connected disability, and one of the five cases included a USERRA-related disability issue.

v. With respect to the 239 cases reviewed by VETS and ESGR involving the same person in FY 2014, VETS obtained service-connected disability responses from 238 of these claimants, 15% (35) of whom reported having such a disability. One claimant among the 35 who reported having a service-connected disability also claimed a USERRA-related disability issue. Among the remaining 203 claimants who responded but did not report having a service-connected disability, one claimed a USERRA-related disability issue.

7. THE NATURE AND STATUS OF EACH CASE REPORTED PURSUANT TO PARAGRAPH 1, 2, 3, 4, OR 5.

i. CASES REVIEWED BY THE DEPARTMENT OF LABOR

The following issues were raised in the new unique USERRA cases reviewed by DOL. Because many USERRA cases involve multiple issues, the number of cases in this chart exceeds the 1,140 new unique cases reported by VETS in FY 2014 and the combined percentages exceed 100%.

Cases Opened by VETS in FY 2014 USERRA ISSUE	VETS CASES ALLEGING ISSUE	
	NUMBER	PERCENT
Military obligations discrimination	496	43.5%
Reinstatement	237	20.8%
Other non-seniority benefits	33	2.9%
Promotion	68	6.0%
Vacation	33	2.9%
Status	24	2.1%
Pay rate	64	5.6%
Reasonable accommodation/ retraining for non-qualified/non-disabled	1	0.1%
Discrimination as retaliation for any action	110	9.6%
Seniority	31	2.7%
Pension	26	2.3%
Initial hiring discrimination	68	6.0%
Layoff	53	4.6%
Special protected period discharge	15	1.3%
Health benefits	13	1.1%
Reasonable accommodations/retraining for disabled	18	1.6%
Other	26	2.3%

DOL closed 1,134 cases in FY 2014 under the following closure codes: no merit, 384 (34%); administrative, 65 (6%); claim granted, 157 (14%); claim settled, 132 (12%); claim withdrawn, 241 (21%); not eligible, 64 (6%); referred, 71 (6%); merit, not resolved, 20 (2%); merit undetermined, 0 (0%).[10] An explanation of case closure codes follows.

[10] Combined closure code percentages exceed 100% due to the effects of rounding each code to a whole percentage.

CASE CLOSURE CODES EXPLAINED

- **ADMINISTRATIVE CLOSURE:** A case should be closed administratively under any of the following circumstances:

  Lack of Interest – Administrative closure is appropriate when the claimant clearly displays lack of interest or is obviously uncooperative. Examples are failure to reply to multiple VETS' letters, failure to give VETS a change of address, failure to supply information that could be easily obtained, and failure to attend scheduled meetings or conferences.

  Continued Unauthorized Contact by Third Party with Employer – Although a claimant is entitled to be represented by a third party under USERRA while the case is investigated by VETS, if the representation interferes with the investigation, he or she will be informed that VETS can no longer continue its involvement in the case and that the case will be administratively closed.
- **CLAIM GRANTED:** When the employer grants all of the claimant's entitlements.
- **CLAIM SETTLED:** When the claimant and the employer agree to settle the case for less than the claimant's full entitlements under USERRA.
- **WITHDRAWN CLAIM:** When the claimant informs VETS in writing of his/her desire to withdraw the claim.
- **NOT ELIGIBLE:** If a case has already been opened, and VETS finds that the claimant does not meet the eligibility requirements in the statute, the case should be discussed with the claimant and, with his/her concurrence, closed on the basis of no eligibility.
- **NO MERIT:** The claimant is not entitled to relief for reasons other than failure to meet eligibility requirements.
- **CASES REFERRED:** Unsettled cases are closed only when they are referred to the Regional Solicitor's Office for appropriate referral action.
- **MERIT, NOT RESOLVED:** When the completed investigation finds merit to the complaint, but VETS is unable to obtain a satisfactory resolution.
- **MERIT UNDETERMINED:** When the investigation is not complete but the statutory deadline for case completion (or an extension previously agreed to by the claimant) is reached and the claimant does not agree to a further extension.

ii. CASES REVIEWED BY THE ESGR ON BEHALF OF THE SECRETARY OF DEFENSE

ESGR Ombudsman services covered an array of USERRA issues that included 1,131 complaints involving some type of military discrimination; 855 complaints involving job reinstatement and reemployment problems; and 325 cases involving possible retaliation or reprisal during FY 2014.

ESGR resolved 1,824 of its 2,374 Ombudsman cases. There were 550 USERRA Ombudsman cases in which the employee and employer could not reach an agreement. In these instances ESGR Ombudsmen informed both parties that the employee had the option to file a case with DOL or seek assistance through a private attorney.

The following crosswalk aligns the issues identified in ESGR case data with VETS data. It shows the number of cases for each separate issue. For three groupings of issues defined as "Primary Categories" -- Discrimination; Reinstatement/Reemployment; and, Reprisal – the crosswalk also shows both the total cases, and the percentage of all cases, for each Category.

Crosswalk of USERRA Issues, FY 2014

ESGR Ombudsman Services ⟺ VETS' National Guard & Reserve Complaint Cases

Primary Categories	ESGR Ombudsman Cases "Problem Codes" (Converted to VETS' Issue Codes)		VETS Complaint Cases "Issue Codes" *	
Discrimination	Military Obligations Discrimination	1036	ID - Military Obligations Discrimination	456
	Initial Hiring Discrimination	95	II - Initial Hiring Discrimination	38
	1,131 Ombudsman Cases (49%)		**494 Issues in 490 Complaint Cases (51% of Complaint Cases)**	
Reinstatement/ Reemployment	Health Benefits	28	IH - Health Benefits	12
	Pension	16	IP - Pension	19
	Seniority	46	IS - Seniority	26
	Other Non-Seniority Benefits	36	IB - Other Non-Seniority Benefits	30
	Status	89	IZ - Status	21
	Layoff	24	IL - Layoff	50
	Vacation	96	IV - Vacation	33
	Reinstatement	381	IR - Reinstatement	215
	Promotion	70	IT - Promotion	61
	Reasonable Accommodations/Retraining for Disabled	18	IA - Reasonable Accommodations/Retraining for Disabled	12
	Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled	4	IW - Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled	0
	Pay Rate	47	IM - Pay Rate	56
	Special Protected Period Discharge	0	IF - Special Protected Period Discharge	13
	855 Ombudsman Cases (37%)		**548 Issues in 403 Complaint Cases (42% of Complaint Cases)**	
Reprisal	Discrimination as Retaliation for any Action	325	ID2 - Discrimination as Retaliation for any Action	64
	325 Ombudsman Cases (14%)		**64 Issues in 64 Complaint Cases (7% of Complaint Cases)**	

* To facilitate comparisons with ESGR data, VETS' data in this chart reflects only National Guard & Reserve (NG&R) complaint cases, whereas ALL complaint cases were reflected earlier in this Report in the "Mandated Reporting Requirements" section. Also, the percentages of NG&R complaint cases among the three Primary Categories for both VETS and ESGR in this chart total less than 100% for each agency, because ESGR's Case counts and VETS' Issue counts here do not include the uncategorized "Other" Problem/Issue Code, thereby excluding 63 "Other" ESGR Cases and 16 "Other" VETS Issues from this chart.

iii. CASES REFERRED TO THE DEPARTMENT OF JUSTICE OR THE OFFICE OF SPECIAL COUNSEL

CASES REFERRED TO THE DEPARTMENT OF JUSTICE

In FY 2014, the Attorney General received 19 referrals from DOL in which DOL found the claims to be meritorious and recommended that DOJ offer representation to the service member. DOJ offered representation in three cases, and declined representation in six cases (DOJ facilitated settlement in three). Two referrals involved State agencies as potential defendants. DOJ declined to pursue litigation in agreement with DOL in one State referral and the remaining State referral was still under consideration by DOJ in FY 2014. The remaining eight referrals were still under consideration by DOJ in FY 2014.

DOJ received an additional 45 referrals from DOL in FY 2014 with a finding of non-merit and a recommendation that DOJ decline to litigate the case. Based on DOL's recommendation and DOJ's independent analysis of the merits of each referral, DOJ declined representation with respect to 27 referrals and offered representation in one referral. Nine referrals involved state agencies, seven of which DOJ declined to pursue litigation in agreement with DOL and two of which were still under consideration by DOJ in FY 2014. The remaining eight referrals were still under consideration by DOJ in FY 2014.

The cases referred to the Civil Rights Division in FY 2014 involved a number of USERRA issues. Seventeen of these cases (27%) involved allegations of termination and/or discharge, 25 cases (39%) involved allegations of problems involving reemployment, and eight cases (13%) involved allegations of loss or denial of benefits, such as loss of pay, assignment, reduction or loss of pension or health benefits, or loss of seniority. The cases also involved various forms of discrimination, with 11 cases (17%) involving failure to promote, one case (2%) involving failure to hire, two cases (3%) involving service connected disability, and 38 cases (59%) involving actions affecting the service member's terms and conditions of employment, such as hostile work environment, discipline or harassment. Eight of these cases (13%) involved allegations of retaliation for asserting USERRA protection.[11]

CASES REFERRED TO THE OFFICE OF THE SPECIAL COUNSEL

During FY 2014, DOL referred 14 cases to OSC at the request of the service member, under 38 U.S.C. Sec. 4324. Additionally, six cases referred to OSC during previous fiscal years remained pending at the beginning of FY 2014. Thus, 20 total cases were pending at OSC during the fiscal year. OSC closed 13 of the 20 cases during FY 2014, with seven cases pending at the end of the fiscal year. OSC did not file any actions with the MSPB during the fiscal year.

In 14 of the 20 cases, the service member alleged discrimination based on uniformed service, including termination, non-promotion, non-selection, or improper denial of employment benefits; in six cases, violations of reemployment rights; and in one case, retaliation for exercising USERRA rights.[12]

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[11] Several cases involved multiple issues. Each issue was counted separately.

[12] One case involved multiple issues. Each issue was counted separately.

USERRA cases referred to OSC by DOL under 38 U.S.C. § 4324 are separate and apart from USERRA complaints received by OSC under the USERRA Demonstration Project which began on 8/9/2011 and ended on 8/8/2014 (*see* "**USERRA DEMONSTRATION PROJECT**").

iv. COMPLAINTS FILED BY THE ATTORNEY GENERAL

DOJ filed five USERRA complaints in FY 2014. Two of these cases settled in FY 2014. The remaining three were in active litigation at the end of FY 2014.

v. CASES REVIEWED BY DOL AND ESGR INVOLVING THE SAME PERSON

DOL's response to Mandated Reporting Requirement # 5, setting forth the number of cases reviewed by DOL and DOD through ESGR that involve the same person, indicates that in comparing ESGR data on USERRA cases during the fiscal year, 239 likely matches were identified. This figure indicates that first ESGR, and subsequently DOL, handled the same individuals' claims.

DOL closed 238 of these 239 likely matches by May 12, 2015, under the following closure codes: no merit, 92 (39%); administrative, 17 (7%); claim granted, 36 (15%); claim settled, 31 (13%); claim withdrawn, 46 (19%); not eligible, 7 (3%); referred, 3 (1%); merit, not resolved, 6 (3%); merit undetermined, 0 (0%). An explanation of VETS case closure codes appears in the explanation of the status of cases reviewed by DOL.

The following chart shows how the alleged issues in these 239 likely match cases were distributed among the various VETS' closure codes.

VETS' Data For 239 Likely Case Matches with FY 2014 ESGR Cases*

VETS' USERRA Issue Codes	VETS' Closure Codes										
	Administrative	Claim Granted	Claim Settled	Claim Withdrawn	Merit Undetermined	Merit, Not Resolved	No Merit	Not Eligible	Referred	NUMBER OF CASES FOR EACH ISSUE CODE:	PERCENT OF ALL LIKELY MATCH CASES:
Military Obligations Discrimination	9	13	12	24	0	2	38	0	0	98	41.0%
Reinstatement	4	14	13	7	0	2	22	2	1	65	27.2%
Other Non-Seniority Benefits	0	0	1	1	0	0	1	0	0	3	1.3%
Promotion	0	3	3	1	0	0	6	0	0	13	5.4%
Vacation	1	0	1	1	0	1	4	0	0	8	3.3%
Status	0	1	2	0	0	0	3	0	1	7	2.9%
Pay Rate	2	8	3	3	0	0	3	0	0	19	7.9%
Reasonable Accommodations/Retraining for Non-Qualified/Non-Disabled	0	0	0	0	0	0	0	0	0	0	0.0%
Discrimination as Retaliation for any Action	0	3	1	3	0	1	10	1	0	19	7.9%
Seniority	0	0	1	1	0	0	1	1	0	4	1.7%
Pension	0	1	0	0	0	0	3	0	0	4	1.7%
Initial Hiring Discrimination	0	2	0	5	0	0	1	0	0	8	3.3%
Layoff	0	0	1	1	0	1	6	0	0	9	3.8%
Special Protected Period Discharge	1	0	0	0	0	1	2	0	0	4	1.7%
Health Benefits	0	0	2	0	0	0	1	0	0	3	1.3%
Reasonable Accommodations/Retraining for Disabled	0	0	1	1	0	0	0	0	0	2	0.8%
Other	0	0	0	0	0	0	0	1	0	1	0.4%
NUMBER OF ISSUE CODES FOR EACH CLOSURE CODE:	17	45	41	48	0	8	101	5	2	267	
PERCENT OF ALL LIKELY MATCH CASES:	7.1%	18.8%	17.2%	20.1%	0.0%	3.3%	42.3%	2.1%	0.8%		111.7%

* One case still open as of 5/12/2015 is not shown in this chart. The issue code for this case: Promotion.

NOTE: Many USERRA cases involve multiple issues, and VETS records all the USERRA issues involved in a case. As a result, the numbers of cases and issues in this chart exceed the 239 ESGR and VETS cases involving the same person, and the combined percentages exceed 100%. Matching of FY 2014 ESGR cases and VETS cases initially opened 10/1/2013 to 10/31/2014 is based on claim dates and claimant names.

8. WITH RESPECT TO THE CASES REPORTED ON PURSUANT TO PARAGRAPHS 1, 2, 3, 4, AND 5, THE NUMBER OF SUCH CASES THAT INVOLVE PERSONS WITH DIFFERENT OCCUPATIONS OR PERSONS SEEKING DIFFERENT OCCUPATIONS, AS DESIGNATED BY THE STANDARD OCCUPATIONAL CLASSIFICATION SYSTEM.

VETS is the only Federal agency that collected occupational data on USERRA claimants and recorded the respective Standard Occupational Classification System (SOCS) code in FY 2014. Therefore, SOCS code data is not available for cases filed only with ESGR. The chart below shows the full distribution of the SOCS codes in FY 2014 USERRA cases, across four different categories: VETS cases; cases common to VETS and ESGR; referrals to DOJ; and, referrals to OSC. The predominant occupations found among each of these four categories of cases can be summarized as follows:

- VETS obtained the SOCS code in 1,113 (98%) of the unique complaints filed in FY 2014. That data reveals that 22% of complaints involved Protective Service occupations; 11% involved Office and Administrative Support occupations; and, each of two categories (Transportation and Material Moving, and Healthcare Practitioners and Technical) involved 8% of complaints.

- With respect to cases reviewed by VETS and ESGR likely involving the same person in FY 2014, VETS obtained the SOCS code in all but two of the 239 cases. That data reveals that 24% of those cases involved Protective Service occupations, 13% involved Office and Administrative Support occupations, and 9% involved Sales and Related occupations.

- With respect to cases referred to the Attorney General from DOL in FY 2014, VETS obtained the SOCS code in all of the 64 cases. That data reveals that 31% of those cases involved Protective Service occupations. Another 9% involved Installation, Maintenance, and Repair occupations, and each of two categories (Office and Administrative Support, and Management) involved 8% of complaints.

- VETS obtained the SOCS code in all 14 of the cases referred to OSC from DOL through VETS and SOL in FY 2014. That data reveals that 29% of cases involved Protective Service occupations, and each of two categories (Business and Financial Operations, and Management) involved 21% of complaints.

Occupations Involved in FY 2014 USERRA CASES[13] As designated by the Standard Occupational Classification System (SOCS)				
SOCS Job Family	**Percentage of Cases involving SOCS Code**			
	VETS Cases	Referrals to		Common to VETS & ESGR
		DOJ	OSC	
Protective Service	22%	31%	29%	24%
Office and Administrative Support	11%	8%	7%	13%
Transportation and Material Moving	8%	6%	0%	6%
Healthcare Practitioners and Technical	8%	6%	0%	5%
Management	7%	8%	21%	7%
Sales and Related	6%	3%	0%	9%
Installation, Maintenance, and Repair	6%	9%	0%	7%
Production	5%	2%	0%	5%
Business and Financial Operations	5%	2%	21%	3%
Computer and Mathematical	4%	3%	7%	5%
Food Preparation and Serving Related	3%	3%	0%	3%
Construction and Extraction	3%	0%	7%	2%
Architecture and Engineering	3%	5%	0%	2%

9. AN INDICATION OF WHETHER THERE ARE ANY APPARENT PATTERNS OF VIOLATION OF THE PROVISIONS OF THIS CHAPTER, TOGETHER WITH AN EXPLANATION THEREOF.

No patterns of violations of USERRA became apparent in FY 2014. DOL will continue to monitor USERRA cases to identify trends as they arise.

[13] The following occupations accounted for 2% or fewer within each case/referral category shown in this chart *(with exceptions as noted here)*: Education, Training, and Library *(Exception: 5% of Referrals to DOJ, and 3% of Cases Common to VETS & ESGR)*; Arts, Design, Entertainment, Sports, and Media *(Exception: 7% of Referrals to OSC)*; Building and Grounds Cleaning and Maintenance; Community and Social Services *(Exception: 3% of Referrals to DOJ)*; Farming, Fishing, and Forestry; Healthcare Support; Legal; Life, Physical, and Social Science; Military Specific; and, Personal Care and Service occupations.

10. RECOMMENDATION FOR ADMINISTRATIVE OR LEGISLATIVE ACTION THAT THE SECRETARY, THE ATTORNEY GENERAL, OR THE SPECIAL COUNSEL CONSIDERS NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF THIS CHAPTER, INCLUDING ANY ACTION THAT COULD BE TAKEN TO ENCOURAGE MEDIATION, BEFORE CLAIMS ARE FILED UNDER THIS CHAPTER, BETWEEN EMPLOYERS AND PERSONS SEEKING EMPLOYMENT OR REEMPLOYMENT.

RECOMMENDATION FROM DOJ AND DOL: *Strengthen the United States' ability to enforce USERRA, in the following ways: Ensure that USERRA is consistent with other civil rights laws by allowing the United States to bring suit in its own name as the plaintiff, to vindicate the public interest in ensuring the statute is enforced; to challenge identified patterns and practices that violate the law; to preserve the right of the aggrieved service member to intervene in such suits or to bring his or her own suit where the Attorney General has declined to file suit; to allow the Attorney General the authority to compel production of evidence; and to guarantee availability of the procedural rights afforded by the statute.*

DOJ and DOL urge Congress to strengthen the United States' ability to enforce USERRA. Amending provisions could address several critical issues, some of which appear in the 2014 DOJ legislative package. First, we request amending USERRA to allow the Attorney General, acting on behalf of the United States, to serve as a plaintiff in all USERRA suits, rather than only in suits filed against State employers. Second, we request the grant of independent authority to the Attorney General to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. This amendment would strengthen significantly DOJ's ability to enforce USERRA to address a systemic violation (such as a policy prohibiting extended absences, including absences for military service) that could adversely affect the employment rights of multiple service members.

Third, to support the proposed pattern-or-practice authority, we request amending USERRA to provide the Attorney General with civil investigative demand authority to compel the production of existing documents and unsworn answers to written questions from the custodian of such documents. DOL has subpoena power in its investigations under USERRA. The Attorney General, however, has no pre-suit investigatory authority. Because the proposal for pattern-or-practice authority includes the authority to initiate an investigation, Congress should provide the Attorney General with the appropriate investigative tools.

We also recommend other changes that would allow for service members to more ably exercise their USERRA rights. DOJ and DOL support changes that would allow USERRA claimants to sue their own State in Federal or State courts.

To guarantee the availability of procedural rights included in the statute, we request that Congress clarify that section 4302(b) of USERRA protects both substantive and procedural rights and benefits from reduction, limitation, or elimination. We further request that Congress clarify that the definition of "benefit," "benefit of employment" or "rights and benefits" in section 4303(2) includes procedural protections provided by the statute. In particular, to guarantee the procedural right of adjudication of USERRA rights, we recommend explicitly noting that agreements to arbitrate are unenforceable unless all parties consent to arbitration after a complaint on the specific claim has been filed in court or with the Merit Systems Protection Board and all parties knowingly and voluntarily consent to have that particular claim subjected to arbitration.

DOJ and DOL look forward to working with Congress on these USERRA provisions.

USERRA annual reports are available for fiscal years (FY) 1995-1999 and 2004-2014. No reports are available for FY 2000-2003 because the reporting requirement expired in FY 2000. It was reinstated by Section 202 of the Veterans Benefits Improvement Act of 2004, P.L. 108-454, 118 Stat. 2598 (December 2004).

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