

**TESTIMONY OF  
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VETERANS' EMPLOYMENT AND TRAINING SERVICE  
U.S. DEPARTMENT OF LABOR**

**BEFORE THE**

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

**June 14, 2023**

**Introduction**

Chairman Van Orden, Ranking Member Levin, and distinguished Members of the Subcommittee, thank you for the invitation to testify today. Accompanying me today is Paul Marone, Senior Compliance Policy Advisor for the Uniformed Services Employment and Reemployment Rights Act (USERRA) program. I again commend the Subcommittee for its continued efforts to promote economic opportunities for America's veterans and for exploring enhancements to workforce protections for service members and their spouses. As I previously testified in March, USERRA has protected the employment and reemployment rights of our Nation's uniformed service members for over 25 years and has played an important role in the recruitment, retention, and readiness of the All-Volunteer Force. I also appreciate meeting with you and your staff, Chairman Van Orden, to further discuss how USERRA could affect military spouses in the workplace. I look forward to future conversations with you and continuing the amicable relationship between the Chair and Ranking Member of this Subcommittee and the Department of Labor's (DOL) Veterans' Employment and Training Service (VETS). 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 offer technical assistance on two draft bills seeking to amend USERRA to enhance and expand its protections: the first, to provide additional enforcement and remediation tools not currently available under the existing statute, and the second, to expand USERRA's employment and reemployment protections to military spouses. These draft bills contain a workable framework to increase 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. Enhancing USERRA's employment and reemployment protections for service members and military spouses is a top priority at DOL VETS, and one that is informed by my own military family's lived experience and stories that I have heard from military spouses while traveling in my current role.

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, 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.

There were more than 1 million service members eligible for USERRA protections at the end of March 2023.<sup>1</sup> This sum included 264,237 members of the Reserve Components (RC) that are

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<sup>1</sup> Total number of U.S. Armed Forces and Selected Reserves for March 31, 2023, reported by Department of Defense, Defense Manpower Data Center, in Armed Forces Strength Figures for March 31, 2023, and Selected Reserves by Rank/Grade for March 31, 2023, accessible at <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>. Note that the Army did not submit Personnel data as of March 2023, so these statistics are not all of DoD.

comprised of Reserve and National Guard troops and 862,921 members of the Active Components of the U.S. Armed Forces.

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 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.

**H.R. XXXX, to amend Title 38, United States Code,  
to Establish Certain Employment and Reemployment Rights for  
Spouses of Members of the Uniformed Services**

This bill would amend multiple sections of USERRA to expand employment and reemployment protections under the statute to eligible military spouses. The President also proposed this policy in his Fiscal Year (FY) 2024 Budget<sup>2</sup>, and DOL VETS whole-heartedly supports the expansion of USERRA employment protections to eligible military spouses, and welcomes the opportunity to provide detailed technical assistance on the many nuanced and complex aspects of the bill where employment and reemployment protections for military spouses are derived from their service members qualifying service in the uniformed services.

Barriers to military spouse employment negatively impact national security. Support for military spouse employment is important to the retention and readiness of the All-Volunteer Force. Maintaining traditional employment and advancing in careers while relocating every few years has historically been a hardship that military spouses have found extremely difficult, if not impossible, to overcome. Extending USERRA's anti-discrimination and reemployment protections to eligible military spouses would limit barriers to military spouse employment.

When a military spouse can build a successful career, it can also bolster a family's financial stability during the time when a service member transitions out of the military into civilian employment. Similarly, spouses' inability to find employment or their own 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. This can lead to lower lifetime earnings and inhibit the long-term financial stability of the family.

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<sup>2</sup> <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-10.pdf>

Service members' spouses' ability to obtain and retain appropriate employment is often integral to service members' decisions to reenlist in the uniformed services, and the Federal government should be seeking additional ways to minimize disruptions to that ability and ensure readiness of the All-Volunteer Force. The impact of military spouses on retention and readiness of the all-volunteer force should not be minimized.

Removing barriers to military spouse employment by extending anti-discrimination and reemployment protections under USERRA to eligible military spouses would alleviate a significant stressor on military families and recognize the vital role of military spouses in the retention and readiness of the All-Volunteer Force. USERRA protections would also help military spouses build successful careers without frequent interruption and re-starts; bolster the financial stability of their families, especially during their service member's transition from military service to civilian life; and promote long-term financial stability for military families. Service members' spouses are critical to ensure military members' readiness, and this should not be forgotten.

**H.R. XXXX, to Amend Title 38, United States Code,  
to Improve the Reemployment Rights of Members of the Armed Forces,  
and for Other Purposes**

This bill would amend multiple sections of USERRA to enhance and expand employment and reemployment protections under the statute, as well as various enforcement and remediation provisions directed toward States (as employers), private employers, and Federal executive agencies. As of the time that we reviewed the draft bill prior to the hearing, it would:

- Section 1(a) of this bill would amend 38 U.S.C. § 4323(e) to enhance USERRA's provision authorizing injunctive relief available under the statute;
- Section 1(b) of this bill would amend 38 U.S.C. § 4323(d) to expand USERRA's provisions authorizing liquidated damages against States (as employers) and private employers by adding a new minimum amount for such damages;
- Section 1(b) of this bill would also add a new 38 U.S.C. § 4323(f) and amend 38 U.S.C. § 4324(c) to establish that the failure of States (as employers) and private employers, and Federal executive agencies, respectively, to provide notice of USERRA's rights and benefits to their employees as prima facie evidence of willfulness;
- Section 1(c) of this bill would amend 38 U.S.C. §§ 4324(c) and 4323(h) to make the award of reasonable attorney fees, expert witness fees, and other litigation expenses mandatory to the person prevailing on their USERRA complaint before the Merit Systems Protection Board or the court, respectively;
- Section 1(d) of this bill would repeal 38 U.S.C. §§ 4315 and 4325 to provide the same substantive and procedural rights and benefits to reemployment under USERRA, and enforcement of those rights and benefits, to employees employed by certain Federal agencies of the intelligence community referred to in 5 U.S.C. § 2302(a)(2)(C)(ii) as other eligible employees under the statute;

- Section 1(e) of this bill would amend 5 U.S.C. § 2302(b)(11)(A) to identify violations of USERRA as prohibited personnel practices by Federal employees who are authorized to take, direct others to take, recommend, or approve any personnel action;
- Section 1(f) of this bill would add a new 38 U.S.C. § 4312(g) to provide employment protections in performance reviews for employees absent from civilian employment for the performance of service in the uniformed services;
- Section 1(g) of this bill would amend 38 U.S.C. § 4303(13) to expand the definition of “service in the uniformed service” to include periods of absence from civilian employment for medical or dental treatment for a condition, illness, or injury incurred or aggravated during the performance of uniformed service; and
- Section 1(h) of this bill would amend 38 U.S.C. § 4301(a)(1) to clarify that a purpose of USERRA is “to encourage service in the uniformed services,” without the limitation that the service be “noncareer.”

DOL VETS supports many of the goals of the draft bill, especially those provisions that expand USERRA protections by removing limitations on types of employees protected under the statute and eligible for assistance from DOL VETS. Additionally, the bill seeks to expand the types of remedies available through litigation under USERRA before the courts or the Merit Systems Protection Board when DOL VETS is no longer involved in the matter, including injunctive relief, liquidated damages, reasonable attorney fees, expert witness fees, and other litigation costs. We welcome the opportunity to provide detailed technical assistance on the many aspects of this bill and would like the opportunity to consult and collaborate with our interagency partners at DOJ and OSC, specifically relating to the bill’s enforcement and remediation provisions relating to States (as employers) and private employers, and Federal executive agencies, respectively.

Additionally, in its FY 2021 DOL USERRA Annual Report to Congress, DOL VETS identified the following further areas of potential improvement to USERRA to empower service members to exercise their USERRA rights which the Committee may wish to consider:

- 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 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.

Finally, 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.

### **H.R. XXXX - TAP Promotion Act**

This bill would allow Veteran Service Organizations (VSOs) to promote participation in VSOs during time reserved for the Transition Assistance Program (TAP) curriculum. VETS recognizes the utility of the military community affiliating with VSOs. It helps rebuild the community that is lost during transition from military service, it allows the federal government to disseminate information to the overall veteran community with greater ease, and VSOs support veterans to connect with federal, state, and local resources that they have earned through their service. However, VETS defers to the Department of Defense on how the TAP program would be impacted by this bill.

### **Other Bills Considered by the Subcommittee**

It is our understanding that this Subcommittee may consider a number of other bills during this hearing, including:

- H. R. 491 - Return Home to Housing Act.
- H.R. XXXX - Isakson-Roe Education Oversight Expansion Act.
- H.R. XXXX - Native American Direct Loan Improvement Act of 2023.
- H.R. XXXX - Housing our Military Veterans Effectively (HOME) Act of 2023.
- H.R. XXXX - To amend title 38, United States Code, to require, as a condition of approval under the educational assistance programs of the Department of Veterans Affairs, that educational institutions make available to eligible persons and veterans digital copies of official transcripts.
- H.R. XXXX - To amend title 38, United States Code, to make certain improvements in the administration of the educational assistance programs of the Department of Veterans Affairs, and for other purposes.

As of the time that we reviewed these bills prior to the hearing, DOL defers to the Department of Veterans Affairs, and other respective Departments where their equities are impacted. If they are amended in a way that impacts DOL, we would be happy to further review them and provide technical assistance upon request.

### **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.

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.

Since my testimony in March, DOL VETS has undertaken the following steps to answer questions and address concerns raised by the Subcommittee regarding USERRA:

- On March 21, 2023, DOL VETS established a recurring USERRA Outreach Event to bring USERRA stakeholders together on a regular basis. The first meeting was held on May 4, 2023, with the following Federal partners and Veteran Service Organizations in attendance: DOL VETS, DOL Office of the Solicitor, DOJ, OSC, DoD ESGR, Reserve Organization of America (ROA), National Guard Association of the United States (NGAUS), and Enlisted Association of the National Guard of the United States (EANGUS). The next meeting will be scheduled in September 2023.
- On March 24, 2023, DOL VETS provided a copy of the USERRA VEOA VP Investigations Manual (the Manual), with limited redactions, to the Subcommittee. Limited redactions were made to the Manual provided to the Subcommittee on the advice of counsel to avoid inadvertent disclosures of DOL VETS' investigative techniques and procedures. Pursuant to a follow-up request from Subcommittee majority staff, on April 5, 2023, the Department's Office of Congressional and Intergovernmental Affairs also provided an *in camera* review of the unredacted Manual to Subcommittee staff. On May 23, 2023, I provided a copy of the Manual, with limited redactions, and provided an *in camera* review of the unredacted Manual to the Chairman.
- On April 13, DOL VETS convened an intra-agency meeting with representatives from DOL partners to develop the mechanisms necessary to collect the data points required by 38 U.S.C. § 4212(a)(2)(B). This development requires a joint effort with the Employment and Training Administration (ETA) and the various State Workforce Agencies throughout the country, as well as a change in how employment data required to be reported is collected and shared among the responsible agencies. My staff is required to provide me with monthly reports on our progress in implementing this requirement.
- On May 10, 2023, DOL VETS provided responses to Questions for the Record from the Subcommittee that arose from the hearing held on March 9, 2023. They included substantive answers to questions from the Subcommittee on USERRA, USERRA case statistics, employer trend data with charts, and projected caseload and costs if USERRA was expanded to protect military spouses.
- On May 11, 2023, in honor of Military Spouse Appreciation Day, DOL VETS hosted an in-person and live-streamed event with a panel of four military spouses called Military Spouses in the Workplace to discuss their experiences and how DOL VETS is striving to

increase employment protections for military spouses, including to update USERRA to expand employment protections to military spouses.

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

As I have previously testified, the USERRA program is funded through the DOL VETS' Federal Administration/USERRA appropriations account. In addition to funding all of our enforcement activities, it also provides funding for our performance accountability systems, outreach, employer engagement, research, and all DOL VETS staff. In FY 2022, the President's Budget request for the DOL VETS' Federal Administration/USERRA appropriations account was just over \$52 million, but Congress only appropriated \$46 million. In FY 2023, the President's Budget request for Federal Administration/USERRA appropriations account was nearly \$54 million, but Congress only appropriated \$47 million. Appropriated funding below the Budget requests have negatively impacted DOL VETS' ability to hire and train enough investigators to conduct USERRA investigations and other agency staff which support veterans and provide or connect them to the services they need.

Notably, appropriated funding 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 to 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, which requires 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 welcomes the opportunity to provide detailed technical assistance on the two bills seeking to enhance and expand employment and reemployment protections under USERRA, as well as the enforcement and remediation provisions of the statute. 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, which 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 for the President's FY 2024 Budget request for Federal Administration and USERRA, 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.