

**TESTIMONY OF  
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U.S. DEPARTMENT OF LABOR**

**BEFORE THE**

**SUBCOMMITTEE ON ECONOMIC OPPORTUNITY  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

**March 9, 2023**

**Introduction**

Chairman Van Orden, Ranking Member Levin, and distinguished Members of the Subcommittee, thank you for the invitation to testify today. I commend the Subcommittee for its efforts to promote economic opportunities for America's veterans and for examining the future of workforce protections for service members. For over 25 years, the Uniformed Services Employment and Reemployment Rights Act (USERRA) has protected the employment and reemployment rights of our Nation's uniformed service members and has played an important role in the recruitment, retention, and readiness of the All-Volunteer Force. The Department of Labor's (DOL) Veterans' Employment and Training Service (VETS) proudly administers USERRA, with the support of our interagency partners at the Department of Defense (DOD), Employer Support of the Guard and Reserve (ESGR), the Department of Justice (DOJ), and the Office of Special Counsel (OSC). I welcome the opportunity to share our vision for the future of USERRA and to share factors that decrease USERRA's ability to protect those who serve our Nation.

It has been an honor to lead DOL VETS for the last two years. My wife Vanessa and I both served on active duty in the Marine Corps, and we have two wonderful daughters who in many ways grew up having to serve with us. So, this isn't just a job for me, it's my life's mission. I have been truly impressed by the talent, dedication, and commitment of our DOL VETS team, as well as by the high level of cooperation and collaboration with our interagency partners. The vision of VETS is to enable all veterans, transitioning service members, and military spouses to reach their full potential in the workplace. Living up to full potential does not just mean getting a job; it means maximizing the value of one's unique capabilities. By improving access to the employment and reemployment rights under USERRA and harnessing America's collective support for our military and their families, we help our veterans, transitioning service members, and military spouses reach their full potential. Achieving this vision not only helps veterans, service members, their families, and the organizations they serve, but it is also good for America's prosperity and security. Veterans, service members, and military spouses comprise some of the most capable, committed, and resilient talent pools in the Nation, and they have

much to contribute to the national labor force and economy as we continue to emerge from the pandemic.

### **The Importance of USERRA to National Security and Maintaining the All-Volunteer Force**

When Congress enacted USERRA in 1994, it did so with three purposes in mind. First, to encourage service in the all-volunteer uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service. Second, to minimize the disruption to the lives of persons performing such service, as well as to their employers, their fellow employees, and their communities, by providing for prompt reemployment of such persons upon completion of such service. Third, to prohibit discrimination against persons because of their service in the uniformed service. Congress has also stated its sense that the Federal Government should be a model employer in carrying out the provisions of USERRA.

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 retaliating against a person because of such person's attempt to enforce their rights, or the rights of others, under the Act. In addition, an employer may not retaliate against an individual for filing a USERRA claim, testifying, or otherwise aiding 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 re-employed with the seniority, status, and rate of pay as if they 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.

Based on calculations, there were more than 1 million service members eligible for USERRA protections at the end of 2022.<sup>1</sup> This sum included 265,179 members of the Reserve Components (RC) that are comprised of Reserve and National Guard troops and 870,797 members of the Active Components of the U.S. Armed Forces, as reported by the Defense Manpower Data Center (DMDC)<sup>2</sup> in its strength accounting report. These figures represent only those RC members who were activated for Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, Operation New Dawn, Operation Inherent Resolve, and Operation Freedom Sentinel. Additional RC members served on active duty for training and domestic operations during this period.

USERRA provides fundamental support to our All-Volunteer Force. USERRA's reemployment protections ensure that our service members will not be penalized for temporarily leaving their civilian careers and employment when activated to defend our Nation. USERRA's anti-discrimination provisions protect our veterans and service members from adverse employment

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<sup>1</sup> Total number of U.S. Armed Forces and Selected Reserves for December 31, 2022, reported by Department of Defense, Defense Manpower Data Center, in Armed Forces Strength Figures for December 31, 2022, and Selected Reserves by Rank/Grade December 31, 2022, accessible at <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>. .

actions motivated, at least in part, by their protected status as a past, present, or future member of the uniformed services. USERRA's anti-retaliation provisions ensure that anyone, regardless of their status in the uniformed services, can assert their own rights or defend the rights of others under USERRA, and be protected against retaliatory employment actions. The existence of these important rights, as well as Federal authority to investigate, resolve, and enforce violations of those rights, removes barriers to, relieves stress from, and recognizes service in, the uniformed services. By doing so, USERRA's employment and reemployment protections encourage and facilitate the recruitment, retention, and readiness of the All-Volunteer Force.

### **Delivering Positive USERRA Outcomes for Both Employees and Employers**

Under USERRA, Congress authorized the Secretary of Labor, through DOL VETS, to assist any person or entity with the employment and reemployment rights and benefits provided under the statute. Congress also authorized DOL VETS to take such outreach actions as deemed appropriate to inform both persons entitled to rights and benefits under USERRA and employers of the rights, benefits, and obligations of such persons and such employers under USERRA. DOL 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, which resulted in the single greatest mobilization of the Reserve and National Guard, DOL VETS has briefed more than one million individuals on USERRA. So far this fiscal year, DOL VETS has already conducted over 500 compliance assistance events nationwide, informing employees and employers alike of their rights and responsibilities under USERRA.

As an example of a successful compliance assistance event, the Attorney for the Town of Davie, Florida contacted DOL VETS' Florida field office seeking to receive an overview of USERRA and assistance addressing concerns regarding employer compliance with USERRA. The Town of Davie coordinated with the DOL VETS Atlanta region to include USERRA training as part of its annual training for supervisors. Three training sessions, including a question-and-answer session, were conducted between April and May of 2021. In total, training was provided to over 160 Town of Davie municipal supervisors and managers.

In another example, on May 14, 2021, the DOL VETS' Maine State Director partnered with the Maine ESGR Chair, and other ESGR ombudsmen, to present a USERRA briefing during the Maine Annual Human Resources Convention. Training focused on the status of mobilized National Guard members, and RC employees, and an overview of their rights and responsibilities. Over 1,000 human resource professionals from throughout Maine attended the training, with several following up with VETS after the event seeking additional information.

When DOL VETS is unable to resolve a USERRA issue through compliance assistance, a servicemember or veteran can submit a claim to DOL VETS for investigation. When this occurs, DOL VETS assigns the case to a trained USERRA investigator. On average over the past three years, DOL VETS has closed 943 cases for investigation per year. When DOL VETS investigators find a violation of USERRA, the investigator works diligently with both the claimant and the employer to resolve the case to the satisfaction of both parties. Of cases in which DOL VETS found a violation of USERRA in FY 2021, DOL VETS resolved 87% of

those, which is the highest resolution rate in the history of the program.

Upon completion of the investigation, if DOL VETS does not resolve the case to the claimant's satisfaction, DOL VETS advises the claimant in a closing letter of their right to have the case referred to either DOJ or to OSC, as appropriate, for consideration of legal representation at no cost to the claimant. If a claimant requests that their case be referred, DOL VETS must refer the claim regardless of whether VETS has determined that the submitted complaint was substantiated by the facts and evidence obtained during the investigation. Each DOL VETS' case referral contains a memorandum analyzing the USERRA claim and providing an assessment of whether the complaint was substantiated.

As an example of successful cooperation between DOL VETS and DOJ, on September 1, 2021, DOJ filed a complaint, which included claimants from five cases referred from DOL VETS, in the United States District Court for the District of Guam against the Territory of Guam and the Government of Guam Retirement Fund. Brought in the name of the United States, the complaint alleges that defendants deny its service member-employees' pension credit and retirement benefits if those employees use donated leave while on military duty, in violation of USERRA. USERRA requires employers to treat employees as having uninterrupted service with the employer for time on military duty, including for pension accrual purposes. The complaint is based on the allegations of five current or retired Guam employees who served on active duty in the military, were denied pension credit for portions of their military service served while using donated leave, and, as a result, will have reduced pension benefits for the rest of their lives, but the United States' complaint alleges that defendants' practices may have illegally denied benefits to many other service members. The United States' complaint seeks damages on behalf of all affected service member-employees and injunctive relief requiring defendants to comply with USERRA. On December 21, 2021, the Court denied defendants' motions to dismiss the complaint. The case is currently in litigation.

**Identified Gaps to USERRA Service Delivery and Coverage**  
**Military Spouses Do Not Currently Have Employment Protections under USERRA**

In March 2022, the Secretary of Labor and I participated in a military spouse roundtable outreach event at Joint Base Lewis-McChord outside Tacoma, Washington. A military spouse in attendance told a compelling story of how she had to leave her position as a Federal employee to keep her family together when her Active-Duty Army husband received orders to serve overseas. I've heard similar stories over and over again from spouses working in both the public and private sector. They tell me about their challenges in building portable careers, and the financial impact this has on their families, as they struggle to find employment at each new duty station and lose out on the benefits of sustained employment, including opportunities to advance or contribute to retirement accounts. Difficulties may include failure to obtain gainful employment due to an employer's perception that such would only be for a short term, often resulting in a military spouse not fully utilizing their education and experience, not working to their full earning potential, or simply delaying their professional careers adversely impacting their families' quality of life. Research shows that barriers to military spouse employment negatively

impact national security and the national economy.<sup>3</sup> USERRA prohibits employers from discriminating against USERRA-protected persons in employment, including initial hiring and promotion, and requires employers to reemploy such protected persons on return from absences due to uniformed service. Military spouses are not presently covered under USERRA; however, our review of the issue has shown that USERRA anti-discrimination and reemployment protections to eligible military spouses could go a long way toward breaking down barriers to military spouse employment.

According to the latest (2021) DoD Report on Demographics: A Profile of the Military Community, from the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy<sup>4</sup>, the total number of military spouses of Active-Duty service members was 594,110. Of these military spouses, over 90% were female and 21% were unemployed. The total number of military spouses of Selected Reserve (Reserve and National Guard) was 354,255. Of these military spouses, over 85% were female and 7% were unemployed. The total number of these military spouses in FY 2020 was 944,329.

The latest data from the Bureau of Labor Statistics revealed that U.S. unemployment rate for January 2023 was 3.4%. At 21%, the unemployment rate for Active-Duty military spouses is over six times the national rate, and, at 7%, the unemployment rate for Reserve and National Guard military spouses is more than double the national rate.<sup>5</sup>

Research shows that support for military spouse employment is important to eliminating obstacles to the recruitment, retention, and readiness of the All-Volunteer Force.<sup>6</sup> Maintaining traditional employment and advancing in careers while relocating every few years—and taking care of children and the bulk of domestic responsibilities, often on their own—has historically been a hardship that military spouses have found extremely difficult to overcome. Choosing the life of a military spouse should not mean that the spouse must give up career aspirations of their own to support their service member.<sup>7</sup>

In addition to helping maintain the All-Volunteer Force, support for military spouse employment can also have a positive impact on the national economy. The same research also showed that economic implications of low military spouse employment are felt beyond the military spouse and their immediate family.<sup>8</sup> Higher employment rates among military spouses can have a

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<sup>3</sup> See Executive Order 13473 (September 25, 2008), in which President George W. Bush authorized noncompetitive appointments in the civil service for military spouses, and stated that “It shall be the policy of the United States to provide for the appropriately expedited recruitment and selection of spouses of members of the Armed Forces...as part of the effort of the United States to recruit and retain in military service, skilled and experienced members of the Armed Forces...” Regarding military spouse impact on national economy, see “The Military Spouse Employment Dilemma: The Multi-Million Dollar Question That No One Is Asking... Until Now.” National Military Spouse Network. 2022.

<sup>4</sup> <https://download.militaryonesource.mil/12038/MOS/Reports/2021-demographics-report.pdf>

<sup>5</sup> For U.S. unemployment data, see <https://www.bls.gov/cps/>. For military spouse unemployment rate, see <https://download.militaryonesource.mil/12038/MOS/Reports/2021-demographics-report.pdf>

<sup>7</sup> See Chrisinger, “Roadmap to Employment Stability for Military Spouses. Five Recommendations to Build Financial Security Throughout the Military Lifecycle,” National Military Spouse Network, 2021.

<sup>8</sup> See Sorenson Impact Center, “Social Cost Analysis of the Unemployment and Underemployment of Military Spouses,” David Eccles School of Business at the University of Utah, 2016.

positive economic impact and contribute to economic growth. When military spouses can build a successful career, it can also bolster a family's financial stability both during service and as the service member transitions to civilian employment. Similarly, a spouse's inability to find employment or their job dissatisfaction can also increase family and relationship stress, lower overall satisfaction with the military, and affect retention decisions for service members. Military spouses also face economic challenges in qualifying for job-related benefits like career development opportunities and vesting of employer contributions to retirement funds due to frequent relocations resulting in job loss or change. This can lead to lower lifetime earnings and inhibit the long-term financial stability of the family.<sup>9</sup> One study has estimated that adverse military spouse employment conditions represent a social cost ranging from approximately \$710 million to \$1.07 billion per year.<sup>10</sup>

For military spouses, difficulty finding and maintaining meaningful employment is a source of significant stress. According to the 2021 Blue Star Families Military Family Lifestyle Survey, military spouse employment is a top-five military life issue for nearly half (47%) of active-duty spouse respondents and a quarter of active-duty service member respondents (25%). The length of time they have been out of the workforce remains among the top barriers to employment for those active-duty spouse respondents (25%) who are not working but need or want to work. Relocation also remains a top barrier; a third (33%) of employed active-duty spouse respondents who report that they will be looking for a new job in the next 12 months will be doing so due to a relocation/permanent change of station (PCS). Spouse employment relieves financial pressure for military families; 68% of spouse respondents who are not currently working but are seeking employment also report their financial situation causes them "some stress" or a "great deal of stress," compared to only 44% of their employed counterparts.

Reserve and National Guard spouses are also impacted by their service member's absences due to deployments. According to the 2019 DoD Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy Survey of Reserve Component Spouses, released in 2021, increased stress was an issue for half of military spouses during their service member's deployment. While 76% of military spouses of Reserve members who experienced a deployment in the preceding 24 months were employed at some point during the most recent deployment, 58% took time off from work, 31% reduced the number of hours worked, and 7% left their job.

Employment challenges for military spouses may begin before they even enter the labor market.<sup>11</sup> Military spouses participate in the labor force at rates considerably lower than their civilian counterparts. A pair of studies by the RAND Corporation found that 42.4% to 42.8% of military spouses are not in the labor force compared to only 25.5% of an adjusted civilian spouse comparison group.<sup>12</sup> According to the 2014 Military Spouse Employment Report from the Institute for Veterans and Military Families, there are many potential reasons for the lower rate of labor force participation by military spouses, including frequency of moves, inability to find

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<sup>9</sup> See Kamarck, Schwemle, and Plagakis, "Military Spouse Employment," Congressional Research Service, 2020.

<sup>10</sup> See Sorenson Impact Center, *supra*.

<sup>11</sup> See Chrisinger, *supra*.

<sup>12</sup> See Lim and Schulker, "Measuring Underemployment Among Military Spouses," Rand Corporation, 2010; and Heaton and Krull, "Unemployment Among Post-9/11 Veterans and Military Spouses After the Economic Downturn," Rand Corporation, 2012.

employment that matched skill and education levels, inability to find employment that is flexible enough to accommodate their military spouse's schedule, childcare issues, or stigmatization of the military lifestyle and the impact on employability. Regardless of the causes, some military spouses face enough difficulty finding employment that it is preventing them from even seeking employment.<sup>13</sup>

Research on the perceptions of military spouses has found that more than half believe that their spouse's military service has hurt their work and career opportunities.<sup>14</sup> The 2017 Hiring Our Heroes survey on Military Spouses in the Workplace: Understanding the Impacts of Spouse Unemployment on Military Recruitment, Retention, and Readiness of spouses of Active-Duty and recently separated service members found that a host of unique factors impact both a military spouse's new job prospects and their perceptions of their marketability to potential employers. Forty-one percent of military spouses say the greatest employment challenge for spouses like them is that employers may not want to hire them because they might move in the future. Other factors impacting a military spouse's ability to find a job include difficulty explaining gaps in their resume (28%), and inability to transfer professional licenses from one state to another (22%). Twenty-eight percent of respondents reported declining to identify themselves as a military spouse to prospective employers.

Removing barriers to military spouse employment would not only minimize some of the disadvantages and disruptions that Congress sought to address in enacting USERRA, but also alleviate a significant stressor on military families and recognize the vital role of military spouses in the retention, recruitment, and readiness of the all-volunteer force. Employment protections would also help military spouses build successful careers without frequent interruption and re-starts; bolster the financial stability of their families, including during their service member's transition from military service to civilian life; and promote the vesting of retirement benefits and long-term financial stability -- all of which would have a positive impact on the national economy and our national security.

### **Previously Identified Gaps in USERRA**

In its FY 2021 DOL USERRA Annual Report<sup>15</sup> to Congress, DOL VETS identified the following areas of potential improvement to USERRA to empower service members to exercise their USERRA rights:

- Currently, the statute governing USERRA does not explicitly supersede mandatory arbitration agreements in employment in the same way that it supersedes any other agreement that reduces, limits, or eliminates any right or benefit under USERRA. Also, USERRA does not state specifically that it protects both substantive and procedural rights and benefits in employment, such as the procedural right of adjudication of USERRA rights. The absence of statutory language in USERRA that agreements to arbitrate are

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<sup>13</sup> See Chrisinger, *supra*.

<sup>14</sup> See Werber Castaneda and Harrell, "Military Spouse Employment: A Grounded Theory Approach to Experiences and Perceptions," *Armed Forces and Society*, vol. 34, no. 3 (2008); and U.S. Chamber of Commerce, "Military Spouses in the Workplace," June 2017.

<sup>15</sup> [https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA\\_Annual\\_FY2021.pdf](https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Annual_FY2021.pdf)

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 claim subjected to arbitration, has resulted in contrary court decisions and confusion for employees and employers.

- Because USERRA does not authorize the Attorney General independently to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA, it also does not preserve the right of the aggrieved service member to intervene in pattern or practice suits, or to bring their own suit where the Attorney General has declined to file suit.
- USERRA does not yet codify the U.S. Supreme Court's decision in *Torres v. Texas Department of Public Safety*, 597 U.S. \_\_\_ (June 29, 2022), which held that States may not invoke sovereign immunity to avoid liability under USERRA. The Torres decision stands to improve the enforcement of reemployment rights under USERRA with respect to a state employer by allowing aggrieved service members and veterans to file suits against State employers in state and federal courts.

Another area of potential improvement to USERRA identified by DOL VETS is that USERRA currently does not impose a deadline for satisfaction of the monetary terms of an agreed-upon resolution of a USERRA violation, nor an additional time-elapsing penalty for continued delays in satisfying such a resolution. As a result, aggrieved service members may be denied prompt monetary resolution of their meritorious claims, and USERRA cases can languish in a pseudo-collections period beyond the 90-day statutory deadline for investigation and resolution established by Congress.

Additionally in its FY 2021 DOL USERRA Annual Report to Congress, DOL VETS also identified the following areas of potential improvement to USERRA to strengthen the United States' ability to enforce USERRA and ensure that the statute is consistent with other civil rights laws:

- Although USERRA is applicable to Federal, State, and private employers, the Attorney General, acting on behalf of the United States, is not currently authorized to serve as a plaintiff in all USERRA suits, only in those suits filed against State employers.
- Currently, USERRA does not authorize the Attorney General independently to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. Such independent authority would significantly strengthen DOJ's ability to enforce USERRA to address a systemic violation (such as a policy prohibiting extended absences, including absences for uniformed service) that could adversely affect the employment rights of multiple service members.
- Similarly, USERRA does not empower 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. While DOL VETS has subpoena power in its investigations under USERRA, the Attorney General currently has no pre-suit investigatory authority.



## **USERRA Funding via the DOL VETS' Federal Administration Appropriation**

The USERRA program is funded through the DOL VETS' Federal Administration appropriation. In FY 2022, the President's Budget request for the DOL VETS Federal Administration and USERRA appropriation was just over \$52 million, but Congress only appropriated \$46 million. In FY 2023, the President's Budget request for Federal Administration was nearly \$54 million, but Congress only appropriated \$47 million. Appropriations below the Budget requests have negatively impacted DOL VETS' ability to hire and train enough investigators to conduct USERRA investigations.

Notably, appropriations below the Budget request levels have also negatively impacted DOL VETS' efforts to digitally modernize our paperless VETS' Case Management system, otherwise known as the VCMS, that will enhance the customer service experience of our veterans, service members, their families, and their employers. The VCMS allows DOL VETS to collect, organize, and analyze investigative material for USERRA investigations. VETS investigators rely on VCMS to:

- timely collect, organize, and follow-up on documentary evidence and witness interviews;
- correctly analyze investigative material; and
- make accurate, consistent, and equitable determinations.

USERRA investigations involve both domestic and sometimes international employers and claimants and are investigated using DOL VETS staff that are located in each state and territory in the United States, making the electronic case management system like the VCMS important.

Lack of funding also endangers DOL VETS' ability to provide ongoing support for the VCMS, such as meeting the Section 508 requirements of the Rehabilitation Act, that require the equitable filing and processing of claims from claimants who have protected status, including claimants with service-connected disabilities. Specifically, claimants who have a service-connected disability make up a significant portion of the cases filed with DOL VETS. In FY 2021, of the 1,117 investigations conducted under USERRA, 33% of claims filed came from persons who self-identified as a veteran or service member with a service-connected disability.

## **Conclusion**

DOL VETS looks forward to working with the Subcommittee to ensure that USERRA continues to support our service members when they are called to serve our Nation, and that remains of fundamental importance to the recruitment, retention, and readiness of the All-Volunteer Force. DOL VETS is committed to continued collaboration with our interagency partners to provide positive USERRA outcomes to employees and employers to minimize the disruption to the lives of veterans, service members, their families, their employers, their fellow employees, and their communities. DOL VETS requests your support in funding our ongoing USERRA efforts so that DOL VETS may continue to provide the high level of customer service that our veterans, service members, their families, and their employers deserve.

Chairman Van Orden, Ranking Member Levin, distinguished members of the subcommittee,

thank you for the opportunity to highlight the important work DOL VETS is doing in support of our veterans, service members, and military spouses who have served our country. I am happy to answer any questions you may have.