Reserve Organization of America

OFFICIAL STATEMENT OF
MATTHEW L. SCHWARTZMAN

BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORUNITY

ON
PENDING LEGISLATION

JUNE 14, 2023

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The Reserve Officers Association of the United States, now doing business as the Reserve Organization of America, is a military service organization incorporated under Internal Revenue Service Code section 501(c)(19), and comprising all ranks of servicemembers, veterans, and family members of our nation's eight uniformed services separated under honorable conditions. ROA is the only national military service organization that solely and exclusively supports the reserve components.

ROA was founded in 1922 by General of the Armies John "Black Jack" Pershing, during the drastic reductions of the Army after World War I. It was formed to support a strong national defense and focused on the establishment of a corps of reserve officers who would be the heart of a military expansion in the event of war. Under ROA's 1950 congressional charter, our purpose is unchanged: To promote the development and execution of policies that will provide adequate national defense. We do so by developing and offering expertise on the use and resourcing of America's reserve components.

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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Reserve Officers Association of the United States, now doing business as the Reserve Organization of America, has not received any grants, contracts, or subcontracts from the federal government in the past three years.

CURRICULUM VITAE

Matthew Schwartzman serves as the legislation and military policy director for the Reserve Organization of America.

Responsible for the development, management, and execution of ROA's government relations program and public policy portfolio, Matthew has more than five years of experience in government and legislative affairs, policy analysis, and membership services.

Matthew is also a co-chair for The Military Coalition's Guard and Reserve Committee and Taxes and Social Security Committee, representing, on select issues, a consortium of more than 30 military and veterans service organizations with approximately 5.5 million members collectively.

STATEMENT

Chairman Van Orden, Ranking Member Levin, and distinguished members of the House Committee on Veterans' Affairs Economic Opportunity Subcommittee, on behalf of the congressionally chartered Reserve Organization of America (ROA), thank you for the opportunity to testify on legislation pending before the Subcommittee.

ROA also thanks the champions of these proposals for their genuine desire to strengthen the education and training benefits provided by the Department of Veterans Affairs (VA), reduce veteran homelessness, and enhance workforce protections for servicemembers, veterans, and military spouses.

ROA's focus today aligns with our resolutions, which are authored and approved by our members, and congressional charter, "… to support and promote the development and execution of a strong military policy for the United States that will provide adequate national security."

While I do not address each proposal provided for consideration in this statement, ROA stands ready to engage on these measures following this hearing.

H.R.3943, the *Servicemember Employment Protection Act of 2023*.

ROA strongly supports Public Law No. 103-53, the *Uniformed Services Unemployment and Reemployment Rights Act* (USERRA) *of 1994*.

Since its enactment, USERRA has made a significant impact on national security by protecting dual-career paths for members of the Reserve and National Guard. Yet, USERRA can be improved.

ROA also recognizes the potential burden that USERRA places on America's employers. ROA seeks to identify and support law and policy that encourages companies to hire and retain members of the reserve components.

Two examples are the *RECRUIT Act*[1] and H.R.3253, the *Reservist Pay Equity Act*.[2]

With the reserve components constituting some 40 percent of the total force, the integrity of USERRA is essential to our nation's military readiness.

Properly resourcing the U.S. Department of Labor Veterans' Employment and Training Service (DOL-VETS) to effectively execute USERRA is also of critical importance.[3]

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[1] Introduced in the 117th Congress, this legislation allows employers with less than 500 employees to claim a tax credit equal to the sum of $1,000 plus an additional amount up to $10,000 depending on the number of military duty days performed during the year.

[2] H.R.3253, the *Reservist Pay Equity Act*, increases the differential wage payment tax credit from 20 to 50 percent.

[3] President Biden's Fiscal Year (FY) 2024 budget requests $348 million in funding, an increase of $12 million above the FY 2023 enacted level, for the Veterans' Employment and Training Service's (VETS) core programs, $347,627,000 and 265 full time equivalents (FTE), an increase of $12,286,000 and 28 FTE over the FY 2023 revised enacted level, and $1,500,000 and 3 FTE to support the enforcement of the USERRA.

Over time, certain USERRA provisions have been circumvented and inadequately enforced, leaving legal voids that weaken its protections and must be corrected.

H.R.3943, the *Servicemember Employment Protection Act*, fills many of these voids.

ROA thanks Representative Scott Franklin for sponsoring H.R.3943 and supports this legislation as currently written *and* with a few proposed amendments.

SEC. 2. IMPROVEMENTS TO REEMPLOYMENT RIGHTS OF MEMBERS OF THE ARMED FORCES.

(a) EXPANSION OF INJUCTIVE RELIEF

An injunction is a court order requiring the termination or compulsion of a specific action. One of the most significant protections afforded under USERRA is the right to be reemployed after performing military service. Unfortunately, injunctions to prevent firings or require reemployment are not normally available under current law.

The conditions required for preliminary injunctive relief are a likelihood of success on the merits when the case goes to trial and existence of an irreparable injury if relief is denied.

However, the act of terminating one's employment is not currently considered an irreparable injury. This is because providing reemployment with back pay, which sometimes happens months after the firing, is considered a repair. As a result, employees experience a greater likelihood of being placed in difficult positions professionally, legally, and financially.

USERRA currently reads: “The court shall use, in any case in which the court determines it is appropriate, its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.”

Courts thus have broad latitude in determining whether to grant injunctive relief. However, as stated previously, courts have not widely recognized willful employment terminations under USERRA as an irreparable injury.

H.R.3943 SEC. 2. corrects this by amending USERRA to prohibit courts from denying a motion for injunctive relief on the basis that an employee may be awarded “wages unearned” following an unlawful termination of employment.

This provides employees covered under USERRA with an additional layer of legal protection by ensuring the act of providing back pay does not diminish the likelihood of being granted injunctive relief.

This will also influence employees to provide their employers with advanced notice of their military service, which is a requirement for relief under USERRA.

H.R.3943 SEC.2. (a) is a win for citizen-warriors and their employers. ROA supports.

(b) EXPANSION OF LIQUITATED DAMAGES

Under current law, if an employer (state, local, or private sector) is established to have willfully violated USERRA, the court can award liquidated damages equal to the actual damages, effectively “doubling the damages.”

In some USERRA cases, the actual damages may be small if the fired or former employee denied reemployment has quickly found another job, with another employer, earning just as much or more.

The incentive for employers to act within the tenets of USERRA may therefore prove inadequate, resulting in willful violations.

Consider the following hypothetical case summary from ROA Law Review 15089[4]:

> *Joe Smith works for Grapevine County as a deputy sheriff. After giving proper notice to the Sheriff, Smith leaves his job for voluntary or involuntary service in the uniformed services.*
>
> *Smith serves on active duty and is released, without having exceeded the five-year limit and without having received a disqualifying bad discharge from the military. After release from service, Smith makes a timely application for reemployment with the Sheriff.*
>
> *The Sheriff says, "I don't care what federal law says. I am the Sheriff of this county, and federal law does not apply to me. You can't work here and play soldier at the same time. No, I will not reemploy you."*
>
> *After just one week of unemployment, Smith finds another job as a deputy sheriff in the neighboring country, which pays a little more than his previous one.*
>
> *Smith's damages, for one week of unemployment, are $600.*

Under current law, Smith can collect $600 in actual damages and $600 in liquidated damages.

H.R.3493 strengthens this protection by enabling courts to award employees with the greater of $50,000 or the amount of the actual damages.

Smith could thus collect $600 in actual damages and $50,000 in liquidated damages.

By providing courts with the flexibility to increase the liquidated damages awarded, H.R.3493 strengthens deterrence against willful USERRA violations and enhances legal protections for wrongfully terminated employees.

However, ROA respectfully requests amending the language of H.R.3493 SEC. 2. (1)(C), which currently reads: "The court may require the employer to pay the person the amount referred to in subparagraph (B) and interest on such amount, calculated at a rate of 3 percent per year."

USERRA currently authorizes awards for prejudgment interest under Title 38 U.S.C. SEC. 4323 (D)(3). Prejudgment interest is an additional form of compensation for the plaintiff and requires the defendant to "relinquish any benefit that it has received by retaining the plaintiff's money in the interim."[5]

There is currently no federal prejudgment interest rate. Instead, different rules apply in different states, with 92 percent having laws mandating prejudgment interest awards.[6]

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[4] https://cdn.ymaws.com/www.roa.org/resource/resmgr/LawReviews/2015/15089-LR.pdf
[5] Brandywine Smyrna, Inc. v. Millennium Builders, LLC, 34 A.3d 482, 486 (Del. 2011).
[6] https://www.iadclaw.org/assets/1/7/50_State_Prejudgment_Interest_Reference_Guide.pdf

By providing courts with the ability to award a prejudgment rate of 3 percent per year for USERRA cases, H.R.3493 enables courts to award a lower prejudgment interest rate than potentially afforded at the state level.

To better recognize state law and provide courts with clearer guidance for awarding prejudgment interest rates in USERRA cases, ROA recommends amending H.R.3493 SEC. 2. (b)(1)(c) to charge courts with awarding plaintiffs with a prejudgment interest rate that is the greater of the state's mandated rate or 3 percent.

SEC. 2 (A)

Title 38 U.S.C. SEC. 4334 requires employers to provide a "notice" of the rights, benefits, and obligations outlined in USERRA for all parties involved. This notice is commonly displayed publicly on a bulletin board at the employer's office location.

However, plaintiffs are not as likely to receive relief and liquidated damages under Section 4334 (when compared to other USERRA protections) given the difficulties in collecting and presenting verifiable evidence of a wrongful and willful USERRA based offense.

If a federal executive agency or the Office of Personnel Management has violated this USERRA protection, H.R.3493 SEC. 2 (A) requires the violation be constituted as *prima facie* evidence[7], subject to the awarding of liquidated damages.

ROA supports.

(2)(c) MANDATORY ATTORNEY FEES AWARD IN SUCCESSFUL ACTIONS FOR REEMPLOYMENT

USERRA cases involving federal executive agencies as employers are adjudicated by the U.S. Merit Systems Protection Board (MSPB), rather than federal district court. If desired, the plaintiff can appeal an unfavorable MSPB decision to the United States Court of Appeals for the Federal Circuit.

USERRA currently authorizes MSPB to award attorney's fees to a successful USERRA plaintiff in the MSPB, if the person proceeded with private counsel and prevailed. However, under current law, this is not mandatory, with discretion left to the Board.

As Abraham Lincoln said, "A man who represents himself has a fool for a client."

Having legitimate legal representation provides USERRA claimants with a greater likelihood of securing their rights. Title 38 U.S.C. SEC. 4323(d)(1)(B) was included to give attorneys an incentive to undertake USERRA cases.

However, the value of the incentive is considerably lessened if there is no assurance in law or precedent that the MSPB will award attorney fees, even if the claimant prevails with the attorney's assistance.

[7] Prima facie is Latin for "at first sight." Prima facie evidence establishes a legally required rebuttable presumption and may be used as an adjective meaning "sufficient to establish a fact or raise a presumption unless disproved or rebutted."

H.R.3493 SEC. (2)(c)(1) amends USERRA to make awarding a plaintiff with "reasonable attorney fees, expert witness fees, and other litigation expenses" mandatory.

This issue also arises if a USERRA case involving federal executive agencies as employers rises to the Federal Circuit.

In *Erickson v. United States Postal Service*[8], the Federal Circuit held that attorney fees cannot be awarded, by the MSPB or the Federal Court itself, for the portion of representation that occurred in the Federal Circuit, rather than the MSPB.

In response, ROA filed an *amicus curiae* brief urging the court to grant a rehearing *en banc*[9] and overturn the MSPB decision to not award attorney fees for the cases heard before the Federal Circuit.

An excerpt from the brief is as follows:

> In the Panel's decision in Erickson v. U.S. Postal Service, the Panel opined that on such appeal neither the Federal Circuit nor the MSPB has the authority to award attorney fees for the legal work done on two successful appeals before this Court. … Such a narrow construction of 38 U.S.C. 4324(c)(4) would make it impossible for the service member to obtain counsel when exercising his or her statutory right to appeal an MSPB decision to the Federal Circuit (unless he or she is independently wealthy or has a large claim, which is rarely the case), effectively denying the right to appeal. This outcome goes against the deeply entrenched precedent that "this legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of need." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). Depriving the service member of the right to appeal, when bringing a claim against the Federal Government, also goes against Congress' intent that "the Federal Government should be a model employer in carrying out the provisions of this chapter." 38 U.S.C. 4301

Ensuring claimants can pursue all legal recourses necessary to ensure their rights and be provided relief is an important condition of USERRA's integrity.

Not permitting plaintiffs to be awarded attorney fees for USERRA cases heard by the Federal Circuit could deter further legal action that may have otherwise resulted in a positive outcome for the plaintiff.

H.R.3493 SEC. 2(c)(2) protects USERRA plaintiffs by ensuring they are awarded with "reasonable attorney fees, expert witness fees, and other litigation expenses" if their case prevails and is not represented by the Special Counsel in the proceeding. ROA supports this provision.

> SEC. 2(d) REPEAL OF IMMUNITY FOR CERTAIN FEDERAL INTELLIGENCE AGENCIES

Intelligence agencies are treated differently from all other federal employment entities under USERRA.

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[8] https://casetext.com/case/erickson-v-us-postal-serv-4

[9] If a rehearing *en banc* had been granted, there would have been new briefs and a new oral argument, and the case would have been decided by all the active (not senior status) judges of the Federal Circuit.

The following excerpt from ROA LAW REVIEW 15089 describes the situation in more detail:

> *In a July 1991 meeting at the New Executive Office Building, the intelligence agencies asked for and were granted an exemption from the USERRA enforcement mechanism, through the MSPB, but not from USERRA itself. The agencies promised to establish their own internal mechanisms for enforcement for USERRA rights within such agencies, and sections 4315 and 4325 require the agencies to establish these mechanisms. The agencies have failed to establish these mechanisms and have flouted USERRA. It is necessary to repeal sections 4315 and 4325 in order to give intelligence agency employees, former employees, and prospective employees effective USERRA rights.*

USERRA Sec. 4315 prescribes that if an intelligence agency determines that the act of reemployment is "impossible or unreasonable," the determination is not subject to judicial review and OPM shall "ensure the offer of employment to a person in a position in a Federal executive agency..."[10]

By eliminating the immunity shield currently provided to select agencies in the intelligence community, H.R.3493 SEC. 2(d) ensures the full spectrum of federal employees are covered by USERRA.[11]

ROA supports.

SEC. 2(E) MAINTENANCE OF PERFORMANCE REVIEW RATINGS

Section 4313 of USERRA provides that an employee who returns from uniformed service (whether for five hours or five years) and meets USERRA's eligibility criteria must be reemployed in the position that would have been attained if the employee had been continuously employed or alternatively put in another position that provides like seniority, status, and pay.

However, neither Section 4313 nor any other part of USERRA contains an explicit provision ensuring employees are only evaluated for their performance while at their civilian job.

This could potentially result in a willful termination of employment in specific industries and occupations (such as sales) where performance evaluations are weighed against an employee's sustained ability to meet certain criteria. Employees who are away from work for uniformed service should not suffer in their career progression because of this.

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[10] https://uscode.house.gov/view.xhtml?path=/prelim@title38/part3/chapter43&edition=prelim

[11] The Executive branch of the federal government is the nation's leading employer of veterans. As of 2019, nearly 6,000 veterans worked at the Federal Bureau of Investigation (FBI). According to the 2021 Interagency Veterans Advisory Council annual State of Veterans in the Federal Workforce report, there are over 500,000 federal civilian employees who are veterans. The percentage of veterans in the federal workforce hired with veterans' preference has increased from 84 percent in FY 2014 to 86 percent in FY 2018. Because DoD limits many mobilizations to 179 days or fewer, many reserve component members complete their career without serving the 180 consecutive days needed for veteran status under Title 5 U.S.C. 2108, even when potentially aggregating several years of active service. ROA urges Congress to bolster employment opportunities in the federal government for veterans of reserve component service by conferring veteran status (to achieve federal hiring preference) on reserve component members after 180 "cumulative" days on active-duty, as opposed to 180 "consecutive days."

Ensuring employees are only evaluated for their performance while at their civilian position is not currently protected under USERRA.

From ROA's perspective, if an employee is away from work for uniformed service, or for travel to and from uniformed service, for part of the evaluation period, the employer must adjust the expectation(s) upon which the performance evaluation is based.

H.R.3493 SEC. 2(E) provides employees with additional legal protection by ensuring the time spent away from work for military duty is credited with the average of the efficiency or performance evaluations which the employee received for the three years before the absence.

> SEC. 2(F) EXPANSION OF ELIGIBLE TIME AWAY FROM CIVILIAN EMPLOYMENT

Under USERRA, a person who leaves a civilian job to perform "service in the uniformed services" and who meets USERRA's eligibility criteria is entitled to reemployment in the preservice civilian job, after release from the period of service.[12]

However, this does not currently enable the provision of employer sponsored leave to employees that may require a medical appointment necessitated by a wound, injury, or illness sustained in the line of duty.

Here is the scenario as described by ROA LAW REVIEW 15089[13]:

> *Joe Smith left his job at XYZ Corporation when mobilized. He deployed to Afghanistan and was wounded. He has largely but not fully recovered from his wounds. He has been released from active duty and has returned to work at XYZ.*
>
> *Twice per month, he needs to travel to a military or Department of Veterans Affairs treatment facility for follow-up care. Appointments are available only on regular workdays, not on weekends. Smith has exhausted his sick leave entitlement at XYZ.*
>
> *He does not have rights under the Family Medical Leave Act (FMLA), because XYZ is too small or because Smith has not worked for the company long enough. Does Smith have the right to time off without pay from his XYZ job for these medical appointments?*
>
> *Under current law, the answer is no.*

H.R.3493 SEC. 2(F) protects employees by covering any period for which a person is "absent from a position of employment for the purpose of medical or dental treatment for a condition, illness, or injury sustained or aggravated during any such duty."

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[12] USERRA defines "service in the uniformed services" as follows: "The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person for any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32." 38 U.S.C. 4303(13).

[13] https://cdn.ymaws.com/www.roa.org/resource/resmgr/LawReviews/2015/15089-LR.pdf

SEC. 3. REVIEW OF INVESTIGATIONS MANUAL OF VETERANS' EMPLOYMENT AND TRAINING SERVICE.

DOL VETS' own internal USERRA Investigation Manual establishes procedures for the conduct of closed-case reviews.

DOL's regulations (outlined under 20 CFR §§ 1002.1 – 1002.314) for implementing USERRA are the primary basis for training and providing references to DOL investigators, rather than the law itself.

In testimony before this Subcommittee on March 9, 2023, ROA expressed that "DOL should be compelled to update its regulations on a more regular basis to ensure investigators and staff are consistently trained on up-to-date USERRA provisions to completely fulfill their statutory responsibilities under USERRA."[14]

H.R.3493 SEC. 3 requires the Secretary of Labor to review DOL-VETS' USERRA enforcement manual on a biennial basis and make such revisions as deemed appropriate. ROA supports.

SEC. 2. (h). REVIEW AND REPORT.

At the aforementioned hearing on March 9, ROA also testified on the need to "amend Section 4332 of USERRA to require the Secretary of Labor to additionally report the number of closed-case reviews conducted in each reporting period, the number of disposed cases found to have been originally closed by DOL VETS with substantive errors that affected a veteran's right and relief under USERRA, and summaries of every case that DOL VETS disposed of by deeming it without merit, and for which a court or other federal agency subsequently affirmed the merit of the veteran's complaint."

H.R.3493 SEC. 2. (h) requires the Comptroller General of the United States to "review the methods through which the Secretary of Labor... processes actions for [USERRA] relief" and submit a report that includes the findings of the review, an identification of the actions for relief under USERRA initiated during the covered period, the number of actions for relief erroneously dismissed, the number of actions for relief referred to the Department of Justice, and an assessment of trends in such actions for relief.

Without objection to H.R.3493 SEC. 2. (h), ROA respectfully requests further consideration of and support for the reporting requirements outlined in our March 9 testimony (stated above).

H.R.3900, to amend title 38, United States Code, to establish certain rights for spouses of members of the uniformed services.

Both the benefits and consequences of military service are intensely felt by the servicemember and their family. ROA believes that "you recruit a service member, but you retain a service family."

[14] https://docs.house.gov/meetings/VR/VR10/20230309/115444/HHRG-118-VR10-Bio-PattonG-20230309.pdf

Military spouses find themselves shouldering the burden that accompanies service. This is especially the case if a military family relies on two incomes.

For a spouse, maintaining employment and advancing professionally while relocating every few years and caring for children – often done solo while the "other half" is deployed – is a serious challenge for these integral components of our military readiness.

There is no acceptable reason for military spouses to lose opportunities for employment and career advancement because they are serving alongside a member of our uniformed services.

Consistently, over the past decade, the military spouse unemployment rate has remained over 20 percent. Spouse employment is important to secure financial readiness for military families. Unfortunately, military spouses face additional barriers to employment and career advancement.

MILITARY SPOUSE UNEMPLOYMENT AND FINANCIAL READINESS:

FAST FACTS

According to the *Blue Star Families 2023 Military Family Lifestyle Survey*, military families' financial well-being "lags behind" civilian peers, financial pressures are "top-of-mind" for military families, and military spouse unemployment remains the "top concern" for spouse respondents for the sixth consecutive year.

Specific to families of the National Guard and Reserve, 19 and 26 percent of survey respondents said spouse employment was their "top" military family issue.

According to the *2021 Active-Duty Spouse Survey:*

- The military spouse unemployment rate is 21 percent.
- A Permanent Change of Station (PCS) move increased the odds of unemployment "significantly."
- 31 percent of spouses had to acquire a new professional credential to work at or near the new duty location. Further, acquiring new career credentials after moving increased the odds of low financial well-being.
- 41 percent of spouses reported not seeking employment after their last PCS move.
- Being unemployed and contributing less than 50 percent to household income increased the odds of low food security.
- According to the *Military Spouse Employment Partnership*, military spouses earn 25 percent less than their civilian counterparts and move 14 percent more frequently than civilian families.

ROA thanks Representative Christopher Deluzio for introducing H.R.3900.

Specifically, H.R.3900 offers military spouses with rights and legal relief under USERRA by:

- Enabling entitlement to reemployment rights and benefits up to a period that does not exceed 5 cumulative years and/or 2 consecutive years under Sections 4312, 4313, 4314, and 4315 of USERRA.
- Affording entitlement to rights and benefits determined by seniority (as are generally provided to employees having similar seniority status) plus the additional rights and

benefits that would have been attained if continuously employed (as are generally provided to employees having similar seniority status).
- Extending access to employer sponsored healthcare for the lesser of the two-year period beginning on the date the spouse's military duty begins or the day after the date the employee fails to apply for or return to their position of employment.
- Providing continued and uninterrupted access to any plan, other than the Thrift Savings Plan, that provides retirement income to employees or defers payment of income to employees until after employment has ended.

ROA believes this legislation is a commendable effort to reduce military spouse unemployment and enhance workforce protections through USERRA.

ROA is encouraged by the level of attention and support the Biden Administration and DOL have given this proposal and looks forward to working with mission partners across all levels of government and industry to improve employment opportunities and outcomes for military spouses.

However, ROA requires more information to determine whether USERRA like protections can be effectively adapted to the environment associated with military spouse education, employment, healthcare enrollment, and PCS patterns. Such information includes but is not limited to:

- How often active and reserve component families move back to a previous PCS location within 5 cumulative or 2 consecutive years.
- How often active and reserve component families move across state lines or to a different location within their current state of residence for a PCS or temporary duty assignment.
- The percentage of employed military spouses enrolled in their employer's healthcare plan.
- The percentage of military families that do not move across state lines for a PCS or temporary duty assignment with the servicemember.[15]
- The percentage of employed military spouses that have access to remote working.

ROA looks forward to collaborating with the members and staff of this Subcommittee to obtain this information in a timely manner.

From ROA's perspective, this data can also be used to accurately project the resource requirements for effective implementation of H.R.3900.

[15] PCS moves are associated with a diverse set of disruptions that impact all members of a military family and the decision-making process for how to effectively manage a PCS. This may include a military family not moving to the new permanent or temporary duty location with their service member spouse. ROA's director of operations, U.S. Navy CDR (Ret.) Trey Criner, in 2008, received orders to move from Camp Pendleton, California to Newport, Rhode Island for follow on duty (for five months) and Jacksonville, Florida thereafter. Because of the 2008 housing crisis, strain from two moves in the previous six years, and his son beginning high school, CDR (Ret.) Criner's family did not move with him to Newport or Jacksonville. CDR (Ret.) Criner was stationed away from his family for two years.

In the meantime, ROA encourages the members of this Subcommittee to prioritize support for hiring incentives that reduce barriers to employment for military spouses (and reserve component servicemembers). One example is H.R.1277, the *Military Spouse Hiring Act*.[16]

ROA believes more information is required to determine whether DOL-VETS is best equipped to manage its current requirements under USERRA and able to absorb any increase(s) in demand for its investigative services.

To better gauge DOL VETS' ability to effectively execute USERRA, ROA requested Subcommittee support for a study performed by the Government Accountability Office (GAO) to evaluate performance, identify deficiencies, and propose recommendations for improvement.

The desired end state of this study is better measurement of the capability and preparedness of DOL VETS to uphold its statutory obligations to servicemembers under USERRA. ROA respectfully requests further consideration of and Subcommittee support for this study prior to moving forward with H.R.3900.

On March 9, ROA also testified that "you get what you inspect; you get what you measure."

Currently, the unemployment and labor market participation rates for military spouses and reserve component servicemembers are not included in the U.S. Bureau of Labor Statistics (BLS) monthly Employment Situation report.

ROA urges Congress to require BLS to track and publicly report on the unemployment and labor market participation rates for military spouses and members of the National Guard and Reserve[17] as part of the monthly Employment Situation report.

H.R.3898, the *Transcript Assurance for Heroes Act*

Both accredited and non-accredited institutions of education must meet certain requirements to validate the quality of education they provide. These requirements are generally focused on the institution's ability to meet their obligations to students and the VA under the law.

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[16] Authorized until December 31, 2025 (under Public Law No: 116-120, the Consolidated Appropriations Act of 2021), the Work Opportunity Tax Credit (WOTC) is available to employers who hire job seekers that have consistently faced systemic barriers to employment. Currently, there are ten protected classes of job seekers under WOTC, including veterans. But despite fitting the criteria to receive federal protection under WOTC, military spouses are not currently included. WOTC has proven highly effective in incentivizing employers to make hiring decisions they may not otherwise seriously consider. Since FY 2018, more than 10 million job seekers in any one of the 10 WOTC protected classes have secured employment. ROA strongly supports the *Military Spouse Hiring Act*, which is also supported by The Military Coalition, representing more than 5.5 million service members, veterans, families, and survivors.

[17] Our nation's citizen-warriors are also experiencing obstacles in obtaining and maintaining civilian employment. This burden on service places an undue strain on reserve component members and their families. According to the *Commanders Strength Management Module* (https://reservenationalguard.com/civilian-employers/civilian-employment-army-reserve-partnership/), the unemployment rate is around 23.8% in the Army Reserve.

H.R.3898, the *Transcript Assurance for Heroes Act*, requires, as a condition of approval for participation in the VA's education and training programs, that educational institutions provide digital copies of official transcripts to students.

Official transcripts are important to students and third parties seeking to validate the accuracy and authenticity of academic records. However, not all schools provide students with the ability to obtain a digital copy.

Under certain circumstances, such as the abrupt closure of a school, this can be problematic for students, who are likely to obtain a copy of their official transcript through an alternatively arduous process.

Since March 2020, at least 37 public or nonprofit colleges have closed, merged, or announced closures or mergers.[18]

According to a study from the State Higher Education Executive Office (SHEEO) and National Student Clearinghouse Research Center (NSCRC), from a sample of 467 schools (that closed between July 2004 and June 2020) and 143,215 students, seven in 10 students were impacted by an "abrupt campus closure."[19] The study also showed that students who experienced an abrupt campus closure had lower re-enrollment and completion rates than students who did not.

The integrity of VA's education and training program is a shared responsibility between the institutions of education, accreditation and oversight authorities, and students.

ROA believes that providing students with a digital copy of an official transcript should be an industry best practice to ensure access to the resources required for verifying course enrollment status and/or VA benefit(s) restoration if a school or program has abruptly closed or lost its accreditation.

ROA also believes that in the instances of an abrupt closure or loss of accreditation, schools or programs providing access to a digital copy of an official transcript put students in a better position to secure positive education and employment outcomes.

ROA thanks Representatives Eli Crane, Nancy Mace, and Mary Miller for sponsoring this well-intentioned measure.

Without objection to H.R.3898, the *Transcript Assurance for Heroes Act*, prior to further action, ROA respectfully requests Subcommittee support for requiring the Secretary of Veterans Affairs to report on the institutions of education that currently do and do not provide this capability.

Further, in the continued absence of the proposed requirement under H.R.3898, ROA requests the report be conducted annually and posted publicly (or its findings be included as part of the VA's GI Bill Comparison Tool) to educate prospective enrollees prior to enrollment.

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[18] https://www.bestcolleges.com/research/closed-colleges-list-statistics-major-closures/#:~:text=At%20least%2037%20public%20or,2020%20were%20for%2Dprofit%20schools.
[19] https://sheeo.org/wp-content/uploads/2022/11/SHEEO_NSCRC_CollegeClosures_Report1.pdf

CONCLUSION

ROA appreciates the opportunity to offer our expertise and insight on the proposals pending before this Subcommittee.

All too often military and veterans' law and policy are developed without an understanding of or appreciation for the impact distinctions between reserve and active duty service. The members of the Reserve and National Guard invariably lose out. And so, too, their families. That means America's military readiness loses out. We cannot afford that loss.

ROA also extends its sincerest gratitude for this hearing and stands ready to provide added support on the issues covered in this statement and on other areas of mutual interest.