

**UNIFORMED SERVICES EMPLOYMENT AND  
REEMPLOYMENT RIGHTS ACT AND  
SERVICEMEMBERS CIVIL RELIEF ACT ISSUES**

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**FIELD HEARING**  
BEFORE THE  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION

AUGUST 18, 2008  
FIELD HEARING HELD IN BENTONVILLE, AR

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**UNIFORMED SERVICES EMPLOYMENT AND  
REEMPLOYMENT RIGHTS ACT AND  
SERVICEMEMBERS CIVIL RELIEF ACT  
ISSUES**

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**MONDAY, AUGUST 18, 2008**

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

The Subcommittee met, pursuant to notice, at 9:10 a.m. at Northwest Arkansas Community College, Student Center Room 108AB, One College Drive, Bentonville, Arkansas, Hon. Stephanie Herseth Sandlin [Chairwoman of the Subcommittee] presiding.

Present: Representatives Herseth Sandlin and Boozman.

**OPENING STATEMENT OF CHAIRWOMAN HERSETH SANDLIN**

Ms. HERSETH SANDLIN. Good morning, ladies and gentlemen.

The Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on the Uniformed Service Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA) will come to order.

I'd like to thank Ranking Member John Boozman for inviting us here today as we conduct this official hearing in his home State. It is great to be back in the Third District of Arkansas. As many of you may recall, under the leadership of then Chairman Boozman, the Subcommittee on Economic Opportunity held a hearing here in 2006, in which we were able to receive testimony from his constituents about the importance of the Transitional Assistance Program and education benefits for the total military force.

We've also had an opportunity to take testimony from the Adjutant General on education benefits. As you may also know, we have made substantial improvements in the GI Bill for our service men and women. I have enjoyed working with Congressman Boozman on this Subcommittee, the full Committee and other opportunities to work together in the Congress with his staff, who I want to thank here in the District, as well as our Committee staff that have traveled with us here today from Washington. Of course, I would like to thank our hosts for today, all of the people here at Northwest Arkansas Community College for giving us this wonderful venue to host this field hearing today as we continue to work together to help our Nation's veterans.

I also want to thank Congressman Boozman for his continued strong bipartisan support for our Nation's veterans and his excep-

tional leadership, for his constituents and for all of our servicemembers across the country. He has been kind enough to travel to South Dakota to hear from some of my constituents. We also held a hearing earlier this year in Indiana. This is our third field hearing this year, and we hope that the testimony we take today will provide us the information and some of the ideas to continue to work to ensure a smooth transition, especially in the area of employment and reemployment rights for our servicemembers.

I look forward to hearing from our guest panelists whose testimony will focus on employment and reemployment rights for servicemembers and veterans. As many of you know, the Uniformed Services Employment and Reemployment Rights Act and the Servicemembers Civil Relief Act were both enacted into law to provide our activated servicemembers with economic protections while serving one's country.

In the past, we've heard stories and anecdotal evidence from returning servicemembers and veterans as they've faced discrimination as a result of their service to our Nation. While violations of these rights by employers may, at times, be intentional, some of these violations have also been unintentional because there are many employers who do not understand USERRA and SCRA rights. Regardless of whether these violations are intentional or unintentional, veterans rights should be protected at all times.

The Subcommittee has held hearings on these important laws and recently passed H.R. 6225, the 'Improving SCRA and USERRA Protections Act of 2008,' in the House of Representatives. If signed into law, this legislation would ensure that equitable relief is available to all USERRA victims when appropriate; protect the student servicemember by capping student loan interest at 6 percent during deployments; require institutions of higher learning to refund tuition and fees for unearned credit and, in addition, guarantee our servicemembers a place when they return to school.

The legislation would also provide a servicemember 13 months to begin paying their student loans after an activation should they decide not to return to school immediately. It would amend the SCRA to cover service contracts to allow our men and women in uniform with deployment orders to more easily terminate or suspend service contracts without fee or penalty. It would also amend SCRA to allow a military spouse to claim the same State as the servicemember with regard to State and property taxes and voter registration. Furthermore, the Chairman of the full Committee, Bob Filner, introduced H.R. 4883 to amend SCRA to provide for a limitation on the sale, foreclosure or seizure of property owned by a servicemember during the one-year period following the servicemember's period of military service.

Unfortunately, for too many of our servicemembers returning from deployments, they're finding themselves in a predicament where existing laws might not be sufficient to protect them. Laws are not properly enforced or existing laws need to be updated to meet the needs of today's servicemembers. I look upon today's hearing as an opportunity to gather more insight into these concerns. I mentioned, I look forward to working with Congressman Boozman and other Members of the Subcommittee as we continue to work

diligently to provide the necessary safeguards to protect our servicemembers and veterans as they transition to civilian life.

[The prepared statement of Chairwoman Herseth Sandlin appears on p. 42.]

Ms. HERSETH SANDLIN. I would now like to recognize the distinguished Ranking Member, Congressman John Boozman, for his opening statement.

#### **OPENING STATEMENT OF HON. JOHN BOOZMAN**

Mr. BOOZMAN. Thank you very much. Let me first thank the Community College for providing the venue allowing us to be here and all of their hospitality. It's a real pleasure always to work with Becky Paneitz and her staff, who do such a very, very good job. I will also want to begin by thanking Ms. Stephanie Herseth Sandlin, the Chair of the Subcommittee on Economic Opportunity, for holding this hearing. You hear a lot in the press these days about the partisan bickering in Congress and in Washington, and how we're not capable of doing anything.

But I'm very fortunate that when I was Chair of the Subcommittee, Ms. Herseth Sandlin was my Ranking Member and did a tremendous job. I'd like to have the job back, but, like I say, I couldn't ask for a better Chairman.

She works in a very bipartisan manner and looks to do both what's appropriate for veterans, what's best for veterans and, yet, is very mindful as to how we spend our tax dollars in the appropriate way. I also appreciate not only her, but her staff, who work very, very hard and also are mindful of the same things, as is my staff.

Members of the National Guard Reserves continue to bear a significant load in the Global War on Terror. In Arkansas alone, over 11,200 members of the National Guard have been mobilized since 9/11, and there are over 3,000 currently deployed overseas. They have conducted the full spectrum of operations in the Global War on Terror. For example, the 213th Area Support Medical Company treated over 20,000 patients in Iraq, and the 875th Engineer Battalion cleared 1,244 explosive devices. Our aviation units perform every kind of mission from Medivac to air control. Our military police and related units provided the security and civil support. They are warriors all and I thank them very much for their service.

Fortunately, we have laws like the Uniform Services Employment and Reemployment Rights Act or USERRA, meant to ensure that when someone returns from military life, military service, they find their job waiting for them.

We also have a law called the Servicemembers Civil Relief Act, meant to protect veterans and their families in a wide variety of ways, ranging from interest rates to auto leases and taxes. Unfortunately, sometimes there are violations of the law, usually through ignorance of the law and, occasionally, through outright willful disobedience. We are here today to listen to several witnesses, who will describe the effectiveness of these laws and, hopefully, to offer suggestions on how we might improve them.

Finally, Madam Chair, I'm sure you will agree that we seldom recognize the contribution of the spouses, who keep the home running while the servicemember is called away. In the fact of great

uncertainty, our military spouses provide the members with the strength to do their duty and the faith that they will be welcomed home once their service is done. We cannot ask for more, but they always seem to exceed our expectations. Therefore, Madam Chair, I think U.S. Department of Defense (DoD)—perhaps we should look into some sort of formal recognition for their contributions to the Nation's defense.

Once again, I thank the Chair for her consideration. I look forward to hearing our witnesses and I appreciate all of you. The people that are going to testify, I appreciate you being here and I know it's a hassle, but this is very, very important, especially with a Nation at war, again, talking about a subject that's so important, reintegrating our troops as they get home. Thank you, Madam Chair.

[The prepared statement of Congressman Boozman appears on p. 43.]

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman. I would like to welcome all of the witnesses who are testifying before our Subcommittee today and I would like to remind each of you that your complete written statement has already been made part of the hearing record. I'd ask you to limit your opening remarks to 5 minutes so that we have plenty of time for follow-up questions that Mr. Boozman and I may have for all four of the panels that we'll be hearing from today.

As Mr. Boozman mentioned, the role, dedication and sacrifice of spouses and families over the last 5 years during the deployments and the Global War on Terror, at times, have not received the recognition that they deserve. Either the formal recognition or the types of insights that we believe spouses are able to provide, which is why, during these field hearings in Indiana, South Dakota, and Arkansas, we have made a point of ensuring that spouses are a part of each of the hearings and each of our first panels.

With that said, I would like to invite our first panel up to the witness table. We have Ms. Paige Smith, a military spouse and Family Readiness Coordinator for Headquarters 142nd Fires Brigade and Mr. Michael Merritt, a member of the National Guard. I want to thank you both for joining us today. We look forward to your testimony.

Ms. Smith, I will start with you. I think you have to pull the microphone a little bit closer so that we can hear you and the folks in the audience can hear you. We will now recognize you for five minutes.

**STATEMENTS OF PAIGE SMITH, FAYETTEVILLE, AR, FAMILY READINESS COORDINATOR FOR HEADQUARTERS 142D FIRES BRIGADE, ARKANSAS NATIONAL GUARD (SPOUSE OF NATIONAL GUARD MEMBER); AND LIEUTENANT COLONEL MICHAEL D. MERRITT, DEPUTY BRIGADE COMMANDER, 142D FIRES BRIGADE, ARKANSAS ARMY NATIONAL GUARD**

**STATEMENT OF PAIGE SMITH**

Ms. SMITH. Thank you. Good morning, Chairwoman Herseht Sandlin, distinguished Members of the Subcommittee. I'm Ms. Paige Smith, and I'm testifying in my position as Family Readiness



Coordinator for Headquarters 142nd Fires Brigade and wife of a recently deployed and returned soldier, Sergeant First Class Joseph Smith. My testimony today reflects my personal views and does not necessarily reflect the views of the Army, the Department of Defense or the Administration. I appreciate the opportunity to appear before you and submit testimony relative to issues pertaining to family readiness in the Arkansas Army National Guard.

First of all, I would like to address the Servicemembers Civil Relief Act and the 6 percent cap on the interest rate on pre-mobilization debt for mobilizing Guard members. When my husband's unit deployed, I know firsthand that all of our soldiers were entitled to have all pre-mobilization debt reduced to a maximum of 6 percent interest rate. And it's been my experience as a family readiness coordinator that the majority of soldiers involved in this mobilization received debt relief due to their creditors supporting the war effort and creditors reducing the interest rates.

I know of no instance that a creditor did not reduce our soldiers' pre-mobilization debt, interest rates; and for that we are grateful. In several State courts, to include Arkansas, incorrectly held that SCRA did not apply to domestic relations. This left soldiers who were custodial parents in a position of choosing between following military orders and custodial rights. This was the exact dilemma that SCRA intended to prevent. I would like to thank the Committee for their hard work to ensure that our soldiers are not in a position of choosing between their families and their country. This was one of the most pressing issues of SCRA and should be resolved.

Secondly, I would like to address the Family Medical Leave Act (FMLA), which was amended January 28th, 2008, to implement new military family leave provisions. This provision requires the Secretary of Labor to issue regulations defining any qualifying exigency before the regulation takes effect. Washington State and California have each passed a Spouse Leave Law, in which employers must provide a certain amount—Washington is 15 days and California is 10—of unpaid leave to spouses of military members who have been notified of an impending call or active-duty order, on leave from a deployment or have returned home from deployment. If this law would be passed for all States, it would allow all military spouses that do not fall under FMLA to have the same rights as those that do. And I would ask your assistance in implementing Federal legislation to address this issue that affects the majority of our soldiers during pre-mobilization and post-mobilization.

I would like to conclude my testimony by thanking you for your hard work, the Congressional staff, in all areas concerning soldiers and family care issues. I appreciate the opportunity to testify before this Subcommittee and represent all military spouses and their families of the 142nd Fires Brigade of the Arkansas Army National Guard.

[The prepared statement of Ms. Smith appears on p. 43.]

Ms. HERSETH SANDLIN. Thank you, Ms. Smith.

Mr. Merritt, you are now recognized for 5 minutes.

**STATEMENT OF LIEUTENANT COLONEL MICHAEL D. MERRITT**

Colonel MERRITT. Good morning, Chairwoman Herseth Sandlin, Congressman Boozman, distinguished Members of the Subcommittee. I'm Lieutenant Colonel Michael Merritt, Deputy Brigade Commander for 142d Fires Brigade, Arkansas Army National Guard. I appreciate the opportunity to appear before you and submit my testimony relative to my experiences as a member of the Arkansas Army National Guard and as an employee of Fortune 500 companies, specifically, issues related to my legal rights under USERRA.

Let me begin by giving you a brief background on my military and civilian career past. I received my commission as a regular Army officer in 1984, and spent 4 years on active duty before leaving active duty and beginning a civilian career and joining the Army National Guard. Over the course of 19 years, I've been exposed to the impacts of military service and the Reserve component from both the employers' perspective, as well as the servicemembers. For 17 of those 19 years, I've been in the human resource profession, with 15 of those years as a human resource manager.

I've held positions in locations that have had as few as a hundred employees to as many as 1,100. Some of those companies had a significant number of Reserve component employees and others had very few. As a national Guard officer with 19 years of service and having recently returned from deployment in support of Operation Iraqi Freedom as an artillery battalion commander, I've seen the impact of military service on the employer-to-employee relationship.

My personal experience has always ended positively, as have most of the experiences of my soldiers that I have been made aware of. Having made that statement, I must admit the greatest contributing factor to those positive outcomes has come more from the desire of employers to take care of their servicemember employees than out of a in-depth knowledge of or desire to comply with USERRA requirements. The concerns that I have heard from my soldiers have come more from perceived lost opportunities during deployment or concern that commitment to the National Guard will somehow hurt their ability to advance in the future. It is my responsibility to review the questionnaires completed by soldiers that have decided not to reenlist upon reaching the end of their term of service. And, by far, the two most common responses are family commitments and/or employment conflicts.

My only personal experience that has led to reference to USERRA requirements came at the end of my recent deployment to Kuwait. My total deployment time was 18 months, during which time my position as human resource manager was backfilled with another employee. As my tour of duty was getting close to ending, I was told that another HR manager position was available in another city, and that I should take this position as a lateral move. This would have required relocating my family shortly after returning from a long deployment and I had no desire to put my family through that at such a time. The positive turn came when I reminded my employer about USERRA requirements and they quickly recognized both the regulatory situation and my personal desire not to move and promised my original position back. I don't really

think it was due to USERRA, but we did talk about it and I think doing the right thing was what their objective was.

After returning to the United States, I made the decision to leave my employer and become self-employed. My decision was not made because of this one small issue, but rather, my desire to continue seeking higher levels of responsibility within the National Guard and to be able to do that under my own terms without the institutional pressure, that I admit, was mostly self-imposed. In many ways, my previous employers have exceeded legal requirements when dealing with my military service obligations. Most common was making up any pay or benefit differential that might exist between military pay and benefits and those of my employer.

In conclusion, it has been my experience that doing the right thing has been the objective of all my employers and USERRA only came into play as a reference for making those right decisions. As a human resource professional, I will say that people in that field are not as familiar with USERRA as they should be. You might be able to credit that to the lack of challenges made by returning servicemembers under USERRA. Trusting that your employer will meet the intent of the law and that no negative repercussions, whether subtle or blatant, will jeopardize your career does cause some anxiety for the citizen soldier. A better understanding of USERRA, a review of company policy for compliance and a communication plan could help prevent misunderstandings and alleviate a lot of those anxieties.

I would like to express my appreciation for being able to address the Committee. I think it's—USERRA is a wonderful thing and I'm much appreciative of having it in my—at my back. Thank you.

[The prepared statement of Colonel Merritt appears on p. 44.]

Ms. HERSETH SANDLIN. Thank you, Mr. Merritt.

I will now recognize Mr. Boozman for questions he may have of our witnesses.

Mr. BOOZMAN. Thank you and we appreciate you, Ms. Smith, for being here and your testimony. It's very helpful and all you're doing, not only in the support of your own family, but helping otherwise. My dad did 20 years in the Air Force, and I know it's tough when mom or dad is away for extended periods. It's hard on the family, and so it's such an important thing.

You mentioned the FMLA. Can you give us, a real life story as to how that would relate in regard how you feel like that affects the family?

Ms. SMITH. I can tell you as far as that relates to me personally. My situation was the fact when—when my husband returned home on leave, which was close to the end of his tour of duty, I was opening up a new hotel, the Double Tree Guest Suites in Bentonville. And I knew my responsibilities there. I was the only sales manager and still am the only sales manager. They were kind enough to give me a week off when Joey came home and they did that with pay. And I didn't have vacation at the time, so I appreciate them for that.

At the same time, I—in relation to me and other wives that I've heard, if we can—they need the opportunity to have that time off without it being held against them or them having to take vacation. I think it's the right thing to do for our military families.

Mr. BOOZMAN. Very good.

Colonel, you mentioned that in the questionnaires, family and jobs were at the top. One of the things that I know I've talked to about—really, for the last year or two, one of my concerns has been that with the deployments that we're having so many, guys—men and women being gone so much that we get the—we do a pretty good job of trying to alert employers. And that's what this hearing is all about. It's trying to prevent future problems from happening, along with solving the problems that we have.

But a real concern that perhaps, instead of having a problem with them being—coming back, but rather, they just don't hire them in the first place; that they know that they're National Guard and that small business, which is the backbone of the country, which is—most of our businesses with few employees, who spend the time to train somebody and in the back of your mind as an employer thinking, you know, this person's going to be gone for a year or 15 months or whatever, that that might be a real problem boding into the future. Can you comment on that? Is that something that we really need to be concerned about?

Colonel MERRITT. Yes, I believe it is going to be an issue and I don't know that it will, necessarily, always be, you know, a blatant move, but I know on job applications years ago, they would always ask, did you have prior service.

And, they would—you would put that down and it used to be you would jump at the opportunity to be able to say, Yes, I am, or Yes, I have. And now, you do have second thoughts as to whether you want to put that on there or not for that very reason. I don't think many corporations will go out there with that intent, but it is a seed in the back of the mind that you would have to take into consideration.

And the small company in the larger percentage of those people represented in the workforce, obviously, the tougher it is for them. But I think it is something that we're going to have to watch in the future to see what impacts that it does have.

I haven't seen it in the short term, but long term, it could definitely become more of a factor as these deployments continue.

Mr. BOOZMAN. Was your unit, prior to deployment, was it briefed on USERRA.

Colonel MERRITT. Yes, sir, we were.

Mr. BOOZMAN. And you felt like that they did a good job in that regard.

Colonel MERRITT. Yes, sir.

Mr. BOOZMAN. Very good. Thank you all very much. Thank you, Madam Chair.

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman.

Just to clarify then, Ms. Paige. Given your circumstances and how flexible your employer was in giving you that time when your husband was home on leave, and maybe conversations with other military spouses, perhaps, that same flexibility hasn't occurred for everyone. Either during that time on leave; or would you agree, perhaps, just as importantly, during that period of readjustment when they return home from the deployment. Do you have any thoughts on how long he was home on leave for more than a week?

Ms. SMITH. Yes, ma'am.

Ms. HERSETH SANDLIN [continuing]. Right.

What are your thoughts in terms of the amount of time without having to use vacation, without having it held against the spouse and the employment situation anyway? Take, for example, the return from deployment—

Ms. SMITH. Uh-huh.

Ms. HERSETH SANDLIN [continuing]. Is a week a sufficient amount of time? Do you think 2 weeks would be more beneficial for that readjustment period, particularly, if there are young children at home?

Ms. SMITH. Yes, ma'am, I think two weeks would be a better timeframe. And with every family, it's different. Every soldier comes back different. Not all of our circumstances are the same, so to speak. We don't have small children at home. We do have a young one at home, but she's 17. I do know that the mothers that have the children that are babies where they had their children while their husbands were gone, which we had a couple of those, I think it's very important to have a longer period of time to just get to know each other again, quite frankly, without worrying what's going to happen at work.

Ms. HERSETH SANDLIN. Uh-huh.

Ms. SMITH. And I do know that I will say there are companies that have supported the soldiers and their families. There are companies that have allowed other employees to give their comp time—

Ms. HERSETH SANDLIN. Uh-huh.

Ms. SMITH [continuing]. To the soldier's spouse so that they could have more time with them because they didn't have all the time, you know, on their own. So it's not all a bad thing. There are companies out there that try to do the right thing, but if we could get it—you know, legislation passed through where it was a definite. And if they didn't need the 2 weeks, then they wouldn't have to take it—

Ms. HERSETH SANDLIN. Uh-huh.

Ms. SMITH [continuing]. But to have it there would be a blessing.

Ms. HERSETH SANDLIN. Okay. I appreciate your insights.

Mr. Merritt, in response to Congressman Boozman's question, they were briefed on USERRA.

Did the Family Readiness Group get a briefing on the USERRA rights of the loved one who's being deployed?

Ms. SMITH. Yes, we—.

Ms. HERSETH SANDLIN. Okay.

Ms. SMITH [continuing]. We do.

Ms. HERSETH SANDLIN. I appreciate your knowledge and familiarity and, again, your perspective on the Servicemembers Civil Relief Act, USERRA and what you've offered us here today. Thank you, again, very much.

Ms. SMITH. Thank you.

Ms. HERSETH SANDLIN. Mr. Merritt, you said you've spent 15 years as a human resources professional.

Colonel MERRITT. Yes, ma'am.

Ms. HERSETH SANDLIN. My hunch is that there are a lot of other human resource professionals that aren't nearly as familiar with USERRA rights as you are and you've recognized that in your testi-

mony. Why do you think that is and what do you think we can do to help better inform companies and human resource professionals, in particular, about USERRA rights?

You have made a few recommendations in your testimony with regard to the review of the corporate policies. Perhaps one of the reasons that certain employers are not familiar is the lack of challenges that certain servicemembers may not be bringing that help inform what those reemployment and employment rates are. Would you have any suggestions for what more could be done to better familiarize companies and human resource professionals, in particular, with USERRA?

Colonel MERRITT. There are some organizations, you know, for human resource professionals that probably would be a good impact; to contact human resource people and say, hey, here's something that's out there that is important to you. I understand most of you probably, you know, exceed the regulations, but, you know, here's something that probably would be smart to spend some time on.

I don't know exactly how legally you could push that. I also think being a little more inclusive with employers during the mobilization process might be something that we could work toward. You know, we do a pretty good job; getting better with the families and I think we've always done a pretty good job with the soldiers, so employers might be the next—you know, the next step to pull them into that process at some level.

But, again, I think it's—everybody's busy and it becomes somewhat of a squeaky wheel kind of situation.

And my experience with larger corporations has been USERRA has not been a problem and an issue, so therefore, I don't spend much time, you know, looking at it. But, probably, your biggest challenge will be your small employers that may not have a human resource professional, do it in-house or there's just one person that does it all. Those people would probably be the ones you would want to reach out to.

Ms. HERSETH SANDLIN. Uh-huh.

Colonel MERRITT. And, also, it might be the easier ones to pull in to the pre-mobilization orientation process, either, you know, separately or inclusive with the employee. I'm not sure which would be better. But I think there's some things that could be done to help that communications process.

The soldiers being smart on the subject is probably one of your best tools because, you know—and, obviously, you're looking after your own interest. You will use your knowledge to help you with your career. But I think if the employers were, maybe, a little more knowledge on the front end, you would avoid a lot of that.

Ms. HERSETH SANDLIN. Your assessment is it's more a lack of familiarity with the law than the policies, as written, being unclear? I mean, once they know the law is out there. But, maybe, for the smaller employers, the—

Colonel MERRITT. Yes.

Ms. HERSETH SANDLIN [continuing]. Explanatory is important, especially, as you said, if they don't have a dedicated human resource professional in-house.

Colonel MERRITT. That's right. Interpretation of USERRA has not been a problem that I have seen. It's just, you know, picking it up and looking at it, period; either out of not knowing it exists—and I'm sure there are some smaller employers that have that issue—but, like I said, people not thinking they have an issue with USERRA because they're doing all they can do to—well, I don't think they're doing it to do more than USERRA requires them. They're just doing what they think is right and that is in the spirit of USERRA, so they don't have that conflict.

Ms. HERSETH SANDLIN. Okay. Just one final question for you, Mr. Merritt, a general question. With your 19 years of experience with the National Guard, what is the most common problem you think that servicemembers, their spouses and families face during a deployment?

Colonel MERRITT. Well, that's a tough one. I think just the separation, in general. This deployment, you know, over those that went to Desert Storm, the communication is—that's available for soldiers now is so much better than it was; you know, the ability to call home and you sit and you know, you absorb. And we do coach people on that. I mean—

Ms. HERSETH SANDLIN. Right.

Colonel MERRITT [continuing]. You're going to hear things from your spouse, and you just kind of absorb them. There's not a lot you can do about it and you learn how to deal with that frustration. But just the ability to communicate with your spouse back home and your children has been a big plus, so it's really the separation; just the family structure. And it's, you know, you run across a few that'll have financial problems and some things that'll pop up because of the deployment, if you want to talk universal issues, it's just taking, you know, one of the parents out of a family and taking them away for a year, a year and a half.

Ms. HERSETH SANDLIN. Thank you.

Mr. Boozman, did you have any final questions?

Mr. BOOZMAN. Well, just one thing.

Does the Guard do any outreach as to employers concerning USERRA.

Colonel MERRITT. Employer Support of the Guard and Reserve (ESGR) is a great organization that, you know, reaches out to many. I'm not really sure of the exact size of the ESGR, but my guess is that, you know, reaching all of the employers that are affected across the State is probably a pretty big challenge. But I know they do reach out to those that they're made aware of and then they do have things that they do that pull employers in.

So ESGR is a great asset for us and has been over time. They've built those relationships. They didn't just pop up because of a deployment, you know. They've been there all along and we do everything we can to—

Mr. BOOZMAN. Uh-huh.

Colonel MERRITT [continuing]. To build the relationships with our employers. We bring them out to the field with us when we're at Fort Chaffee, and let them see what we do. And that familiarity with what we do is a big plus for them. I mean, they know, kind of—they hear what you do on the weekends, but when they get out there and they see that, you know, you really are doing a serious

job, they feel like they own a little piece of that and it helps tremendously.

Mr. BOOZMAN. Very good. I thank both of you, again, for your service to our country and your dedication. Your testimony is very helpful. Thank you.

Colonel MERRITT. Thank you.

Ms. HERSETH SANDLIN. Thank you both. We appreciate your testimony and the sacrifices that you've made.

Ms. SMITH. Thank you.

Ms. HERSETH SANDLIN. We now would like to invite our second panel to the witness stand. Joining us is Major General William D. Wofford, Adjutant General of the Arkansas National Guard, and Captain Thomas Lee, Staff Judge Advocate for the Arkansas National Guard. Thank you both for being here and for providing a written testimony.

We look forward to your comments today.

General Wofford, we'll begin with you. You are recognized for 5 minutes.

**STATEMENTS OF MAJOR GENERAL WILLIAM D. WOFFORD,  
THE ADJUTANT GENERAL, ARKANSAS NATIONAL GUARD;  
AND CAPTAIN THOMAS LEE, STAFF JUDGE ADVOCATE, AR-  
KANSAS NATIONAL GUARD**

**STATEMENT OF MAJOR GENERAL WILLIAM D. WOFFORD**

General WOFFORD. Chairwoman Herseth Sandlin, Congressman Boozman, I'm Major General William D. Wofford, and I'm testifying in my position as the Adjutant General of the Arkansas National Guard. And I appreciate the opportunity to appear before you and submit testimony relative to issues pertaining to National Guardsmen. As you had mentioned, my written testimony is submitted. I've got several issues that I've identified. I'd like to capture just a few of those right now in oral testimony, if I could.

First of all, I'd like to begin my testimony by thanking the Congressional staff for a very important clause in the National Defense Authorization Act of 2008 that contains an affirmative clause that court ordered stay provisions under the Servicemembers Civil Relief Act do not apply to child custody proceedings. Several State courts incorrectly held that the newly created Servicemembers Civil Relief Act did not apply to domestic relations. Congress answered that with the National Defense Authorization Act. This was one of the most pressing issues of SCRA and now appears to be resolved.

One of the issues is that when a servicemember mobilizes, they are entitled to have all their pre-mobilization debt reduced to a maximum of 6 percent interest rate if their income is materially affected. Yet some servicemembers in Arkansas did not receive the debt relief because often the servicemember's income is not materially affected. Now, I would like to point out that most creditors—the vast majority of our creditors are happy to comply with the SCRA and they go ahead and grant that relief without even checking on that, but that is a concern.

I'd like to mention that the continued enforcement under the Department of Justice's Civil Rights Division on SCRA issues. Serv-



icemembers seeking help under SCRA first contact their military Judge Advocate in the Arkansas National Guard. If the Judge Advocate's office cannot resolve the matter and determines that assistance from the Department of Justice would be appropriate, it will submit a request to the Civil Rights Division of the U.S. Attorney's Office. The Division needs to continue that work. That is a very positive effort and we just would like to thank those involved in SCRA for making that possible.

I would like to mention that servicemembers' creditors, employees and landlords should be commended on the sacrifices they make to ensure that a servicemember is prepared to leave their—his civilian position and fight in the war effort. However, if a servicemember is required to pursue legal action to enforce his rights conferred by SCRA, there is no provision for recovery of expenses by attorneys that he must hire. I think that's an issue that should be addressed under the Civil Rights Act provision.

Finally, the main issue I would like to address to the Subcommittee today has to do with employment concerns of Reserve component members. Before I discuss this issue, I'd like to emphasize that our servicemembers of the Arkansas National Guard receive outstanding support from employers when they are called to duty. Even after 7 years of executing the Global War on Terror, Arkansas employers continue to demonstrate tremendous patriotism and dedication to ensuring our servicemembers and their families are cared for while they're deployed. However, I would like to share a growing concern that was mentioned just previously.

Although our employers demonstrate solid support of their employees that are called to active duty, there is mounting evidence that employers are becoming reluctant to hire members of the Reserve components because of repeated, second and third, deployments. It has become apparent that those traits exhibited by the members of the Guard and Reserve that make them valuable employees, leadership, professionalism, physical condition, maturity and a can-do attitude, are no longer considered to be cost effective advantages if they're going to be deployed for 12 months every three to 4 years. The businessmen and businesswomen that are responsible to their superiors and to stakeholders are making hiring decisions that will best help their organization's financial bottom line and that's understandable.

For over a year, I've taken the opportunity to speak to numerous civic organizations, chambers of commerce and business leaders around the State of Arkansas about the National Guard. And I certainly expound on those outstanding qualities for hiring them. However, I also ask them one simple question. What incentives must we, as a Nation, try to develop to ensure it is profitable for employers to hire a Guardsman? I've received some valuable feedback and I'll be more than glad to address that. And I do have it in my written testimony, but I know I've run out of time.

I do want to thank you for allowing me to speak.

[The prepared statement of General Wofford appears on p. 45.]

Ms. HERSETH SANDLIN. Thank you, General Wofford.

Captain Lee, you're recognized for 5 minutes.

**STATEMENT OF CAPTAIN THOMAS LEE**

Captain LEE. Madam Chairwoman and Congressman Boozman, I am testifying regarding my position as the Staff Judge Advocate of the Arkansas National Guard. I thank you for the opportunity to personally appear before you and submit this testimony regarding legal issues of our national Guardsmen. I would like to take the time to explain what we do as Judge Advocates and what type of issues we see as Judge Advocates.

In the last 5 years, we have seen almost 10,000 servicemembers come through our legal station on their way to various deployments. I split our legal assistance services into three stages depending on the current status of the servicemember. The first stage is the pre-mobilization phase. The second stage is the post-mobilization phase. And the third stage is the demobilization phase.

The first phase, the pre-mobilization phase, before servicemembers leave Arkansas on any mobilization, they must go through a soldier readiness processing (SRP) or an Special Reporting Code (SRC). The SRP and the SRC are basically, the benchmark of the deployment process. At the SRP and SRC, we will have multiple stations where a Judge Advocate will draft the servicemember a will or a power of attorney. We also ask whether or not the servicemembers have any legal issues that may prevent them from deployment.

At that time, we also give them a packet of information. The packet includes, first, letters that they can send to their creditors asking for the creditors to reduce their interest rate to 6 percent; second, letters for terminating a residential lease; third, an IRS power of attorney for tax purposes; fourth, a simple letter to send to any court to stay a pending court action; and fifth, a guide on how to resolve fines and warrants. And, in addition to that, during this phase, our Judge Advocates will also talk directly to prosecuting attorneys and judges concerning our servicemembers that have pending misdemeanor charges or traffic violations in our various courts.

Phase II is the post-mobilization phase. At this time, there are, roughly, 3,000 members of the Arkansas National Guard on active military orders in the post-mobilization phase. Currently, we receive an average of 233 calls a month seeking legal assistance information. The phone calls come from servicemembers, their families, attorneys and creditors. We provide all the groups as much information as we can.

Generally, the questions are related to SCRA. In my written testimony, I provide a table regarding legal actions falling under SCRA that servicemembers of the 39th Brigade Combat Team have faced since their January, 2008 mobilization. As you can see, the most common problem is the 6 percent cap on interest rates. This is usually due to the creditor not understanding the law. Generally, this issue can be resolved between the servicemember and the Judge Advocate, once the creditor is aware of the law. Since the 39th Brigade Combat Team has deployed, almost a third of all legal assistance actions are regarding the 6 percent interests rate.

The third phase is the demobilization phase. Once servicemembers return from deployment, they will go through the legal section at the mobilization center. The most common legal issue when

servicemembers return home is that someone has obtained a default judgment against them, as the local court was not aware of the servicemember deploying. The Judge Advocate will help the servicemember resolve this issue.

In conclusion, we are still looking for ways of improving how servicemembers may reach our office. This requires a team effort by the entire National Guard. Our family assistance coordinators pass out our phone numbers at military family gatherings. Our public affairs department has a Web site so if servicemembers need assistance, they can contact our office. We also have to rely on commanders like Lieutenant Colonel Merritt to pass out our information.

I appreciate this opportunity to submit this testimony. I'd like to thank you for all the hard work and services that you provide all servicemembers, not just Arkansas National Guardsmen. The Arkansas National Guard Judge Advocate General section especially thanks you for the support and services that you've provided us.

[The prepared statement of Captain Lee appears on p. 49.]

Ms. HERSETH SANDLIN. Thank you, Captain Lee.

General Wofford, if I could start with you. At the beginning of your oral testimony today, the issue of debt relief under the Servicemembers Civil Relief Act. You state that in a number of instances, it's not triggered because the servicemember's income isn't materially affected. Do you think we set a different standard? Is that just a standard that's too difficult for a servicemember to prove, to demonstrate?

General WOFFORD. Ma'am, I think the standard is there and I think it is fair to the creditors. The vast majority of the creditors provide the debt relief for our servicemembers. There are some creditors that understand the law extremely well and require the individual to bring in proof that their income has been materially affected, their income has been reduced, and so they have to prove that.

In some cases, for many of our Guardsmen in Arkansas, when they're called to active duty, they actually make more money than they do at their civilian jobs. Again, the vast majority of the creditors don't ask. They just go ahead and—or the creditors go ahead and allow them the 6 percent debt relief, but there are some that don't. And I'm not sure how to effect that because, I think, the way the law is written is fair for the employers.

Ms. HERSETH SANDLIN. Okay. Well, I appreciate you bringing a number of other issues to our attention today, the provision with regard to hiring an attorney fees is one I intend to pursue. You know, we've already looked at some other issues as it relates to equitable relief in getting injunctive relief and making sure every servicemember understands he or she is entitled to that. I think this is an important provision because of as Mr. Merritt said. I mean, if there's a lack of challenges being brought, for those that are, they are incurring expenses, generally, with the advice of counsel. I think that's an important change that we should look into with regard to SCRA.

The recommendations you make in your written testimony, as you have discussed with chambers of commerce and other employ-

ers around the State, there are about half a dozen or so recommendations.

General WOFFORD. Yes.

Ms. HERSETH SANDLIN. Do any of those stand out to you in terms of most frequently cited, that would be the most beneficial—

General WOFFORD. Yes.

Ms. HERSETH SANDLIN [continuing]. To employers?

General WOFFORD. Yes, ma'am. Madam Chairwoman, the one recommendation that seems to be common across the board, business men and women around the State, has to do with healthcare benefits—

Ms. HERSETH SANDLIN. Uh-huh.

General WOFFORD [continuing]. That if through TRICARE—or whatever means that the military provides, healthcare benefits to our soldiers—if that was common across the board for every Guardsman, those that are mobilized and those just in a drilling capacity. That is the most common benefit that they think would help them the most because that would be a benefit package they would not have to provide in civilian business.

Ms. HERSETH SANDLIN. I appreciate that. That makes a lot of sense. I know that even for some employers who are able to offer healthcare coverage, that if they're a smaller employer, I know how important it was for the servicemember to know that his family was covered—

General WOFFORD. Yes.

Ms. HERSETH SANDLIN [continuing]. During the deployment.

Captain Lee, talk to me a little bit more about the issue of the default judgments. This can be something where, especially for single servicemembers, mail is being forwarded to a parent's home. Or if they are married, but the spouse isn't familiar with getting, legal document in the mail and what all that means and doesn't have the resources to go hire an attorney to tell her what it means.

Do you have any ideas on how we can best communicate to the courts when we have mobilizations so that we're not dealing with this after the fact with those default judgments? I'm sure, especially in this part of the country, I know that some folks, even their economic interest for what they may be entitled to if they owned land and someone's making an offer for mineral rights under the land, they could face a default judgment if they don't go and contest an offer that's been made. I would imagine that this is an ongoing problem for a number of servicemembers here and elsewhere across the country.

Captain LEE. Yes, ma'am, and the Federal courts now, I believe, in a pleading, you have to state—the attorney has to state that the plaintiff or defendant is not a servicemember who is deployed.

Ms. HERSETH SANDLIN. In the Federal courts.

Captain LEE. In Federal courts. In State courts, we don't have that.

Ms. HERSETH SANDLIN. Okay.

Captain LEE. And that's, mainly, where we see different default judgment issues come up. Generally, the judges themselves never know if a servicemember is deployed unless someone tells them. And that's the issue. It's not that judges are signing court orders

knowing the servicemember is deployed. They just simply don't know.

Ms. HERSETH SANDLIN. That was the point of my question. I would imagine that they wouldn't do that, but what we need are some ideas for how we can ensure that there's some communication there. I think putting the onus on the attorney in the action as it relates to the individual having to state that due diligence at the outset is something that they could find out—

Captain LEE. Yes, ma'am.

Ms. HERSETH SANDLIN [continuing]. By contacting the National Guard, by contacting the Reserve unit. That's something that will be helpful for us to pursue. Thank you.

Mr. Boozman.

Mr. BOOZMAN. Thank you, Madam Chair.

First of all, with your permission, I'd like to recognize George Westmoreland, who's here. George is the Civilian Aid to the Secretary of the Army, and does a good job of getting out in the State and just helping our soldiers in a variety of different ways, so we appreciate you being here.

General Wofford, the Chairwoman had really asked my first question and that was what did you learn? And you say you were able to elaborate on that. The other thing is, is that you guys mention that, basically, 75 percent of our guys that are getting called up are actually making more money when they're deployed than in civilian life, and yet, we're seeing these problems of financial troubles.

And one of the things that I worry about is the divorce rate that we see that's probably affected by these kinds of things. And I know that when you look at that, finances are always high on the chart as far as getting people in trouble with their marriages and things. And, I guess, my question is, is there anything we can do? Can we do a better job or can we do somewhat of a job in helping individuals as they start to deploy with some sort of financial management training. Is that available or could that be made available or—

General WOFFORD. Sure. There are a number of things that can be done. And actually, one thing that is being implemented at this time in every State is what's referred to as the Yellow Ribbon Reintegration Program. The program starts at the very beginning, when a unit is alerted; works with the family through the deployment; and then the reintegration process. And I think Ms. Smith touched on something in her testimony that I think is worth revisiting is during a lengthy deployment, for 12 months or more, the spouse that stays back here that's maintaining the family, holding the family together, becomes somewhat independent.

They—he or she realizes that they've got to become self-sufficient. They've got to be able to maintain the household. At the same time, while the soldier is deployed, most of them are in a high stress situation. The way they do business in a combat environment is it's mission focused. They get the job done, whatever it takes. And they come back to a less stressful environment; realize that the spouse is—doesn't need them as much as they used to, to make the day-to-day decisions that have to be made, which creates additional stress within the family.

I think that the reintegration program—and it boils down to communication. It boils down to education of our soldiers while they're deployed and when they get back home and it takes education of the family. And as Ms. Smith said, they need time to get to know each other, to become reacquainted. And I think that is one of the greatest things that we can do and are doing now. It's just taken us a long time to figure that out.

Mr. BOOZMAN. We really have some excellent credit counseling resources and things. And I would hope—and I know that you all are working—

General WOFFORD. Yes, sir.

Mr. BOOZMAN [continuing]. Really hard in trying to see how we can integrate those things to ward off problems. I had the opportunity of being with the General in Iraq a few weeks ago, and I do want to compliment you for the great job that you're doing. And you can tell by the way that you are received over there, that they have a lot of admiration for the job that you're doing, so give yourself a pat.

General WOFFORD. Thank you, sir.

Mr. BOOZMAN. And we really do appreciate you guys. Thank you for being here.

Captain LEE. Thank you.

General WOFFORD. Thank you.

Ms. HERSETH SANDLIN. Thank you, both, for your insight, leadership and your service to our men and women in uniform. We look forward to following up with you on some of the recommendations and insights that you've offered to the Subcommittee today.

General WOFFORD. Thank you.

Ms. HERSETH SANDLIN. Thank you, again, for your testimony.

We would now like to welcome the third panel. Joining us is Mr. Don Morrow, Arkansas Chairman of Employer Support for the Guard and Reserve; Mr. Herb Lawrence, Center Director for the Small Business Development Center (SBDC) of Arkansas State University; and Mr. William Vines, Commander of Post 31 in the Department of Arkansas, the American Legion.

Gentlemen, welcome. Thank you for being here with us today. We look forward to your testimony. Mr. Morrow, we begin with you. You are recognized for 5 minutes.

**STATEMENTS OF DON MORROW, CHAIRMAN, ARKANSAS FIELD COMMITTEE, EMPLOYER SUPPORT OF THE GUARD AND RESERVE; HERB LAWRENCE, CENTER DIRECTOR, ARKANSAS UNIVERSITY SMALL BUSINESS DEVELOPMENT CENTER, ARKANSAS STATE UNIVERSITY, STATE UNIVERSITY, AR; AND WILLIAM VINES, COMMANDER, POST 31, AMERICAN LEGION, DEPARTMENT OF ARKANSAS**

**STATEMENT OF DON MORROW**

Mr. MORROW. Chairwoman Herseth Sandlin, Mr. Boozman, thank you for the invitation to offer my perspective on issues relating to the Uniformed Services Employment and Reemployment Rights Act (USERRA) as it applies to the Arkansas National Guard and Reserve members and their employers.

USERRA 1994 protects the employment and reemployment rights of Federal and non-Federal employees who leave their employment to perform military service.

The role of informing servicemembers and employers about this law and enforcing it falls to several different government organizations. It should be noted that USERRA covers all employees except screeners employed by the Transportation Security Administration.

ESGR is a Department of Defense organization that seeks to develop and promote a culture in which the American employers support the value of military service of their employees. We do this by recognizing outstanding support, increasing awareness of the law and resolving conflicts through mediation. Gaining and maintaining employer support requires a strong network composed of both military and civilian employer leaders that's capable of providing communication, education and exchange of information. ESGR works with the Reserve component leadership of each service, appropriate government organizations such as the U.S. Department of Labor (DOL) and the U.S. Small Business Administration (SBA) and industry associations such as chambers of commerce and others to create broad based, nationwide support for our troops.

It's important to note that ESGR is not an enforcement agency and we do not have statutory authority to offer formal legal counsel or to participate in any formal investigation or litigation process. Our part in USERRA issue is to inform and educate our customers, the servicemembers and their civilian employers, regarding their rights and responsibility under the USERRA statute; also to provide mediation service.

We have approximately 900 volunteer ombudsmen throughout the country and a national call center in Arlington, Virginia, to provide this service. Our call center received 13,116 requests for assistance during Fiscal 2007. Of these calls, 171 were from servicemembers or their civilian employers in Arkansas. Of those requests, 10,742, 129 for Arkansas, were informative in nature; that is, they were sufficiently resolved by providing information about the law. The remaining 2,374, 42 for Arkansas, were assigned as cases to our ombudsmen.

Through a Memorandum of Understanding between ESGR and DOL Veterans' Employment and Training Service (VETS), ESGR informs those servicemembers whose cases ESGR is unable to successfully mediate within 14 days of their options to either contact the DOL or to retain private counsel. During Fiscal 2007, ESGR referred 416 cases to DOL. It should be further noted that ESGR mediation process is covered by the Administrative Dispute Resolution Act of 1996, which minimizes the amount of specific data that can be released about individual cases.

The ESGR's mandate ends at this point in the USERRA process. As I understand it, the Department of Labor investigates and attempts to resolve these claims that are filed by the servicemembers. If not successful, DOL informs the Federal claimant that they may have their claims referred to the Office of Special Counsel and informs the non-Federal claimants that they may engage Department of Justice. Of course, all parties reserve the right to engage private counsel at any time.

As of June 30th, 2008, 651,918 Reserve component members have been mobilized since the terrorist attacks of 11 September. There are 108,010 Reserve component members mobilized as of July the 30th. As of June, 2008, Arkansas had 16,726 Reserve component members. The use of the Reserve component has shifted from a strategic reserve to an operational reserve, whereby members of the National Guard and Reserve no longer are forces held in reserve, but are integral and integrated part of the total force.

I see I'm running out of time, so let me thank you for allowing me to give my testimony today. And I'll be happy to answer any questions.

[The prepared statement of Mr. Morrow appears on p. 52.]

Ms. HERSETH SANDLIN. Thank you, Mr. Morrow.

Mr. Lawrence, you are recognized for 5 minutes.

#### **STATEMENT OF HERB LAWRENCE**

Mr. LAWRENCE. Thank you. Chairwoman Sandlin, Congressman Boozman, Members of the Subcommittee, as a retired military officer, as a father of a son who just returned from the surge and all the soldiers who are coming after me, I thank you for allowing me to speak to this Subcommittee.

I am the State—the Small Business Development Center Director for Arkansas State University, part of a statewide small business network. We have been working with small business owners who are involved in deployment for the past several years. Continued deployment of National Guard and Reserve military personnel in the Global War on Terror, who are also businessowners, has created additional hardships on these Reserve components' servicemembers. Nationally, continued deployment of this subgroup of Guardsmen and Reservists has resulted in numerous business failures, losses of business income, bankruptcies and economic challenges to their enterprises. They have created undue hardships on their civilian career.

The playing field between the Reserve component businessowner and the non-military businessowner is no longer even. And their service to our country comes at a significant sacrifice to their civilian endeavors.

USERRA, especially in terms of its impact on interest rate caps and deployment loans, does not appear to me to differentiate between consumer-related loans and business loans and does not appear to prohibit its application to business loans.

However, we do have a number of consumer—excuse me—of commercial lenders out there who are confused about exactly what impact the Servicemembers Civil Relief Act has on businessowners, especially because of the variety of loans that those businesses might have. A small businessowner could have revolving lines of credit, as well as business term loans, business credit card loans, equipment leasing, accounts receivable factoring; all of which are critical to sustain most business endeavors, but are challenged by some lenders. I believe it is more out of not knowing the law and what they are required to do, as opposed to not wanting to support our servicemembers.

The Servicemembers Civil Relief Act, clarification for commercial lenders to their obligations, to business-related loans needs to be



more clearly defined to the lender. Additionally, servicemembers who are businessowners, need to be identified by command prior to deployment and access to consulting and counseling business assistance needs to be provided that targets the debt obligations and the options available to those servicemembers to reduce the negative impact of servicing those loans during and upon return from active duty.

Also, the time limits on removal of the six percent cap should be expanded for businessowner servicemembers upon their return to ensure they have the best opportunity to get their businesses back to pre-deployment levels of revenues and customer bases to ensure they can service the debt. If I work for someone else and I go back to my job and get my due level of—and my old level of income, having that eight percent back is not an issue. But for small businessowners who have lost significant revenues during that 12-month period, putting them back to eight percent or 9 percent may not be to their benefit. If there's a way we can expand the timeframe to allow them to continue that 6 percent until they can regain that, it would be helpful.

Current assistance to service related businessowners called to active duty is inadequate to help keep many of them operational or to help them rebuild upon redeployment. The U.S. Small Business Administration programs aimed specifically at veteran and Reserve component businessowners have improved dramatically, but are still not sufficient to meet all of their needs. The Patriot Express Loan Guaranty Loan Program is not available to many commercial lenders. Additionally, the SBA Direct Loan Program for military servicemembers, the Economic Injury Disaster Loan (EIDL), is only a stopgap at present time and is limited to working capital. The EIDL should be expanded to help refinance existing business-related debt, provide deferments where possible and repayment until reasonable time after redeployment to be expanded to meet the needs, as well as working capital. Not all businesses need it, but there are a number that we've worked with who could have used that assistance.

In summary, our soldiers aren't looking for a handout and they're not looking for a subsidy. What they want is assistance to help them regain their competitiveness and to level—and to levelize their playingfield.

And very quickly I'll make a comment too that—to follow up with the General on his discussion of seeing some employers having problems wanting to hire Guardsmen.

I had an informal poll of a number of my lenders, asking if an individual came in—all things being equal, credit history, collateral, ability to repay—that came in and asked for a new loan, and they knew that individual was a Guardsman or a Reservist and if there was a good chance of being deployed, would that impact their decision? Obviously, they wouldn't come out and say, Absolutely, it would, but they did say that would be a significant challenge to overcome in making a decision to make another loan to these individuals.

I thank you very much for your time to listen to me. Thank you.

[The prepared statement of Mr. Lawrence appears on p. 53.]

Ms. HERSETH SANDLIN. Thank you, Mr. Lawrence.

Commander, you are now recognized.

**STATEMENT OF WILLIAM VINES**

Mr. VINES. Thank you. As commander of the American Legion Post in Fort Smith, I'm honored to be asked to represent the American Legion for the State of Arkansas, and I'm happy to be on a panel with the good General Wofford there and to be working with my favorite Congressman, John Boozman. Both of these gentlemen are well respected, well known and the troops really honor and respect both of them here in this part of the State.

In fact, the good Congressman told me and I'm very pleased to be in the presence of—he said that Chairlady Sandlin would be the next Governor of the State of South Dakota—

Ms. HERSETH SANDLIN. Thank—

Mr. VINES [continuing]. Followed immediately by that you would be the next U.S. Senator from South Dakota, so we're very proud to be here with you.

Ms. HERSETH SANDLIN. Thank you.

Mr. VINES. And we welcome you and all those from out of State and those from across the State to beautiful Northwest Arkansas. And I hope John has had an opportunity to show you all the scenic beauty of our State, our tree-covered mountains and the fresh air that we have here and the beautiful clear waters of Beaver Lake, which is just a few miles east of us here. And I know that my formal statement is on the record, so I'm going to kind of jump around here and hit things that are near and dear to my heart.

Just a few miles down the road in Fort Smith and Van Buren, just sitting in the river bottom across the river from each other and most of our industry in the State of Arkansas is located in the river bottom and, of course, we have Whirlpool, Baldor Electric, Hiram Walker, Planter's Peanuts—some of the big name brand industries, as well as many smaller industries that service them.

And, of course, up here in the mountains, you have Bekaert Steel and the two world class corporations, Wal-Mart and Tyson Foods, so we have a lot of industry. Right here in Bentonville where we are now, there's a Guard unit and many of the towns around here have Guard units, so these fellows—we have a good education system here in Northwest Arkansas.

We have good schools and I feel like our people get a little better education, maybe, than they would a lot of other places. Consequently, with all this concentration of industry and with the troops in the Guard, we have a lot of our employees are Guardsmen. And this has always been the as I think Colonel—well, our good Colonel back there mentioned and General Wofford both—it's always been kind of a plus to be in the Guard because these people knew they were going to be hiring a good troop, a little better than troop. And when they hire them and they've come in and they really advance a little faster than their peers because of the training they've had, a good education and the military training which teaches you a lot of leadership and chain of command and how to deal with problems.

Consequently, when they are deployed as we are now so often being deployed, this is a tough deal for the employers. It's tough on the family. It's tough on the troop, but it's also hard on these

employers. And, as we mentioned earlier, the smaller the company, the harder it is. So I just—in fact, this past Friday, met with several of our industrial leaders and CEOs there in Fort Smith, and we had a nice, little informal conversation. And one of the things that they mentioned having—they know I've been involved with the military for 40 years, and been involved with the industry for 40 years, and I've been both an employee and an employer and I kind of see both sides of the coin here.

And they know they can trust me. I'm not going to tell it to you who they are, but they have said in this meeting that they really now are a little hesitant about hiring our Guard troops. When they find out that they're going to the Guard, they really kind of give it some thought.

So I think we need to not only take care of the troops and the families, but we need to also look after these employers and give them some perks, you know; take care of the folks who are taking care of us by—I don't know—give them tax breaks. Give them preferential—some of these government contracts—the many government contracts we have, maybe look at those employers who support the military effort toward getting those contracts. We just need to look after the employers as well as we do our own troops. And I think we do a good job with the troops. When they go off, they know what they have coming to them and many times, they know it better than the employer does, so, yes, ma'am, thank you.

[The prepared statement of Mr. Vines appears on p. 57.]

Ms. HERSETH SANDLIN. Well, thank you, Commander.

Let me start with a question for both you, Mr. Vines, and Mr. Morrow.

Let me read to you a section of General Wofford's testimony and pose a similar question to you as I did to him in terms of what you hear the most from employers that would be helpful to address this issue of a current disincentive because of the deployment pace among National Guard versus what we can do to offset that.

One recommendation is a tax incentive for employers. Another is to provide health benefits for servicemembers and their families on an ongoing basis so businesses don't have to provide healthcare as a part of the benefits package. Also, eliminating Social Security and retirement penalties for those retirees who temporarily backfill deployed or mobilized servicemembers would provide considerable relief. Another is reimburse replacement training expenses for businesses and, finally, reimbursing municipalities for overtime for policemen or firefighters who are required to fill in for deployed servicemembers would go a long way to providing a strong support network.

Which of those do you hear the most would be most helpful to employers in making decisions to overcome any hesitation now? Would it be the healthcare benefits as General Wofford has been hearing the most? Is it a different incentive, like a tax incentive? Mr. Morrow, what do you think?

Mr. MORROW. Well, as General Wofford mentioned, I think probably the healthcare incentive might be the most practical. Obviously, we hear a great deal about tax incentives. And I think the somewhat recent idea of being able to forgive some of the employment taxes for hiring the replacements, I think, is one of the items

that I hear a good bit about. And you mentioned municipalities. Municipalities are probably unfairly hit. Perhaps, unfair might be the wrong term, but we certainly have a high percentage of policemen, firemen, municipal employees in the Guard and Reserve.

And we have a lot of cities that's been hit very, very heavily with their police force, their firefighters. And it's very difficult to hire replacements for those individuals. In many cases, what the employers are saying, If you allow us to hire some of these recent retirees back in to fill those positions and give us a tax break in that process might be an effective procedure for us.

Ms. HERSETH SANDLIN. Mr. Vines?

Mr. VINES. I think the tax breaks, definitely, would be number one on the list. And I think if there's any way that we can work this out so the corporations have a preferential bidding situation on government contracts and so forth, I hear that a lot. With our industry in Fort Smith and—and with our—some of the big construction companies, that would certainly play a part. And we need to keep these employers happy because, you know, if they're not happy and Mama's not happy, then the troop's not going to re-up. And it all really is just one big ball of wax there that needs to be dealt with.

And I hope that we can do something to limit the number of deployments. I hope this will kind of calm down a little bit. And in talking to young people about the fact that they ought to be joining the Guard and all the great benefits we have, I keep telling them, this is all going to settle down here one of these days and you don't have to worry about going off and leaving your loved ones and leaving your job. But when they do, they need to know that they come back to and our employers in this area are very patriotic. We don't have much problem. Any problem we have, I notice, is kind of where the rubber hits the road there. It's the shop foreman or the guy on the loading dock who says, no, you can't go to Guard drill Saturday. You've got to be here. Don't care what the law is. Don't care what the military says. I want this truck loaded on Saturday morning, or I'm in big trouble with the boss.

And, you know, so we discussed that Friday, that we would also make certain that it gets down through the ranks—

Ms. HERSETH SANDLIN. Uh-huh.

Mr. VINES [continuing]. That the law is down through the ranks and that they have to go by it. But we also need to—the troops need to certainly let the employers know ahead of time when they're going to be gone, when they want to be gone. And this is one of the things that is stressed, that they, as soon as they can and as early as possible, let their employer know.

But, you know, this is the big deal for me. I think that working through the employers, we can do an awful lot of good for the employees.

Ms. HERSETH SANDLIN. Thank you.

Mr. VINES. Yes, ma'am.

Ms. HERSETH SANDLIN. I have some additional questions for each of you. Right now, I'd like to recognize Mr. Boozman.

Mr. BOOZMAN. Thank you, Madam Chair.

General Morrow, I could have said the same things about you a few years ago, in the sense when you led our last deployment so

successfully, you have done such a great job. You're so well respected and we really do appreciate your service to our country.

One of the things that would be helpful in following up on the Chair's question is, we have this cost to the municipalities. We have it to small business. We have it to, as Mr. Vines was saying, to our major industries like Planter's Peanuts or whatever. One of the things that would be helpful is in quantifying that, you know.

And do you have any experience in that, Mr. Lawrence. Do you—I mean, is there data that we can say Arkansas, you know, this or that deployment is costing small business this amount of money and could give some examples for our municipalities or—

Mr. LAWRENCE. I can certainly tell you the number of Guardsmen who it appears to be impacted who are small businessowners. The SBA nationally will say 7 percent are self-employed or sole proprietors. When you add to that those who are in partnerships, closely held corporations, I've seen numbers as much as 12 to 14 percent. I work—thanks to General Wofford, I was able to attend most of the 39th Brigade's SRPs; identify those small businessowners; provide them with a business mobilization planning guide.

And I came up and met with 253 self-professed small businessowners out of about 2,600, so as far as the percentage who are involved, I would say we're probably right on national averages. As far as our failures at the moment, I'm not sure we're seeing. All of mine is coming from those soldiers who are coming back who go, I need help. I've run out. And so I'm seeing, as a small business development center director, on an individual basis.

One thing we are trying to do through the Small Business Development Center Network is to find some way to start surveying Arkansas Guardsmen as they're coming back. Are you a businessowner? Were you a businessowner? Have you faced issues? What challenge? We're trying to quantify that, but, actually, at the present time, it's pretty much still anecdotal. I knew to come see you because I had problems with my lawn care business. All my customers went to my competitors, but the bank wants their money. So at that moment, it's mainly anecdotal from the small business side as far as the actual failures.

Mr. BOOZMAN. Well, I think anything we can do to quantify that would be real helpful. The other thing, we've got the hardship on the Guardsmen themselves. And then, again, so many of our small businesses—I don't know what is the average size of the small businesses in Arkansas, but it's—you know, it might be seven or eight employees. And, if a key guy is gone, then certainly, we need to quantify how much that's costing so that we can look at—we need some arguments to move forward with considering health insurance, considering tax breaks, considering some of the things that you all have said. This will be good for business and moving forward.

But we do appreciate you. We appreciate all that Arkansas State is doing—

Mr. LAWRENCE. Thank you.

Mr. BOOZMAN [continuing]. In this regard. They're really becoming a—somebody that has really picked the ball up and we're very, very proud of their efforts.

Mr. LAWRENCE. The PRIDE Center has been very effective there as well, yes, sir.

Mr. BOOZMAN. Very much.

And then you might just take a second and just describe what's going on with the center.

Mr. LAWRENCE. With the PRIDE Center.

Mr. BOOZMAN. Yes, sir.

Mr. LAWRENCE. Okay. Yes, sir, the—ASU, Arkansas State University was fortunate enough to receive funding from an alumnus, who is also retired military, who is concerned about the impact of all the returning veterans, whether they're Guard, Reserves or active duty—coming off of active duty who are suffering some type of injuries, be it physical, be it mental, psychological.

And they developed what is called the Beck, B-E-C-K, PRIDE Center in our College of Nursing and Allied Health. And it is a—basically, a clinic without walls.

They've hired several consultants, most of whom are prior military and as a servicemember comes back, they're suffering whether it's a physical issue or mental, they can go and work through them. They will help them get to the U.S. Department of Veterans Affairs (VA), if necessary; help them with other types of concern of outside consulting, clinical issues that occur. And it's all confidential and they've been very successful, as well as going further. Helping them to looking at getting into school, dealing with their handicaps, especially if they've lost limbs; finding opportunities in the civilian world to become effective and contribute.

And it's just been one of those that, thanks to an alumnus, Mr. Beck, and to the dedication of our Dean of the College of Nursing and Allied Health, Susan Hanrahan and Susan Tonymon, who's the PRIDE Center Director. It's just taken off. My Center, I feel, is very fortunate to be able to work with them, as they have their servicemembers come in that have issues to start a business, so an excellent job being done over there in Northeast Arkansas. We're very proud of them.

Mr. BOOZMAN. Yeah, I know they've become a big part of the task force that Mr. Westmoreland's—

Mr. LAWRENCE. Yes.

Mr. BOOZMAN [continuing]. Heading to—to try and to be helpful. Thank you.

Ms. HERSETH SANDLIN. Okay. Well, thank you. I appreciate learning more about what's been happening in other States, especially with some of our universities, to provide more outreach and services to our returning veterans.

Mr. Lawrence, are you familiar with the Transition Assistance Program?

Mr. LAWRENCE. Yes.

Ms. HERSETH SANDLIN. Yes? You state that, a minimum, businessowners should be identified and they should be made aware of how Servicemembers Civil Relief Act can assist them with their business debt.

Is this something we should be doing in the TAP program.

Mr. LAWRENCE. We do use that, the Transition Assistance Program—

Ms. HERSETH SANDLIN. Here—

Mr. LAWRENCE [continuing]. Here in Arkansas.

Ms. HERSETH SANDLIN [continuing]. USERRA—

Mr. LAWRENCE. Yes.

Ms. HERSETH SANDLIN [continuing]. Is offered here at the bases in Arkansas.

Mr. LAWRENCE. Here in Arkansas and this because we're looking at Federal and possibly on a national basis. When General Wofford took over as Adjutant General, I pulled—I went and spoke with him and asked him about the impact of the deployment of small businessowners with the 39th Brigade, at which point General Wofford, being General Wofford, said, go find out and come up with something.

And the answer was we prepared with their office, the Arkansas National Guard, the business mobilization planning guide so that when I would identify a businessowner, we would give them this guide; work with them to try and help. When we worked with the 39th, General Wofford turned me over to the Transition Assistance Office and I developed a very strong relationship with Ms. Barbara Lee. And it's worked very successfully here in Arkansas, and so it's a model that we're hoping we can—you know, can be carried forward into other States, in addition to just the deploying servicemembers, so I go to every SRP that occurs or my staff does—

Ms. HERSETH SANDLIN. Uh-huh.

Mr. LAWRENCE [continuing]. And work right beside the Transition Assistance and with the Employer Support. Additionally, we are involved in all of the reintegration briefings. So when a unit returns back from deployment, we are there with the Transition Assistance Office, identifying those who we obviously missed since we didn't start this until about 18 months ago, who had been deployed. Are you a businessowner. Do you need help? What can we do? Because all the assistance through the Small Business Development Center system is free of charge and absolutely confidential.

So it's just allowing us to see, yes, I need some help. I've got problems. And we identify who they are, where they're located because my Center works only in the northeast part of the State. I then turn them over to the appropriate—my counterpart, wherever they may be; if they're up here, to the University of Arkansas, Fayetteville, SBDC. And also, we get a lot who are saying, You know, I'm really interested in starting a business. What do I need to do? And so we help them.

Our State Director for the Small Business Development Center Network has even made all of our Starting a Business in Arkansas workshops that we do throughout the State free of charge to any Guardsman, Reservist, any veteran and his spouse who wants to attend, just to try and help them. So we've been very fortunate in being able to work hand-in-glove with the Transition Assistance Office and it's been a very beneficial relationship.

Ms. HERSETH SANDLIN. I appreciate that.

In our two prior field hearings, we focused, specifically, on TAP and in the prior Congress under Mr. Boozman's leadership, we had other field hearings that focused on Transition Assistance. You're absolutely right in terms of trying to find models that are working in States and we find consistently that Arkansas and the leadership in the National Guard is furthering models that can work ef-

fectively in other States. That's part of what we're trying to do here, as well as find out more to share best practices, even if it does not end up being legislation and a change in policy. It's sharing information to the public is another one of our responsibilities on the Subcommittee, so I appreciate your information.

Mr. LAWRENCE. Well, in fact, the work that the Transition Assistance Office did—has been doing with the small business—Guard's members who are small businesses, she was actually nominated and won the Arkansas Small Business Administration Veteran Champion of the Year for her work with the veteran—with the——

Ms. HERSETH SANDLIN. That's great.

Mr. LAWRENCE [continuing]. SBA and with her veterans.

Ms. HERSETH SANDLIN. That's great and that's a great segue for my next question for you. Who should have the lead responsibility in educating commercial lenders? Should it be SBA? Should it be the U.S. Department of Veterans Affairs?

Mr. LAWRENCE. I would say that the VA would be more—might be better able to do that. And the only reason I would say that is some lenders are not pro-SBA, and so, you know, for whatever reason. And so they may have an SBA person come in and not want to listen. And now I think the SBA could effectively do that. They do deal with lenders on a daily basis. I'm not sure given the size of the SBA——

Ms. HERSETH SANDLIN. Uh-huh.

Mr. LAWRENCE [continuing]. I mean, there's——

Ms. HERSETH SANDLIN. Yes.

Mr. LAWRENCE [continuing]. There's more employees at the McClelland VA Hospital than there is in the entire Small Business Administration that they would have the ability to do that.

Ms. HERSETH SANDLIN. Okay.

Mr. LAWRENCE. But I would say from a size standpoint, possibly, the VA would be a better unbiased person to talk with lenders.

Ms. HERSETH SANDLIN. A final question for you, Mr. Lawrence. You had stated that the 6 percent interest cap should be expanded to give the businessowner time during that reintegration and readjustment period.

Do you have any suggestions on what a reasonable time period would be, 6 months? Longer?

Mr. LAWRENCE. Possibly. Well, it would depend on the business. I hate to use that. Some may not need it at all, but if you think that many of these Guardsmen spend a number of years building their business to the point it could generate enough revenues to be able to support the pre-deployment debt level. And then they leave and they are the key person in that business, so that their revenues, their customer base, basically, goes away because no matter how much you may like that individual, if you need that service, you can't wait 12 months.

And so they see that erosion of their customer base. It's going to take them some time to rebuild the customer base; to bring their revenue level back up to where they can service that debt. At a minimum, I would think 6 months would be a reasonable amount. There might be some—like, if you were in a consulting business,



that might have to go longer. But I would say 6 months would certainly be a good start.

Ms. HERSETH SANDLIN. Okay. Just one or two more questions.

Mr. MORROW, you're the former Adjutant General of the Arkansas National Guard?

Mr. MORROW. Yes, ma'am.

Ms. HERSETH SANDLIN. I'm sorry I didn't recognize that earlier. Thank you, General, for all of the other capacities in which you've served servicemembers here in Arkansas. You had stated that you're working to raise the awareness of USERRA for all members of the Reserve components. Are they all in Arkansas currently receiving that training and information?

Mr. MORROW. Madam Chairwoman, the answer is yes, as it applies to units. When a unit is mobilized, regardless of the branch, we know about it. When Individual Ready Reserve (IRR) members are mobilized, we don't know about it, and so in several cases, we miss the IRR. However, the vast majority, obviously, are in organized units and we do manage to brief every unit.

I'd also like to comment that in the area of educating employers, I think we do a very good job in educating the employers. It's very, very difficult to reach the small employers because when we have events, such as boss lifts, meetings at the various chambers around the State, we get the larger employers. For the past 2 years, we've had very successful meetings with the Society of Human Resource Management, SHRM. We've met with that conference for the last 2 years; been very successful; have been able to brief those human resource managers.

Also another big program with ESGR is the statements of support that we gain from employers. And Arkansas, currently, has reached its goal for this fiscal year. We've signed well over 682, which was our goal. We've signed well over that number of statements of support with various employers. And that's been done through meetings with chambers of commerce throughout the State, with various organizations in their annual meetings, the Association of Arkansas Counties, SHRM, as I mentioned and any other organization that we can get on their calendar for their annual meeting. I think we've been very successful there. And I think we've done a very good job in reaching the major employers.

As I said, it's very, very difficult to get the small employer to attend those meetings. It's very difficult for them to give up the time to be able to attend those meetings.

Ms. HERSETH SANDLIN. Well, I appreciate that insight. Going back to your first comments about the Individual Ready Reserve and that they're getting the training, the information on USERRA by units. One of the things that we have found out, starting in Indiana, and some of what we're hearing in DC, is this challenge, not just with regard to information on USERRA rights, but other benefits with the smaller detachments that are being deployed. It was one thing when it was the whole unit.

The Adjutant General in South Dakota is trying to figure out ways to look at the services and information they're providing to the Reserve units, in addition to the National Guard. Because we are finding that the Reserve units are falling through the cracks, either as a unit or the smaller detachments than the individuals

that are being deployed and attached to a larger unit at their mobilization site before deployment.

You state that you become aware of when the unit gets deployed, right? Now, do you become aware of that because your office receives direct notification from the DoD, or is it just through people that you know in the community and news reports?

Mr. MORROW. Well, it's actually a combination of all those things. However, Arkansas is probably in the more fortunate position there than a lot of other States. All the headquarters for the Reserve components in Arkansas, save one, are located at Camp Robinson.

That's where our ESGR office is located. We have a very good relationship with the commanders of all those various Reserve component entities.

The one that's an exception, however, is really not a problem for us because it's located at Little Rock Air Force Base. The Air Force Reserve is located there. All the others are at Camp Robinson, all within just a few miles of our State ESGR headquarters. And, as I said, with the relationship we have with those commanders, I don't think we miss any units. The individuals out there in the IRR, we don't know about those. We don't know about all of them.

Ms. HERSETH SANDLIN. Let me just explain my frustration with the Department of Defense in so easily being able to find these individuals to mobilize them, but seemingly, having difficulty finding them when they're wanting to share information about their benefits. Then, of course, we have the issue of some of the blips when people were getting deployed and they were enrolled in TRICARE, and then all of a sudden, a family fell out of TRICARE. I mean, there were just things we had to work through.

In your experience, do you think that it would be feasible and reasonable for the Department of Defense to be able to notify, assuming we can address all the privacy issues—but to notify every State ESGR office for individuals in Reserve components who are mobilized?

Mr. MORROW. Well, ma'am, I think it'd be possible because when the notification is sent out for the servicemember to report, a notification could be sent to ESGR. We could then, at least, through telephone make some contact with that individual. So, yes, I assume there would be a way to do that. And, certainly, we'd be willing to make the contact and provide the information to the individual. We can provide it by mail. We can provide by telephone, if necessary.

Ms. HERSETH SANDLIN. Thank you. I want to be real cognizant of our time, so I may submit a question in writing for you, Mr. Vines, because we do have one more panel. I appreciate all of your testimony today.

Mr. Boozman, did you have any final questions.

Mr. BOOZMAN. Well, I'd just say that I think you're kind of in a unique situation, General, in the sense of seeing things in light of being the commander and all this you've got to deal with there. And then in your current capacity that, perhaps you and your guys could give that some thought as to how we could locate and do a better job of helping the individuals that are in that situation. Because it does seem as we've gone throughout the country and in Washington that really is a problem.

And, again, especially, in visiting with their wives and this and that it's very easy to, when the brigade leaves or this or that leaves. It's just a whole different deal and some of those individuals seem to be just kind of left out of the mix. So any advice you could give us as far as how we could do a better job of that or how you see it could be handled in a way that is reasonable. That would be very, very helpful. We would appreciate it.

Mr. MORROW. I assume the only way that can happen is for DoD to notify us because, otherwise, we have no means—

Mr. BOOZMAN. Right.

Mr. MORROW [continuing]. Of knowing when those folks are mobilized. I would point out, as a percentage, they're a very minor percentage. However, again, they don't have a family support system—

Mr. BOOZMAN. Not—

Mr. MORROW [continuing] Doing—

Ms. HERSETH SANDLIN. Exactly.

Mr. MORROW [continuing]. Anything for them.

Mr. BOOZMAN. And that's really where it came. We've noticed it as in the last panels, them talking about it and just really not having much support at all, so that would be very helpful.

The Patriot Loan Program, why is it not available to some lenders?

Mr. LAWRENCE. For a lender to be a Patriot Express Lender, that bank must first be a SBA Express Lender, and then they apply to become a Patriot Express. In order for you to become an SBA Express Lender, you have to have so many SBA guarantees on the books already. Your liquidation rates must be below a certain percentage. There's a number of hoops that a bank has to jump through because the benefits from the SBA's standpoint that they're giving that banker to use that express, requires them to really monitor very closely.

So the result is while the larger banks, national banks, the big banks, are Patriot Express Lenders in Arkansas; Metropolitan National Bank, of course; Liberty Bank. I'm sure up here in Northwest Arkansas some of the large ones have gone through that process and are. The smaller banks, the First Community Bank of Batesville, the Citizens Bank of Salem, Arkansas, they may do one or two SBS guarantees a year and they haven't built the track record. Now, they may also have Guardsmen who are small business owners. The best they can—you know, their choice then is to say, You want to go to one of our competitors? And, of course, that's not—so that's the biggest challenge.

The Patriot Express Program is a wonderful program is the Guardsman or the Reservist businessowner can find the bank that can do it for them. But it's just the requirements that the SBA has to impose does not allow it to go to every commercial lender that probably would like to use it.

Mr. BOOZMAN. I see. Mr. Vines, you're kind of in a unique position. I don't think anybody's more supportive in this State of you of our armed services, in every capacity.

Mr. VINES. Thank you.

Mr. BOOZMAN. But working for a manufacturer, yourself being very active in the City of Fort Smith and very active in the manu-

facturing community, any help that you could give us in—in talking to those guys. We mentioned a number of different things, the tax breaks—the this and that. I'd like for you to really follow up on that and just kind of quantify that as to, some sort of ranking, as to what they felt like, whether it was health insurance or this or that. I think that would be very, very helpful.

So I appreciate all of you guys. We just thank you for your service and thank you for all that you're doing for veterans in a variety of different ways. We appreciate you very much.

Mr. LAWRENCE. Thank you.

Mr. VINES. Thank you, Mr. Congressman and thank you, Governor.

Ms. HERSETH SANDLIN. Mr. Lawrence, if we could get a copy for staff of some of the materials that you referenced, that would be helpful.

Mr. LAWRENCE. Certainly. I brought several of these, as well.

Ms. HERSETH SANDLIN. Thank you. Okay. Sorry I missed that. Thank you. Again, I appreciate all of your testimony and your service to country and for our Nation's veterans.

We will now have our final panel join us at the witness table. We have joining us Mr. James Mitchell, Chief of Staff and Director of Communications for the Office of Special Counsel (OSC); and Mr. John McWilliam, Deputy Assistant Secretary of Veterans' Employment and Training Service in the U.S. Department of Labor. Who is accompanied by somebody you had introduced me to earlier from here in Arkansas. If you could introduce him to the rest of the audience because I think he's very familiar with Mr. Boozman.

Mr. McWilliam. Thank you, Madam Chairwoman. I'm accompanied today by Mr. Roy Schultz, who is our newly hired Director for Veterans' Employment and Training within the State of Arkansas.

Ms. HERSETH SANDLIN. Very good. Well, again, thank you for being here with us. We look forward to your testimony. We're pleased that you could be here to hear the testimony of prior panels.

We will go ahead and start with you, Mr. Mitchell. You are recognized for 5 minutes.

**STATEMENTS OF JAMES P. MITCHELL, CHIEF OF STAFF, DIRECTOR OF COMMUNICATIONS, U.S. OFFICE OF SPECIAL COUNSEL; AND JOHN M. MCWILLIAM, DEPUTY ASSISTANT SECRETARY, VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR**

**STATEMENT OF JAMES P. MITCHELL**

Mr. MITCHELL. Thank you, Chairwoman Herseth Sandlin, Ranking Member Boozman. Good morning. I'm James P. Mitchell, Chief of Staff and Director of Communications of the U.S. Office of Special Counsel or OSC. Thank you for the opportunity to provide our perspectives on the enforcement of USERRA, the Uniform Services Employment and Reemployment Rights Act.

Our military members understand their obligations and they serve when called. Unfortunately, not all employers understand their obligations to their employees. And some servicemembers,

mostly members of the National Guard and Reserve, return from active duty, but are turned away by their civilian employers who seem to be saying, welcome back. You're fired. This happens even when the employer is the same Federal Government that mobilized the servicemember.

USERRA provides the strong enforcement mechanism for Federal employees, giving jurisdiction to the Merit System Protection Board. A complaint under USERRA may be made to the Department of Labor, Veterans' Employment and Training Service or VETS. If the employer is a Federal agency and VETS cannot resolve the claim, the complainant may request referral to OSC for possible prosecution. Also, cases with allegations of prohibited personnel practice violations, which come under our jurisdiction, are referred to OSC. While USERRA expanded OSC's role as a protector of the Federal merit system, it established a split process. First, VETS investigates. Then the matter may be referred to OSC for prosecution.

To evaluate the potential advantages of having a single agency handle these claims, Congress in 2004 established a USERRA Demonstration Project, directing about half of Federal employee claims to OSC. During the Demonstration Project, which ran from February 2005 through December 2007, OSC obtained corrective action for servicemembers in over 30 percent of cases. This rate is significantly higher than achieved by other governmental investigative agencies. And that resulted from thorough investigations and legal analysis, educating Federal employers about USERRA and a credible threat of litigation, which itself, leads agencies to settle claims.

We value the commitment of men and women of our military and work aggressively to safeguard the merit system enforcing USERRA. The Demonstration Project showed that Federal claimants who come to us get better and faster service. My statement, for the record, recounts examples of cases where OSC obtained employment and restored Federal employees' benefits. And beyond corrective action for the employee, OSC seeks to prevent future agency violations through, what we call, systemic corrective action. For example, we help agencies modify their leave and promotion policies to comply with USERRA. We provide USERRA training to personnel and we require agencies to post USERRA information.

The Demonstration Project eliminated referral between agencies and allowed claimants to obtain faster, more effective relief. With a single entity handling and resolving cases, claimants benefited from a more efficient and transparent process that increases communication and accountability. Congress tied the outcome of the USERRA Demonstration Project to a U.S. Government Accountability Office (GAO) evaluation, but despite an April 1st, 2007, deadline, it was submitted to Congress only days before the August, 2007 recess. The Demonstration Project was to expire September 30th, so Congress had little time to act. Moreover, the GAO report did not address a central question; that being, are Federal-sector USERRA claimants better served when they can file complaints directly with OSC for both investigation and litigation.

The Demonstration Project was, ultimately, extended to December 31st, but then OSC lost authority to accept direct USERRA

claims by Federal employees. So where does this leave USERRA in enforcement? Today, more than 106,000 members of the National Guard and Reserve are mobilized. A quarter of them are Federal employees.

Troops returning home in greater numbers could cause a spike in USERRA enforcement demand. However, enforcement capacity has been reduced, leading to problems for larger numbers of veterans; what we might call a Walter Reed moment for USERRA. Congress can recover this capacity by assigning the task of investigating and resolving USERRA claims by Federal employees to OSC, which specializes in the enforcement of Federal personnel laws. We are ready to do our part to make their transition back to civilian life as smooth as possible.

Thank you for your attention. I look forward to your questions. [The prepared statement of Mr. Mitchell appears on p. 60.]

Ms. HERSETH SANDLIN. Thank you.

Mr. McWilliam?

#### **STATEMENT OF JOHN M. McWILLIAM**

Mr. McWILLIAM. Thank you, Madam Chairwoman, and Mr. Boozman. Mr. Schultz and I are pleased to be here today to appear before the Subcommittee to discuss employment and reemployment concerns from deployments and multiple deployments of active duty and Reserve component servicemembers. Congress, of course, enacted USERRA to protect the employment rights of the men and women who leave their jobs while serving as members of our military.

One of our Department's top priorities is to protect our military members' jobs when they're called up to serve. We work hand-in-hand with Defense and Justice and the Special Counsel to enforce USERRA. The Department of Labor both investigates complaints by servicemembers and veterans and administers a comprehensive outreach education and technical assistance program. We work closely with the ESGR to ensure servicemembers are briefed on their USERRA rights before and after they are mobilized.

We conduct numerous USERRA outreach and education programs to inform servicemembers and employers on their rights and responsibilities under the law. Since 9/11, we have provided USERRA assistance to over 535,000 servicemembers, employers and others. This includes 341 USERRA mobilization and demobilization briefings given to over 267,000 servicemembers. The Defense Department reports in their Status of Forces Survey that on the average, each National Guard and Reserve component member receives two USERRA briefings. We believe the low rate of reported USERRA problems is due, in part, to our extensive outreach, the Agency's user friendly regulations, the collaborative efforts between Labor, Justice, Defense and Special Counsel and, in great part, to the tremendous support the vast majority of employers show for the Nation's men and women in uniform. VETS continues to provide support in all the States. We work very closely with the ESGR and the National Guard.

We are looking forward to supporting the return of the 39th Brigade to Arkansas this year.

Madam Chairwoman, the United States has the best, the most capable, the most advanced military in the world. The dedication to service and the willingness of our servicemembers to serve is inspiring. Labor takes seriously its responsibilities for assisting our veterans in returning to their previous employment, in finding good, new jobs and careers and in protecting their job rights.

We are dedicated to doing everything possible to help protect their economic and job security. Mr. Schultz and I look forward to answering your questions.

[The prepared statement of Mr. McWilliam appears on p. 64.]

Ms. HERSETH SANDLIN. Thank you both for your testimony.

We'll begin questions for this panel with Mr. Boozman.

Mr. BOOZMAN. Thank you very much. Mike Westbrook told me—he said it was great to hear two agencies argue over who could do the best job for veterans, so we do appreciate that.

You know, Mr. Mitchell makes a strong case, Mr. McWilliam, for doing that, with the success of the Demonstration Project and things and I've got a lawyer here that's licking his lips wanting to get after these people that either don't understand the law or are abusing it or whatever. You mentioned the good that you're doing as far as outreach and all of those things. You know, that wouldn't change, so I know you respond to somebody in your testimony, but what's the reason not to do that?

Mr. MCWILLIAM. Well, thank you, Mr. Boozman. We believe the Demonstration Program highlighted areas where we have improved our program. We have done that, particularly in reporting and in calculating. We have a very high satisfactory case resolution, as does the Office of Special Counsel. Thirty-one percent of our cases are either granted or settled. We have a 53-day average case closing. We believe that there is an inherent advantage in having one agency investigate claims and then using other agencies to actually pursue the legal remedies, such as the Department of Justice does for the non-Federal cases and the Special Counsel does for the Federal cases.

Mr. BOOZMAN. Very good. Do you want to respond? This is kind of fun.

Mr. MITCHELL. And we're sitting close enough together, too.

Well, we think that when it comes to Federal claims, we are the specialists in that area. And one of the—I'm getting some backup here—one of the issues is that oftentimes a USERRA claim will also contain an allegation of a prohibitive personnel practice violation. And it is—when it goes to VETS, it's up to them to figure out that there's a prohibitive personnel practice in there and it's taken often a long time for VETS, which has spread all over the country—has a lot of people working on these issues; and many of whom are not really familiar with prohibitive personnel practices.

So it can take quite awhile, many months sometimes, before we will see a claim referred to us. We think, frankly, there's a two-for here; that if we took over the Federal claims, it would free up VETS to focus on the non-Federal, the private sector, the State and local government claims, while we focused on the Federal where we are specialists. And we think that the Demonstration Project demonstrated that we were doing a superior job of dealing with the Federal claims.

And it was very disappointing to have all this run out at the end of the year and with all the energy and all the enthusiasm that we had for enforcing USERRA. In fact, we had hired an individual who had been involved in writing the original USERRA litigation, Captain Sam Wright, was with us. And he was so disappointed that when we lost our ability to do direct USERRA cases that he went into private law practice, and so lost him. So it's been kind of a morale kick for us, but we really want to have USERRA back. We really want to contribute.

Mr. BOOZMAN. Very good. Today and then in other testimony, in Washington and stuff, we've had some conflicting testimony about whether or not USERRA cases are declining or are arising or whatever. Can you call comment about that? Do you feel like they're on the increase? Are they on the decline or stabilized or—

Mr. MITCHELL. Well, why don't you go ahead, John—

Mr. MCWILLIAM. All right.

Mr. MITCHELL [continuing]. Because they're on the decline for us, definitely.

Mr. MCWILLIAM. Mr. Boozman, they certainly are both in total number of cases, they're on decline and also in a ratio of number of cases per demobilized Guard and Reservist, which is a very key factor that we look at that has fallen significantly over recent years recently.

Mr. BOOZMAN. Does VETS, do they participate in the national conferences, the training events where, for instance, the Society for Human Resources Management that was alluded to earlier in the—

Mr. MCWILLIAM. Yes.

Mr. BOOZMAN [continuing]. Testimony.

Mr. MCWILLIAM. Yes, sir. We try to attend as many of those as we can. We attend SHRM each year and put up a booth and talk with people there. We go to a whole host of them. I have some examples. We participate in many human resources councils around the United States. We have recently gone to the Industrial Liaison Group of Arkansas and the Society of Professional Benefits Administrators. There's a whole series of associations of employment councils. We attend those meetings also and speak about USERRA.

Mr. BOOZMAN. Thank you, Madam Chair.

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman.

Mr. BOOZMAN. I'll turn it over to another lawyer.

Ms. HERSETH SANDLIN. Well, Mr. Mitchell, I think you made a pretty compelling case based on the Demonstration Project and based on the statistics that you offered at the beginning of your testimony that one quarter of the 106,000 currently deployed are Federal employees for the role of the Office of Special Counsel here. Especially as it relates to the more specialized training to identify, investigate and work through the prohibitive personnel practices you've described.

A couple of questions. What do you think the main reasons are that Federal Government agencies continue to violate USERRA?

Mr. MITCHELL. Well, Federal Government agencies are, generally, quite large and we've found that larger and the more spread out they seem to be all over the country—examples of these are the Postal Service, the Veterans Administration and, actually DoD in



its components—that we see larger numbers of cases coming from those agencies. And that’s probably a factor of outreach, not being able to get to a Postmaster General in South Dakota, necessarily, or a Postmaster in South Dakota, who may have influence over whether a letter carrier who comes back from active duty is going to be able to have his job back. And so the—I think the size of the agencies and the distribution of those agencies all over the country is a factor in having more USERRA claims.

Ms. HERSETH SANDLIN. So given the decentralized nature of some of those agencies—

Mr. MITCHELL. Yes.

Ms. HERSETH SANDLIN [continuing]. Do you feel that the centralized nature of OSC is more capable of dealing with that, roughly, 10 percent?

Mr. MITCHELL. Well, when the claim comes in, we can deal with the—

Ms. HERSETH SANDLIN. Federal—

Mr. MITCHELL [continuing]. Federal claim more quickly because we’re much more familiar with those areas of law.

Ms. HERSETH SANDLIN. Right. So if the Office of Special Counsel were to get primary referral for all the Federal cases, would you need a bigger budget? With what you currently have, would that allow you to meet the needs that you anticipate?

Mr. MITCHELL. We had calculated last year that we’d need about \$2.5 million added to our now \$17.4 million budget to grow our USERRA unit back and add the capacity to take on double the number of cases that we were taking in during the Demonstration Project. During the Demonstration Project, if a claimant had an even numbered Social Security number final digit, the claim went to VETS. And if it was odd numbered, it came to us, and if it came to us, then we’d have all of them.

Ms. HERSETH SANDLIN. Okay. Mr. McWilliam, you identified a 53- to 57-day turnaround. How is that calculated? Is that calculated based on all cases entered or is that calculated in some way of those that actually require some days, weeks, months of investigation and completion?

Mr. MCWILLIAM. Ma’am, it’s all cases for which we received a claim from a veteran or a servicemember.

Ms. HERSETH SANDLIN. Are some of those claims addressed and rectified fairly easily so that it’s just almost a day turn? I mean, you can get an answer and solve it within a day.

Mr. MCWILLIAM. I would say some of them within several weeks, ma’am, yes.

Ms. HERSETH SANDLIN. State that again. Some of them within—

Mr. MCWILLIAM. I’m sorry.

Ms. HERSETH SANDLIN [continuing]. Weeks.

Mr. MCWILLIAM. Some of them don’t take as long as others. Absolutely. Some just take a few weeks to do. By the time the investigator receives the complaint, talks to the veteran, the claimant who’s making the claim, assemble some of the initial paperwork, it’s possible that they could be settled fairly shortly. I don’t have a specific time or minimum amount of time that it takes.

Ms. HERSETH SANDLIN. Okay. I just want to make sure that you mentioned that part of the Demonstration Project led to improvements in DOL's and VETS' reporting—

Mr. MCWILLIAM. Yes, ma'am.

Ms. HERSETH SANDLIN [continuing]. And calculation. I would be interested and, perhaps, you could provide to the Subcommittee, with all claims, I would like to see the date entered and the date closed to see how that average is being calculated.

Mr. MCWILLIAM. Age them? Yes, ma'am, we could do that.

Ms. HERSETH SANDLIN. Okay. Just for an example, Mr. Boozman can go through all his District staff who are here. We do case-work—

Mr. MCWILLIAM. Certainly.

Ms. HERSETH SANDLIN [continuing]. On behalf of constituents and, sometimes, it's something that we can easily handle. We can make a quick phone call, put them in touch. We enter it. We open a case.

Mr. MCWILLIAM. Yes, ma'am.

Ms. HERSETH SANDLIN. We close it in our IQ system or whatever. So that certainly affects, the average time—

Mr. MCWILLIAM. Yes, it would.

Ms. HERSETH SANDLIN [continuing]. That it takes.

Mr. MCWILLIAM. Madam Chairman, I was just talking about ones where we actually receive a formal, written complaint from a servicemember. I was not including any technical assistance that we do, which often is like you say a telephone call and we just talk to the people and clarify issues. But we can certainly—

Ms. HERSETH SANDLIN. Okay.

Mr. MCWILLIAM [continuing]. Clarify that—

Ms. HERSETH SANDLIN. Yeah. If you could—

Mr. MCWILLIAM [continuing]. Certainly.

Ms. HERSETH SANDLIN [continuing]. Provide us both the actual written complaints that are—

Mr. MCWILLIAM. Yes.

Ms. HERSETH SANDLIN [continuing]. Filed, as well as, maybe some additional information on—

Mr. MCWILLIAM. Certainly.

Ms. HERSETH SANDLIN [continuing]. The technical assistance.

Mr. MCWILLIAM. Yes, ma'am. Certainly.

[The information was provided in the post-hearing questions and responses for the record, which appears on p. 69.]

Ms. HERSETH SANDLIN. Okay. You also stated in your testimony that VETS is conducting an evaluation of USERRA investigative process.

Mr. MCWILLIAM. Yes, ma'am.

Ms. HERSETH SANDLIN. What will the evaluation entail and when will it be completed?

Mr. MCWILLIAM. We've decided, ma'am, we wanted to do a business process redesign of the entire system, Six Sigma, along those lines. We have a contract out. We are waiting right now to—I believe it's being evaluated to make an award to a consulting firm to ask them to look at the whole process. It's—

Ms. HERSETH SANDLIN. And any timetable then so—

Mr. MCWILLIAM. I believe it's a one-year timeframe, ma'am.

Ms. HERSETH SANDLIN [continuing]. A consulting firm who can—

Mr. MCWILLIAM. Yes, ma'am—

Ms. HERSETH SANDLIN [continuing]. Meet with you.

Mr. MCWILLIAM [continuing]. For this review. It takes about that long to do a really solid business process redesign. And I intend to work through all our major processes. We decided to start with USERRA, and then we're going to go to competitive grants and non-competitive grants. As your Committee is aware, we've, in essence, done this for the TAP employment workshops right now. So we're just in the process of working through each one of our major programs.

Ms. HERSETH SANDLIN. Okay. One final question for both of you. In your experience in your respective offices, you've seen your share of GAO reports. How would you describe the GAO report and evaluation that was finally submitted to the Committee last summer? Was it one of the more thorough ones you've seen? Did it include as many helpful recommendations that you've seen in the GAO report on other operations within each of your offices?

Mr. MCWILLIAM. Madam Chairwoman, I think the GAO reports, although we may not always agree with their recommendations, we think their conclusions are usually very well done and very well thought out. They identified several areas, particularly in data management that have been very helpful to us. They made some recommendations that the Committee has asked us to do to look at making sure that our annual report includes information from other organizations. And so I thought it helped us out quite a bit in improving the process.

Ms. HERSETH SANDLIN. Thank you.

Mr. Mitchell.

Mr. MITCHELL. May I provide a contrasting view?

The GAO, in our—in fact, we filed with them quite an extensive letter of comments. It seemed to focus more on computer data elements than it did on the quality. In fact, they admitted that they did not evaluate the quality of the work that was being done by both agencies. They got hung up on how the computer systems handled the data, and—where we would have preferred something that we offered to Senator Kennedy's staff before a hearing last November is they came in and we gave them a pile of cases.

And they went through the cases over several days. And we would have preferred the GAO, actually, get into the cases, evaluate the work that was done and contact the claimants to see if they were satisfied and evaluate the quality. That wasn't done and it was—just seemed to be this hang-up on the computer data elements. And we were very disappointed in the outcome of the—well—and there were really no recommendations that affected us in that—in that GAO report. It didn't come to any conclusion.

Ms. HERSETH SANDLIN. Mr. Boozman, do you have any follow-up questions?

Mr. BOOZMAN. Well, yes ma'am, a couple of them.

How long is a vet willing to wait? You mentioned the timeframe and stuff and, I mean, how much of this is settled just by the fact that the claimant just gets tired of fooling with it and then moves on and finds themselves another job?

Mr. MITCHELL. They'll let you think about that one while we're thinking about it. It varies. I mean—

Mr. BOOZMAN. Is that a factor in some of these.

Mr. MITCHELL. It is a factor. In some of the cases, they aren't—the veteran doesn't bring a compelling case. There were missteps at the beginning in notifying the employer. There are problems like that, but we've found that, generally, the claimants that come to us stay with us through the process until we've resolved the claim.

Mr. BOOZMAN. The—go ahead, if you'd like.

Mr. MCWILLIAM. I don't have much to add to that, Mr. Boozman. A veteran, at any time, can withdraw and go to private counsel. They can request that we forward it and refer it. I don't have any numbers on that.

Mr. BOOZMAN. One of the other witnesses mentioned, private counsel and the fact that there is no reimbursement for that. Is that something that we need to look at in the sense that somebody's in the right and, yet, they have to go out and, in some cases, hire private counsel. Should we make amends for that in any way or—

The other question I have is, would they be less likely to do that with which group, as far as feeling like they need to hire private counsel?

Mr. MITCHELL. Well, of course, if they stay with us and we see them through, we're their attorney and can see them through the process.

Mr. BOOZMAN. So—

Mr. MITCHELL. And we don't charge attorney fees.

Mr. BOOZMAN. That's what I thought. Would that be an argument for shifting.

Mr. MITCHELL. Yes, sir.

Mr. BOOZMAN. You provide the counsel—

Mr. MITCHELL. Right. We can—

Mr. BOOZMAN [continuing]. And it's free.

Mr. MITCHELL [continuing]. Take care of the prosecution and it's when they go outside and certainly those who wind up going outside, there's quite a large number who, of, I think USERRA claimants who go to law firms to settle claims and I think it would be with considering arranging for attorneys fees to be covered for them.

Mr. BOOZMAN. Very good. Would you agree with that Mr. McWilliam—

Mr. MCWILLIAM. Mr. Boozman—

Mr. BOOZMAN [continuing]. On the—

Mr. MCWILLIAM [continuing]. I'm sorry. I don't have an administrative position on that.

Mr. BOOZMAN. Okay. Very good. Well, thank you, Madam Chair, and I thank the witnesses very much. You guys did a great job. And, like I said, it really is refreshing that, you know, you're both, you know, fighting for veterans and making a case as to which would do the better job. We really do appreciate you guys.

Mr. MCWILLIAM. Mr. Boozman, I'm sorry. I didn't give a very complete answer on that. If you take the case to court and they find in favor of you, attorney fees are recoverable by the court—

Mr. BOOZMAN. Okay.

Mr. MCWILLIAM [continuing]. Under USERRA.

Mr. MITCHELL. By the court, yeah.

Mr. BOOZMAN. I want to thank you for being here and thank your staff, Juan, heading that up and you guys that do all the work over there; Mike, for doing such a good job and then Steve Gray back there, who's coordinated everything here and does such a good job for veterans in Arkansas. We really appreciate him. And we just appreciate our Chairlady for the hard work and her commitment to veterans. You know, being on the Veterans' Affairs Committee is something that we all ask to do. That's not a—that's a Committee that is a labor of love and we just—we really do appreciate your leadership.

Ms. HERSETH SANDLIN. Well, thank you, Mr. Boozman. We appreciate your leadership and hospitality here in Arkansas. Once again, I would like to thank your staff who is here with us from your District offices here in the Third District and your constituents who took time to be here from various regions of the State. I know some of them had to drive a distance to join us today to share their insights and expertise and our folks who have traveled to join us from Washington, DC. Our staffs do an excellent job of counsel here at the table; our other Committee staff who help do all the logistics and set these up. We thank them for the good work that they do to support our efforts in our desire to best serve our Nation's veterans.

Again, I want to thank all of our panelists for being here today. Your insights, your perspectives are invaluable to the work that we do and we appreciate the thoughts that you had on both USERRA and the Servicemembers Civil Relief Act. We take away from today some ideas that will get us working on possibly new legislation to introduce when we return to session this fall to continue our efforts in the 110th Congress and lay the groundwork for the 111th Congress as well. Thank you all very much. This hearing now stands adjourned.

[Whereupon, the Subcommittee adjourned.]

## A P P E N D I X

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### **Prepared Statement of Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity**

I would like to thank Ranking Member John Boozman for inviting us here today as we conduct this official hearing in his home state. Under the leadership of then Chairman Boozman, we conducted a field hearing in Rogers, Arkansas, which provided the Subcommittee the opportunity to receive testimony from constituents affected by the Transition Assistance Program. As we continue to work together to help our nation's veterans, I would also like to thank Ranking Member Boozman for his continued strong bipartisan support of our nation's veterans.

I look forward to hearing from our guest panelists whose testimony will focus on employment and reemployment rights for servicemembers and veterans. As many of you know, the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Service Civil Relief Act (SCRA) were both enacted into law to provide our activated servicemembers with protections while serving one's country.

In the past, we have heard stories and anecdotal evidence from returning servicemembers and veterans as they have faced discrimination as a result of their service to our nation. While violations of these rights by employers may at times be intentional, some of these violations have also been unintentional because there are many employers that do not understand USERRA and SCRA rights. Regardless, whether these violations are intentional or unintentional veterans rights should be protected at all times.

The Subcommittee has held hearings on these important laws and recently passed *H.R. 6225, the Improving SCRA and USERRA Protections Act of 2008* in the House of Representatives. If signed into law, this legislation would:

- Ensure that equitable relief is available to all USERRA victims when appropriate,
- Protect the student servicemember by capping interest at six percent during deployments, require institutes of higher learning to refund tuition and fees for unearned credit, and in addition, guarantee our servicemembers a place when they return to school,
- Provide a servicemember 13 months to begin paying their student loans after an activation should they decide not to return to school immediately,
- Amend SCRA to cover service contracts to allow our men and women in uniform with deployment orders to more easily terminate or suspend their service contracts without fee or penalty, and
- Amend SCRA to allow a military spouse to claim the same state as the servicemember in regards to state and property taxes, and voter registration.

Furthermore, the Committee Chairman Bob Filner introduced H.R. 4883 to amend SCRA to provide for a limitation on the sale, foreclosure, or seizure of property owned by a servicemember during the one-year period following the servicemember's period of military service.

Unfortunately, for many of our servicemembers returning from deployments find themselves in a predicament where existing laws might not be sufficient to protect them, laws are not being properly enforced or existing laws need to be updated to meet the needs of today's servicemembers. I look upon today's hearing as an opportunity to gather more insight into these concerns.

I look forward to working with Ranking Member Boozman and the other Members of the Subcommittee as we continue to work diligently to provide the necessary safeguards to protect our servicemembers and veterans to return to civilian life.

**Prepared Statement of Hon. John Boozman, Ranking Republican Member,  
Subcommittee on Economic Opportunity**

Good morning. Let me begin by thanking Ms. Stephanie Herseth Sandlin, the Chair of the Subcommittee on Economic Opportunity, for holding this hearing. You hear a lot in the press these days about partisan bickering and how Congress isn't capable of anything. I am very fortunate that when I was chair of the Subcommittee, Ms. Herseth Sandlin was my Ranking Member. I would like to have kept the job, but I cannot ask for a better Chair who works in a bipartisan manner and looks to do both good things for veterans and is mindful of how we spend our tax dollars.

Members of the National Guard and Reserves continue to bear a significant load in the War on Terror. In Arkansas alone, the over 11,200 members of the National Guard have been mobilized since 9/11/01 and there are over 3,000 currently deployed overseas. They have conducted the full spectrum of operations in the War on Terror. For example, the 213th Area Support Medical Company treated over 20,000 patients in Iraq and the 875th Engineer Battalion cleared 1244 explosive devices. Our aviation units performed every kind of mission from medivac to air control. Our military police and related units provided security and civil support. They are warriors all and I thank them for their service.

Fortunately, we have laws like the Uniformed Services Employment and Reemployment Rights Act or USERRA, meant to ensure that when someone returns from military service, they find their job waiting for them. We also have a law called the Servicemembers Civil Relief Act meant to protect veterans and their families in a wide variety of ways ranging from interest rates to auto leases and taxes.

Unfortunately, sometimes there are violations of these laws—usually through ignorance of the law and occasionally through outright willful disobedience. We are here today to listen to several witnesses who will describe the effectiveness of these laws and hopefully to offer suggestions on how we might improve them.

Finally Madam Chair, I'm sure you will agree that we seldom recognize the contributions of the spouses who keep the home running while the servicemember is called away. In the face of great uncertainty, our military spouses provide the members with the strength to do their duty and the faith that they will be welcomed home once their service is done. We cannot ask for more, but they always seem to exceed our expectations. Therefore Madam Chair, I think DoD should develop a Spouses Service Medal in recognition of their contributions to the Nation's defense.

Once again, I thank the chair for her consideration and I look forward to hearing from our witnesses.

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**Prepared Statement of Paige Smith, Fayetteville, AR,  
Family Readiness Coordinator for Headquarters 142nd Fires Brigade,  
Arkansas National Guard**

Chairwoman Herseth Sandlin, distinguished members of the Committee, I am Mrs. Paige Smith, and I am testifying in my position as the Family Readiness Coordinator for Headquarters 142d Fires Brigade and the wife of a recently deployed and returned soldier (SFC Joseph Smith). My testimony today reflects my personal views and does not necessarily reflect the views of the Army, the Department of Defense, or the Administration. I appreciate the opportunity to appear before you and submit testimony relative to issues pertaining to family Readiness in the Arkansas Army National Guard.

First, I would like to address the Servicemembers Civil Relief Act (SCRA) and the six percent cap on interest rates on pre-mobilization debt for mobilizing Guard members. When my husband's unit deployed, I know first hand that all our soldiers were entitled to have all pre-mobilization debt reduced to a maximum of 6 percent interest rate. It has been my experience as the Family Readiness Coordinator that the majority of soldiers involved in this mobilization received the debt relief due to their creditors supporting the war effort and creditors reducing the interest rates. I know of no instances that a creditor did not reduce our soldier's pre-mobe debt interest rates and for that we are all grateful. In several state courts, to include Arkansas, incorrectly held that SCRA did not apply to domestic relations. This left soldiers who were custodial parents in a position of choosing between following military orders and their custodial rights. This was the exact dilemma that SCRA intended to prevent. I would like to thank the Committee for their hard work to ensure that our soldiers are not in the position of choosing between their families and their country. This was one of the most pressing issues of SCRA and should be resolved.

Second, I would like to address The Family and Medical Leave Act (FMLA) which was amended on January 28, 2008 to implement new military family leave provisions. This provision requires the Secretary of Labor to issue regulations defining "any qualifying exigency" before the regulation takes affect. Washington state and California have each passed a Spouse Leave Law in which employers must provide a certain amount (Washington: 15days; California: 10 days) of unpaid leave to spouses of military members who have been notified of an impending call or active duty order, on leave from a deployment or have returned home from deployment. If this law would be passed for all states it would allow military spouses that do not fall under FMLA to have the same rights as those that do. I would ask your assistance in implementing Federal legislation to address this issue that effects the majority of our soldiers during pre-mobilization and post mobilization.

I would like to conclude my testimony by thanking you for the hard work of the Congressional staff in all areas concerning Soldier and Family care issues. I appreciate this opportunity to testify before this Subcommittee and represent all military spouses and families of the 142d Fires Brigade of the Arkansas Army National Guard.

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**Prepared Statement of Lieutenant Colonel Michael D. Merritt, Deputy  
Brigade Commander, 142nd Fires Brigade, Arkansas National Guard**

**EXECUTIVE SUMMARY**

I am Lieutenant Colonel Michael D. Merritt, Deputy Brigade Commander, 142nd Fires Brigade, Arkansas Army National Guard. I appreciate the opportunity to appear before you and submit testimony relative to my experiences as they relate to USERRA.

I received my commission in 1984 and spent four (4) years on active duty before beginning a civilian career as a Human Resource Manager and joining the Army National Guard. I have seen the impact of military service in the Reserve Component (RC) from the employer's perspective as well as the Servicemember's. As a National Guard officer recently returned from deployment overseas as a battalion commander, I have a heightened awareness of the impact military service has on the employer/employee relationship.

My personal experiences and most of those of my Soldiers have ended positively. The greatest contributing factor to those outcomes has been the desire of employers to take care of their reserve component employees, not from a sense of obligation to comply with USERRA requirements. Most concerns have come from the perceived missed opportunities, or concern their commitment to serve will hurt their chances to advance in the future.

Doing the right thing has been the objective of all my past employers and USERRA only came into play as a reference. As a Human Resource professional I know many civilian managers to include Human Resource personnel are not as familiar with USERRA as they should be. You might credit that to the lack of challenges made by returning servicemembers under USERRA. I believe a better understanding of USERRA, periodic review of company policy for compliance and a communication plan could help prevent misunderstandings and alleviate a lot of worries from employers and employees alike.

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Chairwoman Herseth Sandlin, distinguished members of the Committee, I am Lieutenant Colonel Michael D. Merritt, Deputy Brigade Commander, 142nd Fires Brigade, Arkansas Army National Guard. I appreciate the opportunity to appear before you and submit testimony relative to my experience as a member of the National Guard and as an employee of a Fortune 500 corporation. Specifically, issues related to my legal rights under USERRA. My testimony today reflects my personal views and does not necessarily reflect the views of the Army, the Department of Defense, or the Administration.

Let me begin by giving you a brief background of my military and civilian career paths. I received my commission as a Regular Army officer in 1984 and spent the next four (4) years on active duty before beginning a civilian career and joining the Army National Guard. Over the course of 19 years I have been exposed to the impacts of military service in the Reserve component from both the employer's perspective as well as the Servicemembers'. For seventeen of those nineteen years I have been in the Human Resource profession, with fifteen of those years as a Human Resource Manager. I have held positions in locations that had as few as one



hundred employees to as many as eleven hundred. Some of those companies had a significant number of Reserve component employees and others had very few. As a National Guard officer with 19 years of service and having recently returned from deployment in support of OIF as an artillery battalion commander, I have seen the impact of military service on the employer to employee relationship.

My personal experiences have always ended positively, as have most of the experiences of my Soldiers that I have been made aware of. Having made that statement I must admit the greatest contributing factor to those positive outcomes has come more from the desire of employers to take care of their servicemember employees, than out of in depth knowledge of or desire to comply with USERRA requirements. The concerns that I have heard from my Soldiers have come more from perceived lost opportunities during deployment or concern their commitment to the National Guard will somehow hurt their ability to advance in the future. It is my responsibility to review the questionnaires completed by Soldiers that have decided not to reenlist upon reaching the end of term of service (ETS) and by far the two most common responses are "family commitments" and/or "employment conflicts".

My only personal experience that has led to reference to USERRA requirements came at the end of my recent deployment to Kuwait. My total deployment time was 18 months during which time my position as Human Resource Manager was backfilled with another employee. As my tour of duty was getting close to ending I was told that another Human Resource Manager position was available in another city and that I should take this position as a lateral move. This would have required relocating my family shortly after returning from my deployment and I had no desire to put my family through that at such a difficult time. The positive turn came when I reminded my employer about USERRA requirements and they quickly recognized both the legal situation and my personal desire not to move and promised my original position back.

After returning to the United States, I made the decision to resign my position and become self employed. My decision was not made because of this one small issue, but rather my desire to continue seeking higher levels of responsibility within the National Guard and to be able to do that under my own terms without the institutional pressure that I admit was mostly self imposed. In many ways, my previous employers have exceeded legal requirements when dealing with my military service obligations. Most common was making up any pay or benefit differential that might exist between my military pay and benefits and those of my employer.

In conclusion it has been my experience that doing the right thing has been the objective of all my employers and USERRA only came into play as a reference for making those right decisions. As a Human Resource professional I will say that people in that field are not as familiar with USERRA as they should be. You might be able to credit that to the lack of challenges made by returning servicemembers under USERRA. Trusting that your employer will meet the intent of the law and that no negative repercussions whether subtle or blatant will jeopardize your career does cause anxiety for the citizen Soldier. A better understanding of USERRA, a review of company policy for compliance and a communication plan could help prevent misunderstandings and alleviate a lot of worries.

I would like to express my appreciation for being given this opportunity to submit testimony to the Committee.

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**Prepared Statement of Major General William D. Wofford,  
Adjutant General, Arkansas National Guard**

**EXECUTIVE SUMMARY**

This testimony addresses five issues related to the Uniformed Services Employment and Reemployment Rights Act, as well as the Servicemembers Civil Relief Act.

- The NDAA of 2008. The NDAA of 2008 contains a clause that confirms that court ordered stay provisions under SCRA do apply to child custody proceedings. In the past several state courts had incorrectly held that SCRA did not apply to domestic relations. The NDAA of 2008 clarified this important issue.
- Six Percent Interest Rate for Pre-Mobilization Debt. Some Servicemembers in Arkansas do not receive debt relief because their income is not materially affected during a mobilization. However, it is important to point out that most creditors comply with the law even when they are under no obligation viewing this as their part of the war effort.

- Continued Enforcement of SCRA/USERRA under the Department of Justice's Civil Rights Division. Servicemembers seeking help under SCRA first contact the military assistance judge advocate's office. If the JAG cannot resolve the matter and determines that assistance from the Department of Justice would be appropriate, the JAG will submit a request to the Civil Rights Division or U.S. Attorney's Office.
- Awarding of Attorney's Fees. Currently if a Servicemember has an issue and is required to pursue legal action to enforce rights under SCRA there is no provision for recovery of the cost of an attorney. If SCRA was amended to allow the recovery of attorney's fees, it could increase the number of attorneys willing to represent our Servicemembers in SCRA court actions.
- Employment Concerns. There is mounting evidence that employers are becoming more reluctant to hire members of the Reserve components because of repeat, second and third, deployments. There have been recommendations to provide incentives for employers to hire Guardsman. These include: tax incentives, health benefits, eliminating Social Security and retirement penalties for retirees who temporarily backfill deployed Servicemembers, reimburse replacement training expenses, and reimbursing municipalities for overtime for policeman and fire fighters that are required to fill in for deployed Servicemembers.

Once again I would like to thank the Committee for all of their efforts in these matters.

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Chairwoman Herseth Sandlin and distinguished members of the Committee, I am Major General William D. Wofford, and I am testifying in my position as the Adjutant General for the State of Arkansas. Please understand that my testimony today reflects my views as the Adjutant General of Arkansas and does not necessarily reflect the views of the Army, the Department of Defense, or the Administration. Thank you for the opportunity to personally appear before you and submit this written testimony relative to issues pertaining to the support of our national Guardsmen. Your invitation encouraged me to address the following issues:

1. The successful passing of the provision related to child custody in the National Defense Authorization Act of 2008
2. The six percent cap on interest rates on pre-mobilization debt for mobilized Servicemembers
3. The Department of Justice Civil Rights Division for enforcement of Servicemembers Civil Relief Act (SCRA) and USERRA issues
4. Possibly including a provision to award attorney's fees under SCRA
5. Employment concerns of the Reserve forces

*THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008*

I would like to begin my testimony by thanking the Congressional staff for their hard work on the inclusion of a very important clause in the NDAA of 2008: the affirmative clause that court-ordered stay provisions under SCRA do apply to child custody proceedings.

During previous military mobilizations, military legal assistance officers advised Servicemembers that they would not lose custody of their children due to an impending deployment because of the Soldiers and Sailors Relief Act.

When the Arkansas National Guard began mobilizing in 2003 for operation Iraqi Freedom, Arkansas JAG office attorneys also advised our Guardsmen that they would not lose custody of their children while they were deployed because the Soldier's and Sailor's Relief Act would allow for a stay of proceedings while they were fighting our country's wars.

Unfortunately, several state courts, including Arkansas' case *Lenser v. McGowan*, have incorrectly held that the newly created Servicemembers Civil Relief Act did not apply to domestic relations. This left Servicemembers who were custodial parents in a position of choosing between fighting for their country—or ignoring military orders to fight for custodial rights. This is the dilemma that most military attorneys agree the Servicemembers Civil Relief Act intended to prevent.

In *Lenser v. McGowan*, SPC Michael Lenser and his wife were having a custody dispute over their child. SPC Lenser asked the Court for a Stay since he had already mobilized from National Guard status to active duty status for an eighteen month mobilization that included a year long deployment to Iraq. The trial court denied his initial stay request and entered an order awarding custody to the child's mother.

Then the Court further stayed the matter until he returned from the deployment. SPC Lenser appealed this ruling and the Arkansas State Supreme Court agreed

with the lower court's ruling. The Supreme Court ruled that a lower court has jurisdiction to consider matters such as support, custody, and other similar matters that arise during the course of the stay. This ruling in large part nullifies the intent of the Servicemembers' Civil Relief Act.

This contributed to SPC Lenser's dilemma of serving his country or keeping custody of his child. Lenser had no court enforceable rights to his child during his deployment. In order to talk to the child or visit the child during his fifteen days of leave from theater, Lenser was required to have the consent of his wife. Neither were the child's paternal grandparents to be allowed to visit the child during his deployment unless the wife consented.

Once SPC Lenser returned from Iraq, he divorced his wife and now has custody of the child, but the personal and emotional conflict suffered by SPC Lenser and his parents was exactly what the SCRA intended to avoid.

Congress answered this issue in the NDAA of 2008. Section 522 of SCRA now specifically states that the act applies to child custody cases. I thank the Congress for their hard work ensuring that Servicemembers are no longer in the position of choosing between their families and their country. This was one of the most pressing issues of SCRA and it appears to be resolved.

#### *SIX PERCENT INTEREST RATE COMBINED ASSESSMENT PROGRAM ON PRE-MOBILIZATION DEBT*

When a Servicemember mobilizes, they are entitled to have all pre mobilization debt reduced to a maximum 6 percent interest rate if their income is materially affected.

While the majority of creditors do allow Arkansas Guardsmen to reduce their interest rate, oftentimes our Servicemembers don't receive the debt relief under the law because the Servicemember's income is not materially affected under the law in order to trigger the debt relief provisions.

While the majority of our Arkansas Servicemembers do enjoy the same debt relief, it's due to creditors voluntarily reducing the interest rate because of their support of Servicemembers. However, if the letter of the law was upheld, many Servicemembers would not receive this benefit.

There is a "gray area" that allows for a creditor to compel a Servicemember to prove that their income is materially affected before they will reduce the interest rate to six percent. Under SCRA, it's clear that it is the creditor's responsibility to prove that the Servicemember's income has been materially affected. Currently, as things stand, it is often the Servicemember who has to take the time to prove their income has been affected. This is clearly an unfair burden on the Servicemember or family; they have to spend their last days together before deployment gathering and providing information to prove their amount of income. This is an encumbrance when the Servicemember is preparing for war.

In other cases, creditors may reduce the interest rate, but not reduce the minimum payment. This should also be reduced and is problematic for Servicemembers and the families they leave behind. Under this, the monthly payment remains the same, although there is more of the amount going to pay down the principal of the loan. However, this still negates the intent of the act which is to reduce debts for a Servicemember while answering their country's call.

I would like to emphasize that this is an issue with only a minority of creditors. Most are happy to comply with the SCRA and see reducing the interest rate as their way of supporting our Servicemembers. Some creditors have gone so far as to reduce all interest rates while a Servicemember is deployed. This not only helps the Servicemember while they are deployed, but allows them to further reduce their principal once they return. These creditors should be commended for going above and beyond.

#### *CONTINUED RESOURCES FOR THE DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION FOR SCRA AND USERRA COMPLIANCE*

We need continued enforcement under the Department of Justice's Civil Rights Division on SCRA issues. While the Division continues to build the SCRA enforcement program, since receiving enforcement authority in 2006, the division has opened several investigations and has resolved the first such investigation with a favorable outcome.

In addition, the Division engages in a sustained outreach effort, which includes visiting military bases throughout the country to educate and inform JAG attorneys that it is actively investigating SCRA matters and stands ready to help them with enforcement.

The process is that Servicemembers who are seeking help under SCRA first contact their military assistance judge advocate in the Arkansas National Guard. If the

JAG cannot resolve the matter and determines that assistance from the Department of Justice would be appropriate, it will submit a request to the Civil Rights Division or a U.S. Attorney's Office. This office complements private enforcement actions brought by private counsel representing a Servicemember. It is important that the division continue its work with the Servicemembers and JAG legal assistance attorneys to ensure Servicemembers' rights are respected under SCRA.

In Arkansas, we've had a number of SCRA issues come up with the last deployment of the 39th Brigade; fortunately, the issues were usually resolved between the Servicemember, the opposing party and the local National Guard judge advocates.

Having Department of Justice assistance to ensure SCRA provisions are upheld, is invaluable support and we ask for this Committee's continued support in SCRA and USERRA issues.

#### *AWARDING OF ATTORNEY'S FEES*

Generally, Servicemembers' creditors, employees, and landlords deserve to be commended on the sacrifices that they make to ensure that a Servicemember is prepared to leave his civilian position and fight in the war effort. However, some of these entities are not aware of the protections of SCRA and others choose not to comply.

Unfortunately, if a Servicemember has to pursue legal action to enforce their rights through SCRA, there is no provision for recovery of the expense of the attorney he must hire to get relief.

To help ensure the protections Congress has provided under Federal law, we request that you consider amending the SCRA to add a provision authorizing courts to award exemplary or punitive damages and attorneys' fees to Servicemembers whose rights are violated intentionally or willfully under SCRA. This change would be reflective of the Civil Rights Act's provisions and fulfill its intentions.

In most cases, the amount in controversy is insufficient to allow an attorney to proceed on a contingency basis. While National Guard judge advocates are ready to try to resolve the issue, they are not allowed to represent Servicemembers in actual court proceedings. Further, most attorneys will not accept SCRA violation cases on a commission basis because there simply is little financial reward. If an amendment was passed by Congress to allow the recovery of attorney's fees, it would increase the number of attorneys willing to represent our Servicemembers.

#### *EMPLOYMENT CONCERNS OF THE RESERVE FORCES*

Before I discuss this issue, I would like to emphasize that our Servicemembers in the Arkansas National Guard receive outstanding support from employers when our members are called to duty. Even after seven years of executing the global war on terror, Arkansas employers continue to demonstrate tremendous patriotism and dedication to ensuring our servicemembers and their families are cared for while they are mobilized.

However, I would like to share with you a growing concern. Although our employers demonstrate solid support for their employees that are called to active duty, there is mounting evidence that employers are becoming reluctant to hire members of the reserve components because of repeat, second and third, deployments.

It has become apparent that those traits exhibited by members of the Guard and Reserves that make them valuable employees: leadership, professionalism, physical condition, maturity, and a 'can-do' attitude, are no longer considered to be cost effective advantages if they are going to be deployed for twelve months every 3 or 4 years. The business men and women that are responsible to their superiors and stakeholders are making hiring decisions that will best help their organization's financial bottom line.

For over a year I have taken the opportunity to speak to numerous civic organizations, chambers of commerce, and business leaders around the state of Arkansas about the National Guard. I certainly emphasize the advantages to their businesses that come with hiring Guard members because of their work ethic and character traits.

However, I also ask them one simple question: 'What incentives must we, as a Nation, try to develop to ensure it is profitable for employers to hire a Guardsman?' I have received some valuable feedback that I would like to share with you. Much of this feedback is resounding evidence that the transition of the Reserve Components from a strategic reserve to an operational force has taken a drastic toll on businesses, and has had a definitive impact in those business considerations used when making hiring decisions.

This has led me to advance a few recommendations that would help make it cost effective for business leaders, especially in small businesses, to hire a member of the Guard or Reserves.

One recommendation is a tax incentive for employers; another is to provide health benefits for Servicemembers and their families on an ongoing basis, so businesses don't have to provide healthcare as part of a benefits package. Also eliminating Social Security and retirement penalties for those retirees who temporarily backfill deployed or mobilized Servicemembers would provide considerable relief. Another is reimbursed replacement training expenses for businesses. And finally, reimbursing municipalities for overtime for policemen or fire fighters that are required to fill in for deployed Servicemembers would go a long way to providing a strong support network for our country and a continuity in the workforce when our Servicemembers are called to serve.

Chairwoman Herseth Sandlin and distinguished members of this Committee, I apologize for veering off somewhat from the USERRA and SCRA topics that we were invited here to address today, but I feel it is imperative that we examine possible initiatives and help build a strong case to make it cost effective for business leaders of our Nation to continue hiring members of the Reserve Components.

Several months ago, I made the comment to Dr. L. Gordon Sumner, Jr., National Director of the Employer Support to the Guard and Reserve Program, that if we did not make it cost effective for business men and women to hire members of the Guard and Reserves, we would not be able to maintain a Reserve Component five years from now. He corrected me by responding that if we don't do something soon about this issue we will not have a Guard and Reserve *three* years from now.

I appreciate this opportunity to submit testimony to the Committee on Veterans Affairs Subcommittee on Economic Opportunity. On behalf of our Servicemembers, I would like to thank you for all the hard work and service you provide. The Arkansas National Guard especially thanks you for the support that you provide us. I look forward to answering any questions that you may have on August 18, 2008.

**Prepared Statement of Captain Thomas Lee,  
Staff Judge Advocate, Arkansas National Guard**

**EXECUTIVE SUMMARY**

I would like to take the time to explain what services the Judge Advocates of the Arkansas National Guard provide and the type of issues that we see. In the last five years, we have seen almost 10,000 Servicemembers come through our legal station on their way to various deployments. We have provided some sort of legal service to each and every one of them.

- I have enclosed a table regarding legal actions that Servicemembers of the 39th Brigade Combat Team have faced since their January 2008 mobilization.

ISSUE	INSTANCE	%
6% interest	24	29.2
Eviction	12	14.6
Auto Repossession	16	19.5
Judicial Stay	8	9.8
Unpaid Debt Issues	4	4.9
Child Support	2	2.4
Residential Lease Termination	2	2.4
Other	7	17.1

- The most common problem during a deployment is a creditor not understanding the law of the six percent interest rate cap on pre-mobilization debt under SCRA.
- The other issue that requires much time of the local judge advocates is domestic relations issues.

- I appreciate this opportunity to submit testimony to the Committee on Veterans Affairs Subcommittee on Economic Opportunity. The Judge Advocates would like to thank you for all the hard work and services that you provide all Servicemembers.

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Chairwoman Herseth Sandlin and distinguished members of the Committee, I am Captain Thomas Lee, and I am testifying regarding my position as the Staff Judge Advocate of the Arkansas National Guard. Please understand that my testimony today reflects my personal views and what I have seen for the last five years as a Judge Advocate and does not necessarily reflect the views of the Army, the Department of Defense, or the Administration. Thank you for the opportunity to personally appear before you and submit this written testimony relative to issues with legal support of our National Guardsmen. I would like to take the time to explain what services the Judge Advocates of the Arkansas National Guard provide and the type of issues that we see. In the last five years, we have seen almost 10,000 Servicemembers come through our legal station on their way to various deployments. We have spoken with each one.

As a Judge Advocate, I split our legal assistance services into three stages corresponding to the current status of the Servicemember. We see different issues and provide varying service depending upon the stage of the Servicemember. The first stage being the pre-mobilization phase when the Servicemember is preparing for deployment and legal issues that they think may arise or while they attempt to resolve current legal issues. The second stage is the post-mobilization phase where the Servicemembers, their families, or legal representatives have arising legal issues, but are not in a position to resolve them. The third stage is the demobilization phase where the Servicemember has returned and must resolve legal issues that arose from the deployment or were judicially stayed during the deployment.

#### *Phase I—Pre-mobilization*

Before a Servicemember leaves Arkansas on a mobilization he must go through a Soldier Readiness Process (SRP). Often a Servicemember goes through the SRP and later will process through a Soldier Readiness Certification (SRC) before leaving Arkansas. SRPs and SRCs are basically the benchmark of the deployment process. At each SRP and SRC, the Servicemember speaks with a Judge Advocate and is asked if he needs any legal assistance. We have multiple stations where a Judge Advocate will draft the Servicemember a will or a power of attorney. Generally, we try to talk the Servicemember out of a general power of attorney and instead draft a specific power of attorney for whatever purpose the Servicemember needs, or we ask that they wait until they need a power of attorney and we can prepare and e-mail one to them at that time.

Also at the SRP, we ask whether the Servicemembers have any legal issues that will prevent them from deploying. Then we provide them with a packet of information. The packet includes letters that they can send to the creditors asking for their creditors to reduce their interest rate to six percent, letters for terminating a residential lease, an Internal Revenue Code power of attorney for tax purposes, and a sample letter to send to a court to stay a pending court proceeding and a guide on how to resolve fines and warrants.

During this phase, our Judge Advocates will often talk directly to prosecuting attorneys and judges concerning our Servicemembers that have pending misdemeanor charges or traffic violations in our various courts. Usually the prosecuting attorney and judges agree to re-arrange their docket so that Servicemembers may attend to these matters before they deploy. The prosecutors and judges throughout Arkansas have been a tremendous help in the war effort.

#### *Phase II—Post-mobilization*

At this time, there are roughly 4,000 members of the Arkansas National Guard on active military orders. Between the two Judge Advocates of Arkansas National Guard Joint Forces Headquarters and the one Judge Advocate of the rear detachment 39th Brigade Combat Team Legal, we receive an average of 223 calls a month seeking legal assistance information. The phone calls come from Servicemembers, their families, attorneys, and creditors. We provide all groups as much information as we can on military legal issues. Generally, the questions are related to the Servicemembers Civil Relief Act (SCRA). I have enclosed a table regarding legal actions falling under SCRA that Servicemembers of the 39th Brigade Combat Team have faced since their January 2008 mobilization.

ISSUE	INSTANCES	%
6% interest	24	29.2
Eviction	12	14.6
Auto Repossession	16	19.5
Judicial Stay	8	9.8
Unpaid Debt Issues	4	4.9
Child Support	2	2.4
Residential Lease Termination	2	2.4
Other	7	17.1

*Table 1—Legal actions involving the 39th BCT since mobilization*

Our Servicemembers often run into financial problems when transitioning from their civilian pay status to a military pay status. The rights from repossession of vehicles and eviction from homes are a key element in SCRA for our Servicemembers and their families. While many of the issues arising from the pay transition are not per se legal issues, our Judge Advocates are able to assist the Servicemembers in resolving the temporary financial hardship with their creditors.

The most common problem during a deployment is a creditor not understanding the law of the six percent interest rate cap on pre-mobilization debt under SCRA. Generally, this issue can be resolved between the Servicemember and the Judge Advocate once the creditor is aware of the law and the Judge Advocate determines whether the section of SCRA applies to the Servicemember's case. Since the 39th Brigade Combat Team has deployed, almost a third of all legal assistance actions are regarding six percent interest rate issues.

#### *Phase III—Demobilization*

Once a Servicemember returns from deployment, he will go through the legal section at the mobilization center. The Judge Advocate will ask Servicemembers if they have any legal assistance issues that need to be resolved. Hopefully, the Servicemember will notify the Judge Advocate at that time if he is aware there is a legal issue; however, the Servicemember often does not find out that they have legal issues until they return home. If they do notify the Judge Advocate at the mobilization center of pending legal issues, the Judge Advocate will try to resolve them or they will notify us about the matter and we will help the Servicemember resolve the issue. Having mobilized and deployed myself has allowed me to develop a good working relationship with the Judge Advocates at the various mobilization centers.

The most common legal issue when Servicemembers return home is that someone has obtained a default judgment against them as the court is often not aware that the Servicemember was deployed. SCRA allows the Servicemember to file a motion with the court to set aside the default judgment. Often, it is the Judge Advocate providing legal guidance to the Servicemember on how to get a default judgment set aside.

The other issue that requires much time of the local Judge Advocates is domestic relations. Whether it is a Servicemember who lost custody of their children or the Servicemember wants to dissolve his marriage, the Judge Advocate will provide assistance. Usually, the Judge Advocate works in coordination with the Army Chaplain and family assistance personnel, advising the Servicemember of various options. It is unfortunate that many families are irreparably harmed by deployments, but it is a fact of being a Servicemember not only in the National Guard and Reserves but any other service component. For those Servicemembers and their spouses who seek a divorce while deployed, Judge Advocates advise them of the legal hurdles and refer them to a civilian attorney in their community. We do not go to court representing either party.

We are still looking for ways of improving how Servicemembers may reach our office. This requires a team effort by the Arkansas National Guard as a whole. Our family assistance coordinators pass out our phone numbers at military family gatherings. Our public affairs department has a website so if Servicemembers need as-

sistance, they can contact their office and public affairs will route the issue to the Judge Advocate.

I appreciate this opportunity to submit testimony to the Committee on Veterans Affairs Subcommittee on Economic Opportunity. I would like to thank you for all the hard work and services that you provide all Servicemembers. The Arkansas National Guard especially thanks you for the support that you provide us. I look forward to answering any questions that you may have on August 18, 2008.

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**Prepared Statement of Don Morrow, Chairman, Arkansas Field Committee,  
Employer Support of the Guard and Reserve**

Chairwoman Herseth-Sandlin, Mr. Boozman, and members of the committee: thank you for the invitation to offer my perspective on issues relating to the Uniformed Services Employment and Reemployment Rights Act (USERRA), as it applies to Arkansas National Guard and Reserve members and their employers.

The Uniformed Services Employment and Reemployment Rights Act 1994 protects the employment and reemployment rights of federal and nonfederal employees who leave their employment to perform military service. The role of informing Servicemembers and employers about this law and of enforcing it, fall to several different government organizations. It should be noted that USERRA covers all employees except screeners employed by the Transportation Security Administration.

Employer Support of the Guard and Reserve (ESGR) is a Department of Defense organization that seeks to develop and promote a culture in which all American employers support and value the military service of their employees. We do this by recognizing outstanding support, increasing awareness of the law, and resolving conflicts through mediation.

Gaining and maintaining employer support requires a strong network comprised of both military and civilian-employer leaders that is capable of providing communication, education, and exchange of information. ESGR works with the Reserve component leadership from each service, appropriate government organizations such as the Department of Labor's Veterans' Employment and Training Service (DOL-VETS), and the Small Business Administration, and industry associations such as the Chamber of Commerce and others, to create broad-based, nationwide support for our troops.

It is important to note that ESGR is not an enforcement agency, and we do not have statutory authority to offer formal legal counsel or to participate in any formal investigative or litigation process. Our part in the USERRA issue is to inform and educate our customers—Servicemembers and their civilian employers—regarding their rights and responsibilities under the USERRA statute, and also provide mediation services. We have approximately 900 trained volunteer ombudsmen throughout the country and a national call center in Arlington, Virginia, to provide this service. Our call center received 13,116 requests for assistance during Fiscal Year (FY) 2007. Of those calls, 171 were from Servicemembers or their civilian employers in Arkansas. Of those requests, 10,742 (129 for Arkansas) were informational in nature, that is, they were sufficiently resolved by providing information about the law. The remaining 2,374 (42 for Arkansas) were assigned as cases to our ombudsmen. Through a Memorandum of Understanding (MoU) between ESGR and DOL-VETS, ESGR informs those Servicemembers whose cases ESGR is unable to successfully mediate within 14 days of their options to either contact the DOL-VETS or to retain private counsel. During FY 2007, ESGR referred 416 cases to DOL-VETS. It should be further noted that the ESGR mediation process is covered by the Administrative Dispute Resolution Act 1996, which minimizes the amount of specific data that can be released about individual cases.

ESGR's mandate ends at this point in the USERRA resolution process. As I understand it, the Department of Labor (DOL) investigates and attempts to resolve claims filed by Servicemembers, and, if not successful, DOL informs the federal claimants that they may request to have their claims referred to the Office of Special Counsel, and informs non-federal claimants that they may engage the Department of Justice. Of course, all parties reserve the right to engage private counsel at any time.

As of June 30, 2008, 651,918 Reserve component members have been mobilized since the terrorist attacks on September 11, 2001. There are 108,010 Reserve component members mobilized as of July 30, 2008. As of June 2008, Arkansas had 16,726 Reserve component members. The use of the Reserve component has shifted from a strategic reserve to an operational reserve whereby members of the National



Guard and Reserve no longer are forces held in reserve but are an integrated and integral part of our total force.

The Department is well aware of the stress this operational use has on our Servicemembers and their employers. To that end, Secretary Gates has provided policy guidance designed to give more predictability as to the frequency and duration of Reserve component mobilizations so that both Reserve component members and their employers can better plan their professional and personal futures.

As I stated earlier, ESGR operates proactive outreach programs to inform, educate, and recognize the employers of our Servicemembers. We do this to raise awareness of USERRA and to thank employers for their support. As you know, employers suffer twice the cost when their employees are mobilized for military duty, in that they lose their trained, productive employees and they have to often hire replacements for the time those employees are gone. We talk all the time about the costs borne by our Servicemembers, and by their families. Those are no doubt real costs. However, we do not often talk about the costs borne by the employers of Guard and Reserve members. These employers do not have a choice when we take away their employees for months. Despite these very real costs, employers across the country continue to provide incredible support, and it is the least we can do to publicly recognize that support.

All of our records, including the numbers of Reserve component members who contact us to recognize their employers, to the day-to-day interaction ESGR volunteers across the country have with Servicemembers and employers, to the ever decreasing numbers of USERRA cases handled by ESGR, indicate that employer support for the Guard and Reserve remains strong. Of course, there are instances of USERRA violations, but I urge caution to not extrapolate isolated but highly visible problems into broad-based policy problems.

We are working with the individual Uniformed Services to raise awareness of USERRA and to provide training about USERRA to all Reserve component members. We also continue to work with the appropriate federal government agencies such as the DOL-VETS, the Department of Veterans Affairs, and the Small Business Administration, to better communicate to Servicemembers and their employers about USERRA, transition assistance and reintegration programs.

The Department has also provided ESGR more resources over the past five years to better serve our customers and we now have 166 full-time staff around the country in addition to the approximately 4,400 volunteers. The ESGR Arkansas Field Committee has approximately 50 volunteers assisting Servicemembers and their civilian employers. We also have a national customer service center that is operational 12 hours per day during the workweek to provide service.

We continue to believe that the existing USERRA process is the process that will continue to best serve the interests of Servicemembers, whereby the Department of Defense, through the ESGR organization, provides mediation, and the DOL continues to have the statutory authority to investigate USERRA claims. The ESGR and DOL will, of course, continue to collaborate to the fullest extent possible to ensure the speediest and most effective resolution of USERRA challenges.

For our part, ESGR will continue its mission to gain and maintain employer support by recognizing outstanding support, increasing awareness of the law, and resolving conflicts through mediation, and by cooperating to the fullest extent allowable with the DOL.

I hope that I have been able to clarify the role played by the Arkansas ESGR in helping employers and Servicemembers as it relates to the USERRA statute. Thank you.

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**Prepared Statement of Herb Lawrence, Center Director, Arkansas  
University Small Business Development Center**

**EXECUTIVE SUMMARY**

Continued deployment of National Guard and Reserve military personnel in the Global War on Terror who are also businessowners is creating additional hardships on those reserve component servicemembers than their non-businessowner/self-employed counterparts. Continued deployments of this sub group of Guardsmen and Reservists has resulted in numerous business failures, losses of business income, bankruptcies and economic losses to their enterprises that have created undue hardships on their civilian careers. The playing field between reserve component businessowners and non military businessowners is no longer even and their service to their country is resulting in significant losses in their civilian careers.

The SCRA especially in terms of its impact on interest rate caps for pre deployment loans does not differentiate between consumer related loans and business loans although the wording of the act does not appear to prohibit its application to business loans. However servicemembers who own their own businesses also have pre deployment business debt that is not clearly identified in the wording such as revolving lines of credit, business term loans, business credit card loans, equipment leasing or accounts receivable factoring, all of which are critical to sustainment of most business endeavors.

SCRA clarification for commercial lenders as to their obligation to business related loans needs to be more clearly defined, servicemembers who are business-owners need to be identified by command prior to deployment and access to consulting/counseling business assistance needs to be provided that targets their debt obligations and options available to the servicemember to reduce the negative impact of servicing those loans upon their return from active duty. SCRA time limits on removal of the 6 percent cap need to be expanded for business owner servicemembers upon return from active duty to ensure best possible opportunity to get their businesses back to pre deployment levels of revenues and customer bases to ensure they can service the debt.

Commercial lenders need further education on the SCRA and its impact specifically to small business owner servicemembers and be provided with tools to help them provide the best possible alternatives to assist those customers retain a viable business upon return from deployment. Some confusion exists among commercial lenders as to the scope and applicability of SCRA to businessowners who are called to active duty.

Current assistance to service related businessowners called to active duty is inadequate to help keep them operational or to help them rebuild upon deployment. U.S. Small Business Administration programs aimed specifically at veterans and reserve component businessowners has improved but is still not sufficient to meet their needs. Patriot Express guaranty loan programs are not available to many commercial lenders and need to be expanded to allow smaller community banks to access the program. Additionally the SBA direct loan program for military servicemembers EIDL (Economic Injury Disaster Loan) direct loan program is only a stop gap at the present time and is limited to working capital. The EIDL should be expanded to help refinance existing business related debt, provide deferments on repayment until a reasonable time after redeployment and be expanded to include needs other than working capital.

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#### **Servicemembers Civil Relief Act (SCRA) and its Impact on Reserve Component Business Owners**

In 1777 the commanding general of the British forces in North America summarily dismissed concerns expressed by his staff about the quality of the colonists' military force as "an army of peddlers and shop keepers". Those militia "small businessowners" went on to defeat that super power, win our nation its freedom, and have continued to serve as our National Guard and Reserves in every major conflict since then.

The continued deployment of our nation's reserve component since 2003 is unprecedented in modern times. Not since World War II has the nation's National Guard and Reserves been called upon to mobilize and deploy to supplement the country's armed forces in combat operations overseas to this level. As the subcommittee is well aware these continued deployments on our nation's National Guard and Reserves have created great hardships on these citizen soldiers, their families and their civilian careers.

Nowhere is this more evident than in the challenges that our reserve components "peddlers and shop keepers" face. The impact of continued deployment on those military personnel who are businessowners or self employed is a critical issue that deserves congressional assistance. The U.S. Small Business Administration estimates that at least 7 – of all reserve component servicemembers are self employed or sole proprietors. When the number of servicemembers who are involved in other business entities is included (those in partnerships or with substantial ownership in privately held corporations such as Sub Chapter S, C Corporations or Limited Liability Companies) these percentages of impacted members increase significantly. Estimates range from 10 percent to 14 percent for the number of servicemembers involved in some form of businessownership. While these are a relatively small proportion of all Reserve Component servicemembers, these individuals tend to hold critical "mid-level" positions in their units. While retention of all military members

is of great importance to sustaining our armed forces, the potential loss of many of these key leaders would be detrimental to the deploying units.

Small businessowners who are members of our National Guard and Reserves face additional challenges as they prepare for continued deployments overseas for extended periods of time. In addition to the personal and family issues that must be overcome these servicemembers also must make hard decisions about their business operations. Unlike their fellow soldiers who are guaranteed their jobs by their employers, no such guaranty exists for these small businessowners. When the yellow ribbons are taken down and the parades are over this sub set of servicemembers must deal with the often negative consequences that their absence has had on their livelihood.

Because of the nature of their businesses, the deploying servicemember is generally the key management person of that business and his or her extended deployment causes severe problems as they attempt to rebuild their businesses. Many have been forced to close their businesses during deployment or to have family members attempt to sustain it while they are on active duty and the majority find that the loss of revenues and loss of their customer base upon their return makes return to pre-deployment levels of operations a significant challenge. For many of these citizen soldiers the result of their decision to serve their country results in a level of sacrifice and loss far greater than that of their non-businessowner fellow servicemembers.

While the Servicemember Civil Relief Act has proven itself to be a significant piece of legislation aiding many deploying servicemembers, especially in terms of pre-deployment debt obligations, its protection to these small businessowners seems to be of limited value and is not uniformly understood by all commercial lenders. While the Act does not have specific language differentiating consumer loans from business loans, it does create confusion among some commercial lenders as to whether it even applies to business loans.

The majority of all small businesses have to operate on some form of debt financing. Whether this is in the form of term loans, revolving lines of credit, accounts receivable factoring, equipment leases or business credit cards, commercial loans are a fact of life for most businesses to succeed. Unlike consumer loans (home mortgages, auto loans, credit cards, etc.) that are paid for by the borrower from wages and salaries received by their employers, commercial business loans must be repaid from the revenues generated by these small businesses. 12–15 month deployments of businessowners results in losses of revenues which in turn impacts their ability to meet their financial obligations to their lenders.

While the 6 percent cap of interest rates required by the SCRA are invaluable to many servicemembers as they face decreased household income due to their military deployment, even this reduction is often not enough to allow that returning businessowner to deal with the challenge. When a businessowner loses a significant part of ongoing revenues due to his or her deployment even a 6 percent cap is not sufficient to keep that business afloat.

At a minimum all servicemembers called to active duty who are businessowners should be identified and they should be made aware of how SCRA can assist them with business debt. These servicemembers must have access to individual counseling assistance at no charge who are able to review their business financial position, their current business debt schedules and work out plans to assist them in meeting with lenders to implement SCRA requirements as they currently exist.

More emphasis must be placed on educating commercial lenders especially those involved in business related loans of their obligations under SCRA to help these deploying businessowners with their debt issues. Discussions with loan officers from a number of financial institutions around north central and Northeast Arkansas indicates that they are not fully aware of their responsibilities under SCRA to deploying businessowners.

However, the benefits available under SCRA as it is currently written are not sufficient to help those returning servicemember businessowners deal with the challenges of rebuilding their businesses. SCRA allows the lender to return loans to pre-deployment interest rate levels upon release from active duty. While this is not as significant an issue to returning servicemembers who are returning to their old civilian employers and thus to their pre-deployment income levels, for most small businessowners rebuilding revenues and customers to the pre-deployment levels is not an overnight proposition. It often took years for that businessperson to build his or her revenues to its pre-deployment level and will take significant time for them to return to those levels after deployment ends. At a minimum continuation of the 6 percent interest rate cap for business loans should be allowed to continue for a reasonable amount of time after the businessowner returns to civilian life to help rebuild their business.

Another issue that is not adequately addressed with SCRA is in the scope of the enterprises that would be covered under the 6 percent cap. While as written it impacts both the deploying servicemember and his/her dependents it does not address those businessowners who are involved in partnerships where they are partial owners in the business but their departure has a significant negative impact on the partnerships earning ability and thus ability to service business debt. As example a 3 person medical clinic where one of the three partners is a reserve component servicemember and is called to active duty, while the other two members may not be servicemembers, that departing individual is a significant contributor in civilian life to the overall revenue stream of the business and thus to the ability of the partnership to meet their contractual debts. Assuming that all three partners co-signed for business debt, even though that deploying member is only a one-third owner, the business should have access to the same interest rate cap as if that individual was a sole owner.

Finally, although outside the scope of the SCRA as it is currently written the Subcommittee should give consideration to changes or additions to the Act that will further help reduce the negative impact of businessownership on these servicemembers. For many small businessowners even a reduction of interest rates to 6 percent on their business loans is not sufficient to help their business survive the deployment and regain lost revenues or customers. It is strongly suggested that Congress review possible legislation that would facilitate "banking holidays" for those deploying servicemembers whose businesses will not be able to be sustained during their deployment even at the 6 percent cap. Obviously commercial lenders are not in a position on their own to provide these total payment deferments for the period of the deployment without some type of governmental involvement such as providing some form of guaranty on these loans similar to U.S. Small Business Administration guarantees or other governmental guaranty programs. Another option is the possible expansion of the current SBA disaster direct loan program Economic Injury Disaster Loans (EIDL) for deploying small businessowners that would allow the government to "buy out" the loans from the lenders and set up terms that would benefit the servicemember.

The U.S. Small Business Administration has made significant improvements on their loan assistance programs aimed at veterans and reserve component servicemembers through their Patriot Express programs and the EIDL direct loans; however these initial moves need to be significantly enhanced to ensure our businessowner servicemembers are able to operate on a par with non military businesses. The Patriot Express loan is limited to those commercial lenders who are already members of the SBA Express loan program and in Arkansas only a very limited number of larger banks are able to use this program. Small community banks do not have access to this program and thus are not able to provide the assistance with the SBA guaranty to their servicemember customers.

Additionally the Economic Injury Disaster Loan program through the SBA while beneficial to those servicemembers who qualify is limited to working capital needs and does not include the ability to refinance existing commercial loans nor to provide loans for equipment, inventory, or other normal business loan needs.

Reserve component businessowners find themselves at a significant disadvantage economically and through access to capital that significantly cripples their ability to keep their business operational while deployed or to recover upon return when compared to their non-servicemember competitors. Banking requirements also make it difficult for individual banks to make deferments or other assistance to their reserve component business customers without some form of governmental assistance.

In conclusion, small businessownership is and remains the bedrock of our economy and studies from the Small Business Administration show that veteran owned businesses are significantly more likely to be formed and to succeed than their non-veteran counterparts. However, continued deployment of this significant subgroup of our reserve component in the Global War on Terror has created a tremendous barrier to their normal civilian operations far in excess of that faced by non-business owner servicemembers or their non-business owner fellow servicemembers. I urge the Subcommittee on Economic Opportunity of the House Committee on Veterans' Affairs to give consideration to the current level of assistance available to reserve component businessowners under the SCRA, to look at expansion of assistance under SCRA that addresses unique lending needs of these servicemembers and to consider alternative forms of direct governmental assistance to allow these citizen soldiers to remain on a level playing field as they strive to keep their business enterprises viable.

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**Prepared Statement of William Vines, Commander, Post 31, American  
Legion, Department of Arkansas**

**EXECUTIVE SUMMARY**

Sustained and multiple deployments have taken a significant toll on servicemembers and their families, who are bearing a disproportionate burden on these wars. Servicemembers, who honorably defend this country, depend on laws like USERRA to protect their jobs while they are involuntarily activated and sent to war. According to the Department of Defense's (DoD) Status of Forces study released in November 2007, among Post-9/11 returning National Guard and Reservists, nearly 11,000 were denied prompt reemployment and more than 20,000 lost seniority, pay, and other benefits awarded to them through their dedicated service.

In addition, nearly 20,000 saw their pensions cut and more than 15,000 did not receive the training they needed to return to their former jobs. Twenty-three percent of National Guard and Reservists surveyed in 2006 who could not find a job post-deployment said that they were unemployed because their previous employer did not promptly rehire them as required by law. It was the intent of Congress in enacting USERRA that no veteran be denied employment, reemployment, advancement or discrimination in employment for serving their country in the interest of protecting our nation.

The very nature of military service often compromises the ability of servicemembers to fulfill their financial obligations and to assert many of their legal rights. It is unfair to expect servicemembers to concentrate on fighting battles overseas and then simultaneously attend to all their personal matters at home. SCRA helps ease the economic and legal burdens on military personnel called to active duty status in Operation Iraqi Freedom and Operation Enduring Freedom. Relief under SCRA extends to actions terminating leases, evictions, foreclosures and repossessions, default judgment, lower interest rates on credit cards and loans and protects against lapses or termination of insurance policies.

Millions of servicemembers depend on USERRA and SCRA protections while they are called to serve their country. USERRA and SCRA were created to prohibit discrimination against and eliminate the disadvantages faced by deployed servicemembers. The American Legion recommends strengthening the enforcement on USERRA and SCRA. There needs to be effective consequences for non-compliance or proactive regulation of these Acts to ensure that veterans are not disadvantaged or unable to return to their previous jobs, due to their honorable service to our Nation. The American Legion urges this Subcommittee to send a strong message to Congress to ensure full protections and benefits under these Acts.

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Madam Chairwoman and Members of the Subcommittee:

The American Legion appreciates this opportunity to share its views on USERRA and SCRA.

**UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS  
ACT (USERRA)**

Over seven years of war has caused record high deployment rates of reserve component soldiers, who have the responsibility of maintaining civilian employment while waiting for the call to serve their nation. Many of these soldiers, who struggle daily to balance their dual military and civilian lives, have returned home from deployment to find their employers not hiring them back. According to the Department of Defense's (DoD) Status of Forces study released in November 2007, among Post-9/11 returning National Guard and Reservists, nearly 11,000 were denied prompt reemployment and more than 20,000 lost seniority, pay, and other benefits awarded to them.

In addition, nearly 20,000 saw their pensions cut and more than 15,000 did not receive the training they needed to return to their former jobs. Twenty-three percent of National Guard and Reservists surveyed in 2006 who could not find a job post-deployment said that they were unemployed because their previous employer did not promptly rehire them as required by law. Sustained and multiple deployments have taken a significant toll on servicemembers and their families, who are bearing a disproportionate burden of these wars. Servicemembers, who honorably defend this country, depend on laws like USERRA to protect their jobs while they are involuntarily activated and sent to war. It was the intent of Congress in enacting USERRA that no veteran be denied employment, reemployment, advancement or discrimination in employment for serving their country in the interest of protecting our nation.

*The Uniformed Services Employment and Reemployment Rights Act (USERRA)* 1994, 38 United States Code (U.S.C.) §§ 4301–4334, was signed into law on October 13, 1994. USERRA prohibits discrimination in employment on the basis of an individual's: prior service in the uniformed services; current obligations as a member of the uniformed services; or, intent to join the uniformed services. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is to be reemployed with the status, seniority, and rate of pay as if continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and State and local governments. It applies to employers operating overseas as well.

The Department of Labor, through the Veterans' Employment and Training Service (VETS), provides assistance to all persons having claims under USERRA. The Department of Labor is the enforcement authority for USERRA and it processes all formal complaints of violations of the law. VETS refers unresolved claims to the Department of Justice (DOJ) or the Office of Special Counsel (OSC) for litigation as appropriate. The veteran may then request that the Department of Justice litigate on their behalf but only after a certain period has passed.

Although USERRA defines individual agency roles and responsibilities, it does not make any single individual or office accountable for maintaining visibility over the entire complaint resolution process. In a report addressing USERRA issues by the Government Accountability Office (GAO) in October 2005, it noted that the ability of federal agencies to monitor the efficiency and effectiveness of the complaint process was hampered by a lack of visibility resulting, in part, from the separated responsibilities for addressing complaints from among multiple agencies. The GAO report recommended that Congress consider designating a single individual or office to maintain visibility over the entire complaint resolution process from DoD through DOL, DOJ, and OSC. This would encourage agencies to focus on overall results than agency-specific outputs and thereby improve federal responsiveness to servicemember complaints that are referred from one agency to another. The American Legion supports this recommendation by GAO.

Since September 11, 2001, DoD has relied on more than 600,000 members of the National Guard and Reserve components to support various operations abroad and at home. In particular, from September 2001 to July 2007, the department deployed more than 434,000 Reservists to support operations in DoD's Central Command area of responsibility. During this same period, DOL/VETS have provided USERRA assistance to over 410,000 employers and servicemembers. In FY 2006, VETS staff closed 1,377 USERRA complaints, recovering \$2,346,142.04 in lost wages and benefits and in FY 2007, VETS staff closed 1,200 USERRA complaints, recovering \$1,886,572.95 in lost wages and benefits. Soldiers who are called to active duty serve and protect their country. They should not come home from a military leave of absence to find they have no job or that their seniority has been taken from them.

With the rising numbers of USERRA cases across the country, The American Legion is deeply concerned with the protection of the servicemember and the prevention of the servicemember not being reemployed by their previous employer after deployment(s). USERRA cases have become more complex than in the past and frequently involve multiple issues. This is due to longer and more frequent deployments of National Guard and Reserve members. As currently drafted, USERRA fails to adequately support military personnel upon their return to civilian employment as numerous employers have violated the rules laid out in Title 38 of the United States Code. The American Legion thanks this Subcommittee for supporting *H.R. 6225, Improving SCRA and USERRA Protections Act of 2008*, which has passed the House and referred to the Senate Veterans' Affairs Committee. H.R. 6225 would require courts to grant injunctive relief, when appropriate, to veterans filing claims against state or private employers under USERRA. The bill would also prohibit governmental entities from charging fees to some servicemembers for terminating utility contracts, and it would prohibit state and local governments from imposing certain taxes on some spouses of servicemembers. Additionally, the bill would require public institutions of higher learning to refund tuition and fees to servicemembers if they must leave school for military service commitments.

The *Servicemembers Access to Justice Act (SAJA)* is also new legislation that is under consideration. SAJA would strengthen the protections in current law to ensure that servicemembers' and veterans' employment and reemployment rights are effectively enforced under USERRA. Specifically, this bill would make it easier for servicemembers to obtain justice when their employment rights are violated by prohibiting employers from requiring servicemembers to give up their ability to enforce their rights under USERRA in court in order to get a job or keep a job.

### **SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

The very nature of military service often compromises the ability of servicemembers to fulfill their financial obligations and to assert many of their legal rights. On December 19, 2003, the President signed into law the *Servicemembers Civil Relief Act* (SCRA). This law is a complete revision of the *Soldiers' and Sailors' Civil Relief Act* (SSCRA) 1940. This helps ease the economic and legal burdens on military personnel called to active duty status in Operation Iraqi Freedom and Operation Enduring Freedom. Relief under SCRA extends to:

- reducing the rate of interest for debts incurred before entering active duty to 6 percent
- tolling civil statutes of limitations
- staying civil and administrative proceeding and execution of judgments
- protecting against default judgments, evictions, mortgage foreclosures and repossessions of property
- providing the ability to terminate residential and automobile leases

With the military's increased reliance on National Guard and Reserve units and individuals, creditors residing in remote areas of the country outside of the traditional military towns are not aware of this Act, including members of the Reserve components. Therefore, servicemembers are experiencing serious financial difficulties while on active duty—their cars are repossessed, homes foreclosed and credit histories ruined because this legislation is unknown. We simply cannot afford to have our men and women in Afghanistan, Iraq, or elsewhere distracted by concerns over whether someone is seeking a default judgment against them back home, or repossessing their leased car, or evicting their spouse and children, or selling their house at an auction sale, or running up penalties on credit cards with 21 percent interest rates.

In the most unfortunate of circumstances, lenders are unwilling to negotiate and assist veterans who are in default status even though these veterans are in a good position to correct the situation. It is unfair to expect servicemembers to concentrate on fighting battles overseas and simultaneously attend to all their personal matters at home. Moreover, veterans have a positive track record of following through with payments. During the fourth quarter of 2007, only 2.83 percent of homeowners using Veterans Affairs (VA's) Loan Guaranty program were seriously delinquent. This is much lower when compared to 6 percent for Federal Housing Administration mortgages, and a whopping 14.44 percent for the subprime mortgages.

The American Legion has produced a brochure on active duty legal rights, copies of which will be distributed across the country. If the Transition Assistance Program (TAP) was mandatory, servicemembers and local community businesses would also know of this program, and a lot of frustration, time and misunderstandings could be avoided. To their credit, Navy TAP representatives discuss personal financial planning during workshops and seminars. However, the Reserve components need to have this issue also addressed pre and post deployment.

H.R. 4883 is a bill to amend SCRA to provide for a limitation on the sale, foreclosure, or seizure of property owned by a servicemember during a 1 year period following the servicemember's period of military service. This legislation would greatly assist those veterans that were deployed to a combat zone and had little time to successfully transition from active duty military service to the civilian sector. Members of the Reserve components would be the largest benefactors of an extension from 90 days to 1 year. Enactment of this legislation would provide veterans an extended period of time to become employed, correct all their finances and assist them in the transition process. The American Legion supports this legislation.

### **CONCLUSION**

Millions of servicemembers depend on USERRA and SCRA protections while they are called to serve their country. USERRA and SCRA were created to prohibit discrimination against and eliminate the disadvantages faced by deployed servicemembers. Again, The American Legion recommends strengthening the enforcement on USERRA and SCRA. There needs to be effective consequences for non-compliance or proactive regulation of these Acts to ensure that veterans are not disadvantaged or unable to return to their previous jobs, due to their honorable service to our Nation. An individual should never be forced to choose between serving in the National Guard/Reserve and keeping their civilian employment. Such decisions could easily and quickly undermine our National Security. The American Legion urges this Subcommittee to send a strong message to Congress to ensure full protections and benefits under these Acts.

Thank you for the opportunity to submit the opinion of The American Legion on these issues.

**Prepared Statement of James P. Mitchell, Chief of Staff, Director of  
Communications, U.S. Office of Special Counsel**

**EXECUTIVE SUMMARY**

Not all employers understand their obligations to their employees who, through active duty military service, meet their own obligations to our nation. Some servicemembers, mostly members of the National Guard and Reserve who return from active duty, are turned away by their civilian employers upon their return. Some, who also serve their country as Federal civilian employees, return from active duty only to find that the government that sent them to war is unwilling to welcome them back to their jobs.

The Uniformed Services Employment and Reemployment Rights Act 1994 (USERRA) strengthened the enforcement mechanism for Federal employees by giving the Merit Systems Protection Board (MSPB) explicit jurisdiction over USERRA violations by Federal executive agencies.

Under USERRA, a person claiming a violation by any employer may make a complaint to the Department of Labor's Veterans' Employment and Training Service (DOL-VETS) which must investigate and attempt to resolve the matter. If DOL-VETS cannot resolve a complaint involving a Federal executive agency, the individual may appeal to the MSPB, or request a referral to the U.S. Office of Special Counsel (OSC) for possible representation before the MSPB and, if necessary, the U.S. Court of Appeals for the Federal Circuit.

In 2004, Congress mandated a demonstration project whereby OSC would receive roughly half of Federal USERRA claims directly from claimants. By combining both the investigative and prosecutorial functions in one agency, Congress hoped to determine whether OSC could provide better service to Federal employees filing USERRA claims.

OSC obtained corrective action for servicemembers in more than 30 percent of the claims filed with us and took less than 120 days on average to resolve cases. OSC achieved this high rate of corrective action through its thorough investigations, expert analysis of the law, ability to educate Federal employers about the requirements of USERRA, and a credible threat of litigation before the MSPB. We have the ability to get quick and effective relief, while providing a centralized point of contact for all servicemembers who work for the Federal government.

The demonstration project expired on December 31, 2007, removing OSC authority to accept directly USERRA claims made by federally-employed servicemembers. Our role in USERRA enforcement continues; if DOL-VETS is unable to resolve a claim, a claimant may request that the matter be referred to OSC. We may then represent the claimant before the MSPB.

Granting OSC exclusive jurisdiction over the Federal sector USERRA cases would benefit Federal employee claimants by having a single agency receive, investigate and resolve their claims. Moreover, given our expertise and experience in protecting Federal employees from prohibited personnel practices, Federal sector USERRA investigation and enforcement is a natural "fit" for OSC. We don't know when our servicemembers will start returning home in greater numbers, boosting demand for USERRA enforcement. But, we believe that OSC has demonstrated to Congress that it should assign this important responsibility solely to OSC.

**INTRODUCTION**

Chairwoman Herseth Sandlin, Ranking Member Boozeman, and members of the committee: good morning, and thank you for the opportunity to testify today on important matters of concern to our servicemembers, their families, and ultimately our national security.

My name is James P. Mitchell and I am Chief of Staff and Director of Communications of the U.S. Office of Special Counsel (OSC), an independent investigative and prosecutorial agency. I appreciate the opportunity to appear before you today to provide our perspectives on the enforcement of the Uniformed Services Employment and Reemployment Rights Act, or USERRA.

The U.S. Office of Special Counsel values the tremendous commitment of our military men and women. We are dedicated to protecting the employment rights of those who serve our nation both as members of the Federal civilian workforce and as members of our Armed Forces. We honor our commitment by vigorously enforcing



USERRA on their behalf, including, when necessary, by prosecuting Federal employers before the U.S. Merit Systems Protection Board (MSPB).

While our servicemembers understand and fulfill their obligations to our nation, unfortunately, not all employers understand and fulfill their obligations to their employees who serve on active duty. Some servicemembers, mostly members of the National Guard and Reserve who return from active duty in Iraq and Afghanistan combat zones and elsewhere, are turned away by their civilian employers or not afforded their full rights and benefits upon their return.

It is difficult to imagine an employer welcoming back a returning servicemember with words to the effect, "Welcome back—you're fired!" But it happens. This is especially troubling when the very government that sent them to war does not welcome them back to their government jobs upon their return, or begrudgingly reinstates them, but with less pay, status, or benefits than they are entitled to under the law.

Civilian employees of the Federal government represent about 25 percent of the National Guard and Reserve. Under USERRA, the Federal government is supposed to be a "model" employer. Yet the very government that sends its employees forth into combat might deny them their livelihood when they return home.

### **PROTECTING JOBS OF VETERANS**

Protecting the jobs of returning veterans is not a new concept. The Veterans' Reemployment Rights (VRR) law was enacted in 1940 to provide those protections. Over time, through a series of amendments and sometimes conflicting judicial constructions, it became cumbersome and confusing. It had enforcement loopholes as well, especially regarding the Federal government as a civilian employer.

Enacted in 1994, USERRA improved job protections for veterans. It strengthened the enforcement mechanism for Federal employees by giving the MSPB explicit jurisdiction to adjudicate allegations of USERRA violations by Federal executive agencies as employers.

Under USERRA, a person claiming a violation by any employer (Federal, state, local, or private sector) is permitted to make a complaint to the Department of Labor's Veterans' Employment and Training Service (DOL-VETS), which must investigate and attempt to resolve the matter.

If DOL-VETS cannot resolve a complaint involving a private, state, or local employer, the individual may file a private lawsuit or request a referral to the Attorney General for possible representation in Federal district court.

If the employer is a Federal executive agency, the individual may appeal to the MSPB, or request a referral to OSC for possible representation before the MSPB and, if necessary, the U.S. Court of Appeals for the Federal Circuit.

USERRA thus expanded OSC's role as protector of the Federal merit system and Federal workplace rights by giving OSC prosecutorial authority over Federal sector USERRA claims. However, it also established a bifurcated process in which DOL-VETS first investigates and attempts to resolve such claims, followed by possible referral to OSC for prosecution before the MSPB when there is no resolution by DOL-VETS.

### **IMPROVING PROTECTION FOR FEDERAL EMPLOYEES**

Congress recognized the inefficiencies in this process, as well as OSC's unique expertise in investigating and prosecuting Federal employment claims. In 2004, Congress passed the Veterans Benefits Improvement Act (VBIA), and included a demonstration project to determine whether OSC could provide better service to Federal employees filing USERRA claims.

Under this demonstration project, roughly half of Federal USERRA claims were submitted directly to OSC for investigation and prosecution between February 2005 and December 2007.<sup>1</sup> During this period, the time-consuming process that shuffled Federal USERRA claims between different Federal entities, before being resolved by OSC, was eliminated.

During the demonstration project, OSC obtained corrective action for servicemembers in over 30 percent of the USERRA claims filed with us, a rate that is significantly higher than that for most governmental investigative agencies. OSC achieved this high rate of corrective action through its thorough investigations, expert analysis of the law, ability to educate Federal employers about the requirements of USERRA, and a credible threat of litigation before the MSPB.

<sup>1</sup> Under the demonstration project, OSC had exclusive investigative jurisdiction over Federal-sector USERRA claims where: 1) the claimant's Social Security Number ended in an odd digit, or 2) the claimant alleged a prohibited personnel practice (PPP), as well as a USERRA violation (regardless of Social Security Number). DOL-VETS retained investigative jurisdiction over all other Federal sector USERRA claims.

A Government Accountability Office (GAO) study of the demonstration project showed that it took less than 120 days on average for OSC to resolve cases (which includes prosecution as well as investigative time).

Our centralized and straight-line process has ensured that the USERRA claims we receive are resolved efficiently, thoroughly, and, correctly—under the law. The numerous corrective actions we've obtained for returning servicemembers include back pay, promotions, restored benefits and seniority, time off and broader "systemic" changes that prevent future USERRA violations where they work.

In addition to obtaining corrective action for the individual employee, in our role as protector of the Federal merit system, OSC seeks "systemic" corrective action to prevent future violations by an agency. For example, we have assisted agencies in modifying their leave and promotion policies to comply with USERRA, provided USERRA training to agency managers and HR specialists, and required agencies to post USERRA information on their websites and in common areas.

In a specific case involving the U.S. Postal Service, OSC was instrumental in restoring military leave time that was denied to an Agency employee. In addition, we worked with the agency to ensure that managers accommodate employees who perform military duty by identifying and scheduling replacement workers and posting USERRA informational posters in locations accessible to employees. The claimant indicated that after the Special Counsel's involvement, he noticed a greater interest in the agency's efforts to recognize and support veterans.

Congress tied the outcome of the USERRA demonstration project to a GAO evaluation. OSC participated in this evaluation, but GAO's report did not meet the April 1, 2007 deadline mandated by Congress. Instead, the final report was published only two weeks before the congressional August recess, leaving Congress with no opportunity to act on USERRA before the demonstration project would conclude on September 30, 2007.

Moreover, the GAO report did not address the central question that the demonstration project was intended to answer: are Federal sector USERRA claimants better served when they are permitted to make their complaints directly to OSC, for both investigation and litigation, bypassing the bifurcated process of referral between agencies? We submit that the answer is an emphatic "yes."

The demonstration project was ultimately extended by Congress through the FY2008 Continuing Resolution to December 31, 2007, when OSC lost the authority to accept directly USERRA claims made by federally employed servicemembers. As a result, OSC's role is again limited to providing representation to Federal employees who request that their USERRA claims be referred to OSC for possible representation before the MSPB when DOL-VETS cannot resolve their claims.

#### **OSC: POISED TO HANDLE ALL FEDERAL USERRA CLAIMS**

Although our role is now reduced considerably, we at OSC are privileged to be engaged in the Federal sector USERRA enforcement. Because the mission of OSC is to protect the Federal Merit System, our specialized USERRA unit is staffed with attorneys and investigators who are experts in Federal personnel law and have years of experience investigating, analyzing, and resolving alleged violations of Federal employment rights.

We are proud of our achievements in enforcing USERRA. We filed the first ever prosecutions by OSC in the law's history, obtaining corrective action in several cases that had been delayed for years or considered non-winnable. For example, in that prosecution, we obtained more back pay than originally requested by the claimant, attorneys' fees, and interest on those amounts.

The case of an Army Corps of Engineers employee, who was not reemployed after serving in the Air Force, remained unresolved until OSC received the case. We prosecuted before the MSPB and obtained full corrective action for the servicemember, including \$85,000 in back pay, reemployment in his former position, and full restoration of seniority and benefits.

When an injured Iraq war veteran returned from duty only to be sent home by his Federal employer because he could no longer perform his former job, we convinced the agency to find him a suitable job consistent with his physical limitations, along with back pay.

Another case involved a claimant who alleged that the U.S. Department of Homeland Security (DHS) mischarged his leave and imposed a debt on him as a result of his service in the Air Force Reserve. At the USERRA unit's request, DHS took a series of actions necessary to make the claimant whole, including restoring annual leave, canceling the debt, and reimbursing him for lost pay.

Early this year, a more than seven-year wait for USERRA relief ended for an Air National Guardsman, who lost his Federal job while on active military duty. The servicemember filed a USERRA complaint with DOL-VETS in November 2000. In

2004, after DOL-VETS had been unable to resolve his claim, he requested it be referred to OSC. It was not. However, within a few days of the matter being raised in a Senate hearing by Alaska Senator Lisa Murkowski, the case was finally referred to OSC last November. Within a few months, OSC negotiated a settlement that provided the servicemember with 65 months of back pay plus interest, and restored his Federal retirement benefits as if he'd been properly reemployed in June 2000.

Many of the claimants described above could have received relief faster had OSC been able to receive and investigate their claims from the beginning, without the need for attempted resolution and referral by DOL-VETS. As the GAO report found, the referral process alone adds an average of over eight months to the resolution of such claims (i.e., from the time VETS completes its investigation and attempted resolution to the time DOL's Solicitor's Office refers the claim to OSC). In the last case described above, this process took years and delayed significant relief for a deserving servicemember.

By authorizing OSC to directly accept some Federal USERRA claims from the time they are filed, the recently concluded USERRA demonstration project eliminated the cumbersome referral process and allowed claimants to obtain faster, more effective relief. Instead of having to rely on another agency's investigation and frequently having to conduct additional investigation, OSC has control of the investigation throughout. Moreover, OSC can negotiate with the agency and more quickly file with the MSPB, if necessary. Agencies are aware of the credible threat of litigation by OSC and more willing to quickly resolve meritorious claims as a result. Claimants benefit from a more efficient, transparent process that increases accountability and communication by having a single entity handle and resolve their claim from beginning to end.

In cases referred from DOL to OSC, OSC has often found that further investigation is needed to make a determination, or that the claim has not been fully or properly analyzed by DOL under the law. For instance, in two of the cases filed by OSC with the MSPB during the current Special Counsel's term, DOL recommended that OSC not afford the claimant representation (i.e., that the claim was non-meritorious), but OSC disagreed and obtained full relief for the servicemembers. Authorizing OSC to directly receive and investigate all Federal USERRA claims would eliminate these problems and extend the benefits described above to all Federal servicemembers.

OSC is committed to getting as much relief as the law allows for our brave servicemembers, and doing so as quickly as possible. These patriots have given their all in the service of this great Nation. They should never be hung out to dry by a long, drawn-out, confusing process. OSC is passionate about obtaining relief for all who come to us, and no less for the soldiers of our country who also serve as civilians in the Federal government.

That passion extends beyond resolution of individual USERRA claims. Early this month, the Administrator of the Office of Personnel Management (OPM) issued a memorandum to heads of executive departments and agencies changing a leave policy for Federal employees returning from active duty. Previously, OPM's guidance allowed five days of excused absence for a returning servicemember, but only upon return from a single deployment. The revised policy states that Federal civilian employees returning from active duty may receive five days of uncharged leave (excused absence) from their civilian duties each time they return from deployment. It also allows employees who have already returned to work and did not receive these five days of excused absence to take them at a time mutually agreeable to the employee and the agency.

This policy change was the result of an OSC initiative: in a July 1 letter to OPM Administrator Linda Springer, the Special Counsel noted that the policy of allowing only a single five-day period of excused absence for a returning servicemember was inconsistent with the OPM Administrator's own sentiment expressed in a 2003 memorandum implementing the policy:

*"Many of our employees have endured great disruption to their families and their normal lives as a result of their service in the war against terrorism. Therefore, I join the President in urging that agencies do everything possible to ease their return to civilian life."*

The Special Counsel's letter noted that many Federal employees have been deployed multiple times, and have suffered on multiple occasions the "disruption to their families and their normal lives" mentioned in OPM's memorandum. He cited studies indicating an increased incidence of post-traumatic stress disorder and other psychological problems in those who have served multiple tours. Suggesting that returning military personnel have an even greater need for five days of administrative

leave after a subsequent tour than after their first, he requested that OPM change its guidance and OPM responded favorably.

In sum, granting OSC exclusive jurisdiction over all Federal sector USERRA cases would benefit Federal employee claimants by having a single, specialized agency resolve their claims, as evidenced by OSC's track record in USERRA enforcement and its performance during the demonstration project. For these reasons, and given OSC's almost 30 years' experience in investigating and resolving Federal employment claims, Federal sector USERRA investigation and enforcement is a natural "fit" for OSC and its mission. Moreover, such a change would free DOL-VETS from having to navigate Federal personnel law (OSC's particular expertise), allowing DOL-VETS to focus on serving the larger volume of USERRA claimants from the private sector and those in state and local governments.

Thus, the benefit to servicemembers would be doubly positive—for Federal servicemembers who would benefit from OSC's specialized experience, and for non-Federal servicemembers who would benefit from greater attention to their claims at DOL-VETS.

#### **USERRA "SURGE" AHEAD?**

Today, America is in the middle of the largest sustained military deployment in 30 years. That deployment is not limited to the approximately 200,000 servicemembers in Iraq and Afghanistan at this moment. In recent years, the number of members of the National Guard and Reserve mobilized at one time peaked at more than 212,000. As of August 6, the Department of Defense reported that 107,754 members of the National Guard and Reserve had been mobilized and were on active duty.

With Federal employees comprising about 25 percent of the National Guard and Reserve, will we see a "spike" in the number of claims filed by returning servicemembers who have been turned away from their employers? Will the government demonstrate its support for our troops by being fully ready to provide prompt and effective action on these claims?

We don't know when they will start returning home in greater numbers, boosting demand for USERRA enforcement. We believe that adequate information has been developed to support a decision by Congress to assign the task of investigating and resolving USERRA claims by Federal employees to OSC. We are poised to assume this responsibility and to do our part in making their transition back to civilian life as smooth as possible.

Thank you for your attention and I look forward to your questions.

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#### **Prepared Statement of John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor**

Madam Chairwoman Herseth Sandlin, Ranking Member Boozman, and distinguished members of the Subcommittee:

Thank you for the opportunity to discuss employment and reemployment concerns resulting from deployments and multiple deployments of Active and Reserve Forces.

The mission of the Veterans' Employment and Training Service (VETS) is to provide veterans and transitioning servicemembers with the resources and services to succeed in the 21st century workforce. One of the most important ways that we meet that mission is by providing employment protections for servicemembers as well as National Guard (NG) and Reserve Component (RC) members through the Uniformed Services Employment and Reemployment Rights Act 1994 (USERRA).

Congress enacted USERRA to protect the employment rights of the men and women who leave their jobs while serving as members of our active military, National Guard and Reserve. USERRA authorizes the Secretary of Labor (in consultation with the Secretary of Defense) to prescribe rules implementing the law as it applies to private, state and local employers. On December 19, 2005, VETS issued regulations to implement USERRA as it relates to those covered employers. These milestone regulations established the rules these covered employers must follow as well as spell out the legal rights for eligible servicemembers.

Since the onset of military operations in Afghanistan and Iraq, over 1.6 million members of the active duty military have served in these two theaters. In addition, many of the Nation's National Guard units and Reservists have also been called to active duty in support of the Global War on Terror and have served in these theaters or elsewhere.

In fact, the Department of Defense (DoD) reports that over 600,000 National Guard and Reserve mobilizations have occurred since September 11, 2001. This represents the largest deployment of the National Guard in the past half century.

### **What Returning Veterans Face When They Come Home**

These deployments create significant challenges for servicemembers and their families. Many members of the National Guard and Reserve are married and employed. Long tours of duty overseas interrupt their normal roles as workers, parents and members of the community. Lengthy tours of duty also challenge employers as they deal with these absences and with the reintegration of servicemembers back into the workforce. In addition, some National Guard and Reserve members are self-employed or own a small business. Extended deployments may mean they face special problems, including economic losses or other adverse effects.

To put this into perspective, each year, nearly 320,000 military members return to civilian status—either through retirement, voluntary separation from active duty, demobilization or discharge from the National Guard or Reserve, or as a result of a discharge due to disability.

### **Servicemembers Need Good Information and Assistance When They Return to Their Civilian Lives and Jobs**

Servicemembers transitioning to civilian life from active duty must have good information as well as the tools and skills to enable a smooth transition back to civilian life. This information and assistance comes from many sources.

DoD and each of the military services strive to assist servicemembers as they separate from active duty or demobilize and return to their civilian life and jobs. Active duty members participate in formal separation counseling and transition assistance programs when they are preparing for discharge. National Guard and Reserve commanders provide information and assistance to their members when they demobilize, so their members know how and where they can receive help if they need it. States also assist. Most states have created programs to increase public support and awareness of returning servicemembers. Services include outreach and family support activities, financial assistance such as emergency funds, educational assistance, mental health and other comprehensive services and assistance to augment the services provided by the federal government, including the Transition Assistance Program (TAP). TAP consists of comprehensive three-day workshops which are provided at selected military installations nationwide. Workshop attendees learn about job searches, career decision-making, current occupational and labor market conditions, and resume and cover letter preparation and interviewing techniques. Participants also are provided with an evaluation of their employability relative to the job market and receive information on the most current veterans' benefits. DOL has also offered to provide TAP employment workshops to returning National Guard and Reserve members.

### ***Protecting Servicemembers' Employment***

One of our Department's top priorities is protecting our military members' jobs when they're called up to serve. We work hand in hand with DoD and Justice (DOJ), and the Office of Special Counsel (OSC) to enforce USERRA.

### ***The Uniformed Services Employment and Reemployment Rights Act***

USERRA protects the public and private sector civilian job rights and benefits of veterans and members of the armed forces, including National Guard and Reserve members. The law prohibits employer discrimination due to military obligations and provides reemployment rights to returning servicemembers. DOL's Veterans' Employment and Training Service (VETS) not only investigates complaints by servicemembers and veterans, it also administers a comprehensive outreach, education, and technical assistance program here in the United States and around the world.

VETS works closely with DoD's Office of the Assistant Secretary for Reserve Affairs' Employer Support of the Guard and Reserve (ESGR) to ensure that servicemembers are briefed on their USERRA rights before and after they are mobilized. We conduct continuous USERRA outreach and education to inform servicemembers and employers on their rights and responsibilities under the law. Since most complaints result from a misunderstanding of the USERRA obligations and rights, we took an important step in 2005 to make it easier to understand the law by promulgating clear, easy-to-understand regulations in question-and-answer format. From the terrorist attacks on September 11, 2001, through the end of March 2008, VETS has provided USERRA assistance to over 535,000 servicemembers, employers and others. This includes 341 USERRA mobilization and demobilization briefings given to 267,000 servicemembers. The 2006 Status of Forces Survey reported that National Guard and Reserve Component members received an average of two USERRA briefings each, and only seven percent claimed to have experienced USERRA-related problems. We believe that this low rate of reported USERRA problems is due, in

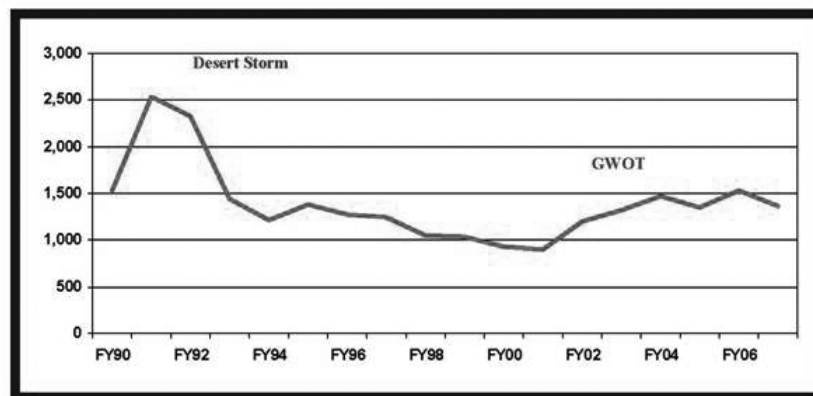
part, to our extensive outreach and education; the agency's user-friendly 2005 regulations; the collaborative efforts of DOL, DOJ, OSC and ESGR; and to the tremendous support the vast majority of employers show for the Nation's men and women in uniform.

Our record in enforcing USERRA shows that we vigorously investigate complaints, and when employers do not comply with the law we make every effort to bring them into compliance. VETS does this through a nation-wide network of over 100 highly skilled federal employees who are veterans employment specialists. Almost all are veterans themselves. They are trained to meet the many workplace employment needs of today's servicemembers. VETS' federal employment specialists are located where veterans need them most, and they are in all 50 states, the District of Columbia, and Puerto Rico. These specialists conduct outreach and provide technical assistance to employers, servicemembers, veterans, and veterans' organizations on employment and reemployment issues at the national, state and local levels, including at locations where servicemembers are demobilized.

VETS teams with ESGR, the OSC, and DOJ to ensure the employment rights and benefits for returning servicemembers are protected. ESGR engages in a number of efforts to ensure employer support for the Guard and Reserve is sustained. ESGR also reinforces the relationship between employers and employees through informal USERRA mediation. DOJ and the OSC help enforce USERRA by representing USERRA complainants when DOL is unable to resolve the complaint and/or when the servicemember or veteran requests their case be referred.

VETS has a decades-long history of protecting the rights and interests of American service men and women employed in both the public and private sectors by investigating complaints under USERRA and its predecessor laws. Complaints under the Veterans' Reemployment Rights Act (VRRRA), the predecessor to USERRA (USERRA was enacted into law by Public Law 103-353, October 13, 1994) peaked in 1991 following mobilizations for Operation Desert Storm, when claims topped 2,500. After 9/11, USERRA complaints rose again, from approximately 900 per year to approximately 1,500 in FY 2004 and FY 2006. Complaints in FY 2007 decreased to 1,365. As the chart below shows, complaints during the Global War on Terror have never approached the Desert Storm high. Once again, we attribute much of this result to VETS' comprehensive outreach and education efforts; our work with DoD and DOJ; the 2005 regulations; and, the strong support of those who employ our Nation's servicemembers. In our view, the enactment of USERRA in 1994 also played a role, as the statute provided stronger protections and other improvements that resulted in a better understanding of the job rights and benefits of veterans and members of the armed forces.

#### USERRA AND VRRRA CASES OPENED



(NOTE: VRRRA cases are those prior to the enactment of USERRA on October 13, 1994)

VETS is committed to continuous improvement of our USERRA investigative processes and our reporting to Congress on investigations. As a result of that commitment, we have made a number of investments to our USERRA program, and more are planned. For example:

- We have established a corps of Senior Investigators and stationed one in each of our Regions. The Senior Investigators are highly specialized experts who are in constant contact with the VETS National Office and with their respective Regional Solicitor's offices, and provide training and support to investigators in the field.
- In February 2008, VETS implemented a new USERRA Operations Manual, and all of our investigative staff has been trained on its use. The new manual is electronic and provides search functions to enable investigators to quickly locate appropriate procedures and pertinent sections of law and regulation. The new manual clarifies procedures for notifying claimants of their right to referral, and for recording the appropriate case outcomes in the VETS investigative database.
- In order to continue to ensure the privacy of our electronic investigative data, VETS moved its investigative database out of a secure contractor facility to its current location in the Department behind the DOL firewall.
- VETS is enhancing and expanding its investigator training, to include classroom, online distance learning, and regional training seminars.
- VETS has implemented new procedures for enumerating cases reported to Congress in order to eliminate any duplication.
- In order to ensure that every case is looked at by at least two individuals, VETS is requiring that each USERRA case is reviewed by a higher-level supervisor before a claimant is notified of the results of our investigation.
- We are evaluating currently available systems that would enable us to move to complete electronic case management. This would facilitate higher-level reviews within VETS to assist our investigators and improve communications on specific cases between VETS and our Solicitor's office and between our Solicitor's office and DOJ and OSC.
- VETS is conducting an evaluation of the USERRA investigative process to examine the current process and identify program improvement strategies to increase efficiency and effectiveness.

***Protecting the Employment Rights of Servicemembers in Arkansas***

From the start of the Global War on Terror, we observed an initial increase in USERRA complaints in Arkansas, including 17 in FY 2002, 22 in FY 2003, and 30 in FY 2004, although complaints have steadily declined over the past few years. In FY 2005, complaints dropped down to 27, and in FY 2006 complaints dropped down to 17, a decrease of nearly 40 percent. In addition to everything that VETS has done to work with both servicemembers and employers alike to decrease the number of USERRA complaints, the State of Arkansas has been a more than willing partner in these efforts.

The State of Arkansas has a recently signed Memorandum of Understanding (MOU) between the Adjutant General of the Arkansas National Guard, the Director of the Arkansas Department of Workforce Services and the Assistant Secretary of Labor for Veterans' Employment & Training. This MOU outlines the new proactive reintegration program for National Guard and Reserve members returning to Arkansas as well as the continuum of care needed to support a normal life after redeployment for our soldiers and families.

The new reintegration program provides the following schedule of services:

- A first meeting is held 30 days after demobilization. This is a one-day event, coordinated by the Reintegration working group, held offsite within the local community with family members and support activities. This event gives the opportunity for families to come together and meet one-on-one with a number of agencies. Booths available to assist the Soldiers and families are: Military One Source, ESGR, VET Center, Judge Advocate General, Department of Education, Department of Veterans Affairs, Chaplain, the Arkansas Employment Agency, and Military and Family Life Consultant (MFLC). The intent is to offer any services that a soldier or family might need to assist the soldier with reintegrating into normal life.
- A second meeting is held 60 days after demobilization. This is a two-day event, coordinated by the reintegration working group, held offsite at a retreat-type setting with family members and appropriate support activities.
- A third meeting is held 90 days after demobilization. This is a two-day event at the Guard unit's local Armory. It includes follow-up briefings by Post-Deployment Health Reassessment (PDHRA), and VA Dental in-processing.

So far in Fiscal Year (FY) 2008, DOL/VETS has participated in two joint Reintegration Briefings with approximately 90 returning National Guard soldiers in attendance. At each of these briefings, DOL/VETS has provided information on employment and reemployment, and we have teamed with the Arkansas Department

of workforce Services to ensure all returning servicemembers are fully aware of their rights and that they know where and how they can get help if they need it. The Arkansas National Guard Transition Assistance Advisor, Ms. Barbara Lee, is preparing a schedule for the return of the 39th Brigade, approximately 3,000 soldiers, at the end of this year or early next year. VETS will be there on-site to provide those returning servicemembers information on their rights under USERRA.


Enforcement is a major focus of VETS, and potential violations of USERRA are taken very seriously. VETS has made it easier for a servicemember to determine if he or she has a valid complaint and if so, to file a USERRA complaint online through our interactive USERRA elaws Advisor. The Advisor leads the user through a series of questions and based on the responses, provides the individual with customized information on his or her eligibility, rights and responsibilities under the law. The elaws Advisor is available at [www.dol.gov/elaws/userra.htm](http://www.dol.gov/elaws/userra.htm).

### **Conclusion**

The United States has the best, most capable, most technologically advanced military in the world. The dedication to service and the willingness of our military to sacrifice in order to support our National security is extremely important. The men and women in uniform are the guarantors of our freedom and preserve our way of life. Our servicemembers are known for their intelligence, strong work ethic, loyalty, discipline, and leadership abilities. They have the highly sought after marketable professional qualities. Our country is a better and safer place because of them.

DOL takes seriously its responsibilities for assisting our veterans, especially those returning from Iraq and Afghanistan, in: returning to their previous employment; finding good new jobs and careers; and protecting their job rights. These brave men and women are protecting our National security and we must do everything we can to help protect their economic and job security.

Thank you for allowing me to testify before this Subcommittee today. I am prepared to respond to your questions.





MATERIAL SUBMITTED FOR THE RECORD

Committee on Veteran's Affairs  
Subcommittee on Economic Opportunity  
Washington, D.C.  
*August 26, 2008*

Mr. John McWilliam  
Deputy Assistant Secretary  
Veterans' Employment and Training Service  
U.S. Department of Labor  
200 Constitution Ave, NW  
Room S-2220  
Washington, DC 20210

Dear Mr. McWilliam:

I am sending you some questions in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity Field Hearing on Uniformed Services Employment and Reemployment Rights Act and Servicemembers Civil Relief Act Issues on August 18, 2008. Please answer the enclosed hearing questions by no later than September 26, 2008.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-4150.

Sincerely,

Stephanie Herseth Sandlin,  
*Chairwoman*

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U.S. Department of Labor  
Office of the Assistant Secretary for  
Veterans' Employment and Training  
*October 7, 2008*

The Honorable Stephanie Herseth Sandlin  
Chairwoman  
U.S. House of Representatives  
331 Cannon House Office Building  
Washington, DC 20515

Dear Chairwoman Herseth Sandlin:

Thank you for the opportunity to appear before the House Veterans' Affairs Committee's Economic Opportunity Subcommittee Field Hearing on August 18, 2008, to testify on the U.S. Department of Labor Veterans' Employment and Training Service (VETS) and its administration of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Subsequent to the oversight hearing, the Subcommittee forwarded a question for the record to the Department of Labor. Our response to that question is enclosed. In accordance with your instructions, we have also provided this response to Ms. Ofra Torres via email and facsimile.

Thank you for the opportunity to appear before the Subcommittee and for your continued support of employment services for America's veterans.

Sincerely,

John M. McWilliam  
*Deputy Assistant Secretary*

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**Question 1:** Submit a list of U.S. Department of Labor's USERRA related claims. This list should include the date the claim was opened and the closing date from 2005 to 2008.

**Response:** Rather than listing the over 3500 cases closed by the Department of Labor's Veterans' Employment and Training Service (VETS) over these years, we developed the following table to facilitate the Subcommittee's analysis of the length of time USERRA cases remained open in VETS over the years in question. The table indicates that in each year, from FY 2005 through August 2008, approximately 85 percent or more of all cases were closed in 120 days or less.

**USERRA Cases Closed by U.S. Department of Labor Veterans' Employment and Training Service (VETS), FY 2005 through August 2008**

Case Age at Closing (days)	FY 2005	FY 2006	FY 2007	FY 2008 thru August
<30	404	529	418	412
31 to 60	299	315	313	312
61 to 90	201	221	199	233
91 to 120	100	97	111	115
121 to 150	53	65	65	80
151 to 180	39	34	35	44
181 to 210	22	16	18	18
211 to 240	5	16	12	17
241 to 270	15	9	7	9
271 to 300	9	5	4	4
301 to 330	5	3	4	4
331 to 365	3	6	1	4
365+	6	5	6	12
<b>TOTAL</b> <sup>1</sup>	<b>1161</b>	<b>1321</b>	<b>1193</b>	<b>1264</b>

<sup>1</sup>These total case closures differ from the total closures reported in VETS' USERRA Annual Reports to Congress because multiple closures of the same case have been eliminated in this table. This is not possible in annual reports because cases might be reopened and then closed in a later year.

