

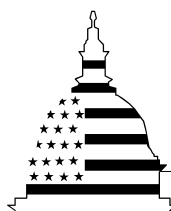
GAO

Report to the Ranking Minority Member,
Committee on Health, Education, Labor,
and Pensions, U.S. Senate

October 2005

MILITARY PERSONNEL

Federal Management of Servicemember Employment Rights Can Be Further Improved



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Highlights of [GAO-06-60](#), a report to the Ranking Minority Member, Committee on Health, Education, Labor, and Pensions, U.S. Senate

Why GAO Did This Study

The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 protects millions of people, largely National Guard and Reserve members, as they transition between their federal duties and their civilian employment. The act is intended to eliminate or minimize employment disadvantages to civilian careers that can result from service in the uniformed services. This report examines the extent to which the Departments of Defense (DOD), Labor (DOL), Justice (DOJ), and the Office of Special Counsel (OSC) have achieved this purpose, specifically, the extent to which the agencies (1) have data that indicate the level of compliance with USERRA, (2) have efficiently and effectively conducted educational outreach, and (3) have efficiently and effectively addressed servicemember complaints.

What GAO Recommends

GAO is making a number of recommendations to better identify USERRA compliance and employer support trends, more efficiently and effectively educate employers, increase agency responsiveness, and process USERRA complaints. DOD, DOL, and OSC concurred with the recommendations. DOJ did not comment on the draft report. To encourage results rather than outputs, Congress should consider designating a single office to maintain visibility over the entire complaint resolution process.

www.gao.gov/cgi-bin/getrpt?GAO-06-60.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Derek B. Stewart (202) 512-5559 or stewartd@gao.gov.

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What GAO Found

Whether or not overall USERRA compliance has changed is difficult to firmly establish; however, the agencies that support or enforce USERRA have collected formal and informal complaint data and some employer support figures that provide limited insights into compliance. For example, DOL's formal complaint numbers show a possible relationship with the level of the use of the reserve components and the number of complaints. DOD data show that some employers exceed USERRA requirements, but these data have limitations. DOD has only 1 full year of informal complaint data, so it will be several years before DOD can identify any meaningful trends in informal complaints. Because informal complaint figures have not been captured on a consistent basis, agencies lack the data necessary to identify total complaint trends. Furthermore, data from a 2004 DOD survey showed that at least 72 percent of National Guard and Reserve members with USERRA problems never sought assistance for their problems. This raises questions as to whether complaint numbers alone can fully explain USERRA compliance or employer support. Some recently added employment questions on DOD's periodic surveys, if continued, offer the potential to provide insight into compliance and employer support issues.

DOD, DOL, and OSC have educated hundreds of thousands of employers and servicemembers about USERRA, but the efficiency and effectiveness of this outreach is hindered by a lack of employer information. DOD's reserve component members who can be involuntarily called to active duty are required to enter their civilian employer information into a DOD database but the services have not enforced this requirement and as of August 2005, about 40 percent of the members had not entered the required information. Without information about the full expanse of servicemember employers, federal agencies have conducted general outreach efforts but have been limited in their ability to efficiently and effectively target educational outreach efforts to employers who actually have servicemember employees.

Agency abilities to efficiently and effectively address servicemember complaints are hampered by incompatible data systems, a reliance on paper files, and a segmented process that lacks visibility. The systems that DOD, DOL, DOJ, and OSC use to track USERRA complaints are not compatible. As a result, data collection efforts are sometimes duplicated, and DOL relies on its paper files when transferring or reviewing complaints. This slows the transfer of complaints and limits the ability of DOL managers to conduct effective, timely oversight of complaint files. Furthermore, segmented responsibilities and lack of visibility have led agencies to focus on outputs rather than results. For example, agencies measure complaint processing times but not the elapsed time servicemembers actually wait to have their complaints fully addressed. GAO analysis of 52 complaints that had been closed and reopened two or more times found that recorded processing times averaged 103 days but the actual elapsed times that servicemembers waited to have their complaints fully addressed averaged 619 days.

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Abbreviations

DMDC	Defense Manpower Data Center
DOD	Department of Defense
DOJ	Department of Justice
DOL	Department of Labor
ESGR	Employer Support of the Guard and Reserve
OSC	Office of Special Counsel
USERRA	Uniformed Services Employment and Reemployment Rights Act
VETS	Veterans' Employment and Training Service

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United States Government Accountability Office
Washington, D.C. 20548

October 19, 2005

The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

Dear Senator Kennedy,

The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994¹ protects millions of individuals² as they transition between their federal duties and their civilian employment. Prior to USERRA, reemployment rights were set forth in the Vietnam Era Veterans' Readjustment Assistance Act of 1974.³ Following the 1991 Gulf War, military servicemembers and employers flooded the government with questions and complaints concerning reemployment rights. In 1994, following a review of the effectiveness of the 1974 act, Congress passed USERRA to "encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service." The act covers not only the more than 2 million members who have served in the reserve components⁴ of the armed services since the act was passed, but also large numbers of active duty servicemembers and veterans, including those who served before the act's passage. For example, citizens who left civilian jobs and signed active duty enlistment contracts following the events of September 11, 2001, retain reemployment rights under USERRA as long as they meet a few basic requirements. Among the eligibility requirements are (1) the absence of the receipt of a dishonorable or other disqualifying

¹ Pub. L. No. 103-353, as amended, codified at 38 U.S.C. §§ 4301-4334.

² In addition to military servicemembers and veterans, the act covers the commissioned corps of the Public Health Service and other persons designated by the President in time of war or national emergency. These persons currently include about 8,000 intermittent disaster-response appointees in the National Disaster Medical System. However, since the primary focus of this report is veterans and active and reserve component military members, we use the term servicemembers throughout this report to include all those covered by the act.

³ Pub. L. No. 93-508 (Dec. 3, 1974).

⁴ The reserve components include the collective forces of the National Guard including the Army Guard and the Air Guard, as well as the forces of the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, and the Coast Guard Reserve.

discharge, (2) giving proper notice prior to departure and after return from service, and (3) returning within 5 years of departure or immediately after the expiration of their initial enlistment contracts, whichever is longer.

Every individual in the country who serves in, has served in, or intends to serve in the uniformed services is potentially covered by USERRA. The act applies to a wide range of employers, including federal, state, and local governments as well as for-profit and not-for-profit private sector firms. Enforcement and implementation of USERRA is complex, with several federal agencies having specific and sometimes overlapping outreach, investigative, or enforcement roles. Along with the Department of Labor (DOL), the Department of Defense (DOD) is responsible for informing servicemembers and employers of their rights, benefits, and obligations under USERRA.⁵ Much of DOD's outreach is accomplished through its Employer Support of the Guard and Reserve (ESGR) organization. The ESGR performs most of its work through volunteers and specially-trained impartial ombudsmen who act as informal mediators for USERRA issues that arise between servicemembers and their employers. DOL, through the efforts of its Veterans' Employment and Training Service (VETS), is the avenue through which servicemembers file formal USERRA-related complaints⁶ against civilian employers. Representatives of VETS investigate USERRA complaints and try to resolve disputes, but if they are unable to resolve servicemember complaints, DOL informs the servicemembers that they may request to have their complaints referred to the Department of Justice (DOJ) or to the Office of Special Counsel (OSC). Unresolved complaints against private sector or state or local government employers are referred by DOL to DOJ to investigate, mediate, and litigate. Prior to February 8, 2005, unresolved complaints against federal executive agency employers were referred from DOL to OSC. Under a new demonstration project,⁷ OSC now receives some USERRA complaints directly from certain servicemembers.

⁵ The law also gives outreach responsibilities to the Secretary of Veterans Affairs but we did not review actions of the Department of Veterans Affairs in supporting USERRA because their role is more limited than that of the four federal agencies that you asked us to review.

⁶ Federal agencies use a variety of terms to describe servicemember allegation of USERRA violations, including "complaints," "claims," "cases," "matters," and "referrals." For clarity and consistency throughout this report, we use the term complaint to describe these servicemember allegations. We refer to complaints to DOD as "informal complaints" and complaints to DOL, DOJ, and OSC as "formal complaints."

⁷ Veterans Benefits Improvement Act of 2004, Pub. L. No. 108-454, § 204 (2004).

In light of the significant number of National Guard and Reserve members serving in the Global War on Terrorism who will be demobilized, returned to their civilian jobs, and possibly called back to duty, you requested that we review the efforts of certain federal agencies to support and enforce USERRA, specifically the activities of DOD, DOL, DOJ, and OSC. We agreed to address your immediate needs by first reviewing issues surrounding OSC's enforcement of USERRA in the federal sector. On October 6, 2004, we issued *U.S. Office of Special Counsel's Role in Enforcing Law to Protect Reemployment Rights of Veterans and Reservists in Federal Employment*, [GAO-05-74R](#). This report responds to your broader request to review the actions of the four federal agencies involved in carrying out USERRA responsibilities. Our objectives were to determine the extent to which the agencies (1) have data that indicate the level of compliance with USERRA, (2) have efficiently and effectively conducted educational outreach, and (3) have efficiently and effectively addressed servicemember complaints.

To address our first objective, we collected, reviewed, and analyzed data from a wide variety of sources, including the four federal agencies that support and enforce USERRA. We analyzed the annual numbers of complaints filed with DOL and those referred from DOL to DOJ and OSC from fiscal year 1997 through the third quarter of fiscal year 2005 to determine whether there were trends in the total referrals, or the referrals to either agency. We also reviewed the tabulations of responses from DOD's Defense Manpower Data Center (DMDC) May 2004 projectable survey of reserve component members. We also conducted original analysis on the survey responses that addressed employment issues. In addition, we conducted a survey of the ESGR's ombudsmen to obtain information about their backgrounds and training as well as the numbers of complaints they had handled and resolved. We also reviewed data related to the ESGR's outreach and employer recognition programs. To address our second objective, we reviewed USERRA to determine agency roles and responsibilities in educating servicemembers and employers concerning USERRA, and we interviewed agency officials from DOD and DOL to determine how they carry out their USERRA educational outreach responsibilities. We also collected and analyzed data concerning DOD's and DOL's outreach activities. We interviewed DOJ and OSC officials to determine whether they were involved in any outreach activities. To address our third objective, we reviewed USERRA and the Veterans Benefits Improvement Act of 2004 to determine agency roles and responsibilities in processing USERRA complaints. We interviewed headquarters officials from the four agencies to determine how they pass

complaint information among various offices. Further, we interviewed the ESGR ombudsmen and customer service center representatives, state ombudsmen coordinators, DOL investigators, and officials at two of DOL's regional offices and two of its solicitor's offices. We reviewed DOL hard copy files in two regional offices and compared the data in those files to electronic data from DOL's USERRA Information Management System. We also reviewed agency procedures for collecting and reporting information about the time required to address USERRA complaints. We determined that the agency data used in this report were sufficiently reliable for the purposes of this review, though the complaint data systems had some limitations that we discuss further in the report. We conducted our work from October 2004 through August 2005 in accordance with generally accepted government auditing standards. A more detailed description of our scope and methodology is provided in appendix I.

Results in Brief

Whether overall USERRA compliance or employer support has increased, decreased, or remained steady is difficult to firmly establish; however, the federal agencies with responsibilities under USERRA have collected formal and informal complaint data and some employer support figures that provide limited insights into USERRA compliance or employer support. DOL's formal complaint numbers show a possible relationship with the level of the use of National Guard and Reserve members and the number of complaints. For example, DOL numbers show that formal complaints rose in fiscal years 1991 and 1992 following the substantial increase in the use of the reserve component for Operations Desert Shield and Desert Storm. The formal complaint numbers rose again between fiscal years 2001 and 2004 following the larger use of the reserve component for Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom. However, DOL's formal complaints were generally lower in the years following USERRA's passage—ranging from 895 to 1,465 in fiscal years 1995 through 2004—than in the years prior to its passage in 1994, when they ranged from 1,208 to 2,537 between fiscal years 1989 through 1994. Because relatively few complaints reach DOJ and OSC by design, formal complaint data from those agencies may not fully provide an accurate picture of USERRA compliance or employer support. Between fiscal years 1995 and 2004, annual formal complaints remained below 59 at DOJ and below 21 at OSC. DOD data indicate that some employers are exceeding the requirements set forth in USERRA and providing their servicemember employees with “extra” benefits, but these data have limitations. DOD's employer support organization, ESGR, has only 1 full year of informal complaint data, so it will be several years before the ESGR can identify any meaningful trends in

informal complaint numbers. Because informal complaint figures have not been captured on a consistent basis, agencies cannot know whether total complaints have been increasing, decreasing, or remaining steady. Furthermore, a 2004 DOD survey showed that at least 72 percent of Selected Reserve members with USERRA problems never sought assistance for those problems. This raises questions as to whether complaint numbers alone can fully explain USERRA compliance and employer support. These types of recently added employment questions on DOD's periodic surveys, if continued, offer the potential to provide insight into compliance and employer support issues.

DOD, DOL, and OSC have educated hundreds of thousands of servicemembers and employers about USERRA, but the efficiency and effectiveness of agency outreach efforts are hindered by a lack of employer information, an issue that we previously reported and recommended that DOD address. The agencies' educational outreach efforts have ranged from placing USERRA information on agency Web sites and maintaining toll-free information lines, to conducting individual and group briefings. Despite these many general outreach efforts, agencies lack essential employer information needed to efficiently and effectively target outreach to employers who actually have servicemember employees. A March 21, 2003, memorandum from the Under Secretary of Defense for Personnel and Readiness required all members of the reserve components who are subject to being involuntarily called to active duty to provide DOD with their civilian employment information to assist the department in accomplishing its employer outreach. However, the services have not enforced this requirement and as of August 2005, about 40 percent of DOD's reserve component members who were subject to being called to active duty had not complied with the requirement to enter their civilian employer information into DOD's database. With limited employer data available to them, agencies have been restricted in their ability to efficiently and effectively target outreach to employers who actually have servicemember employees. Without complete information about the full expanse of servicemember employers, the federal agencies conducting outreach efforts have no assurance that they have informed all servicemember employers about USERRA rights and obligations.

Agency abilities to efficiently and effectively address servicemember complaints, as intended by USERRA, are hampered by incompatible data systems, reliance on paper files, and a segmented process that lacks visibility. The speed with which servicemember USERRA complaints are addressed often hinges on efficient and effective information sharing

among the agencies involved in the complaint resolution process. However, the automated systems that DOD, DOL, DOJ, and OSC use to capture data about USERRA complaints are not compatible with each other. As a result, information collection efforts are sometimes duplicated, which slows complaint processing times. In addition, agencies are unable to efficiently process complaints because they are forced to create, maintain, copy, and mail paper files due to the incompatible data systems. Although DOL maintains electronic complaint files, it relies on its paper files when transferring complaints and it also focuses its complaint file reviews on its paper files. This slows the transfer of complaints and limits the ability of DOL managers to conduct prompt, effective oversight of complaint files. In addition, the ability of agencies to monitor the efficiency and effectiveness of the complaint process is hampered by a lack of visibility and by the segmentation of responsibility for addressing complaints among several different agencies. The segmented complaint resolution process means that the agency officials who handle the complaints at various stages of the process generally have limited or no visibility over the other parts of the process for which they are not responsible. This prevents any one agency from monitoring the length of time it takes for a servicemember's complaint to be fully addressed, and leads agencies to focus on output figures for their portion of the complaint process rather than on overall federal responsiveness to complaints. As a result, agencies have developed goals that are oriented toward outputs of their agency's portion of the process rather than toward results regarding an individual servicemember's complaint. For example, agency goals address complaint processing times at different stages of the process, rather than the actual elapsed time servicemembers wait to have their complaints addressed. To highlight the difference between agency focuses on processing times and servicemember concerns with elapsed times, we reviewed complaints that had been closed and later reopened by VETS investigators. Specifically, we analyzed 52 complaints that were closed and reopened two or more times. Our analysis revealed substantial differences between the recorded processing times and the actual elapsed times for these complaints. The recorded processing times averaged 103 days. However, from the servicemembers' perspectives, it took much longer because the servicemembers actually waited an average of 619 days from the time they first filed their initial formal complaints with DOL until the time the complaints were fully addressed by DOL, DOJ, or OSC.

We are making four recommendations in this report. First, to better identify USERRA compliance and employer support trends, we recommend that DOD include USERRA questions in its periodic surveys of servicemembers;

second, to help educate employers about USERRA, we recommend that DOD take steps to enforce the requirement for servicemembers to report their civilian employment information, maintain the database on this civilian employment information, and share applicable employer information with DOL, OSC, and other federal agencies that educate employers about USERRA; third, to increase agency responsiveness to servicemember complaints, we recommend that DOD, DOL, DOJ, and OSC explore methods of electronically transferring information between agencies; fourth, to reduce the administrative burden on VETS investigators and improve the ability of VETS managers to provide effective, timely oversight of USERRA complaint processing, we recommend that the Secretary of Labor develop a plan to reduce agency reliance on paper files and fully adopt the agency's automated complaint file system. Further, to encourage results rather than outputs, Congress should consider designating a single office to maintain visibility over the entire complaint resolution process.

In written comments on a draft of this report, DOD, DOL, and OSC generally concurred with our findings and recommendations to their respective agencies. DOJ reviewed a draft of this report and had no comments. DOD deferred to DOL, DOJ, and OSC regarding our recommendation for the agencies to explore methods of electronically transferring information between agencies. DOL and OSC commented on our matter for congressional consideration that Congress should consider designating a single office to maintain visibility over the entire complaint resolution process. DOL noted that the mandated OSC demonstration project is ongoing, and therefore, it would be premature to make any suggestions or recommendations for congressional or legislative action until the pilot has been completed. DOL did note that its office is uniquely situated to provide an overview of the entire complaint resolution process. OSC supported our matter and stated that OSC has unparalleled experience and expertise in administering federal sector employment complaints and prosecuting meritorious workplace violations before the Merit Systems Protection Board. OSC believes that their office is in the best position to be the overseer. We believe that the Congress is the best qualified to determine the identity of the overseer and the timing of this matter for congressional consideration.

Background

USERRA Coverage and Protections

USERRA has extremely broad coverage, provides a wide range of protections, and applies over long time periods. The discrimination provisions of the law cover every individual who serves in, plans to serve in, or has served in the uniformed services of the United States. The law's reemployment and benefit provisions are applicable to some active duty military personnel as well as to National Guard and Reserve members. USERRA applies to public and private employers in the United States, regardless of size, and includes federal, state, and local governments, as well as for-profit and not-for profit private sector firms. It also applies in overseas workplaces that are owned or controlled by U.S. employers.

Generally, servicemembers are entitled to the reemployment rights and benefits provided by USERRA if they meet certain conditions. These include having held a civilian job⁸ prior to call-up, serving fewer than 5 years of cumulative military service with respect to that employer,⁹ providing their employer with advance notice of their service requirement when possible, leaving service under honorable conditions, and reporting back to work or applying for reemployment in a timely manner. Provided servicemembers meet their USERRA requirements, they are entitled to

- prompt reinstatement to the positions they would have held if they had never left their employment, or to positions of like seniority, status, and pay;
- health coverage for a designated period of time while absent from their employers, and immediate reinstatement of health coverage upon return;
- training, as needed, to requalify for their jobs;

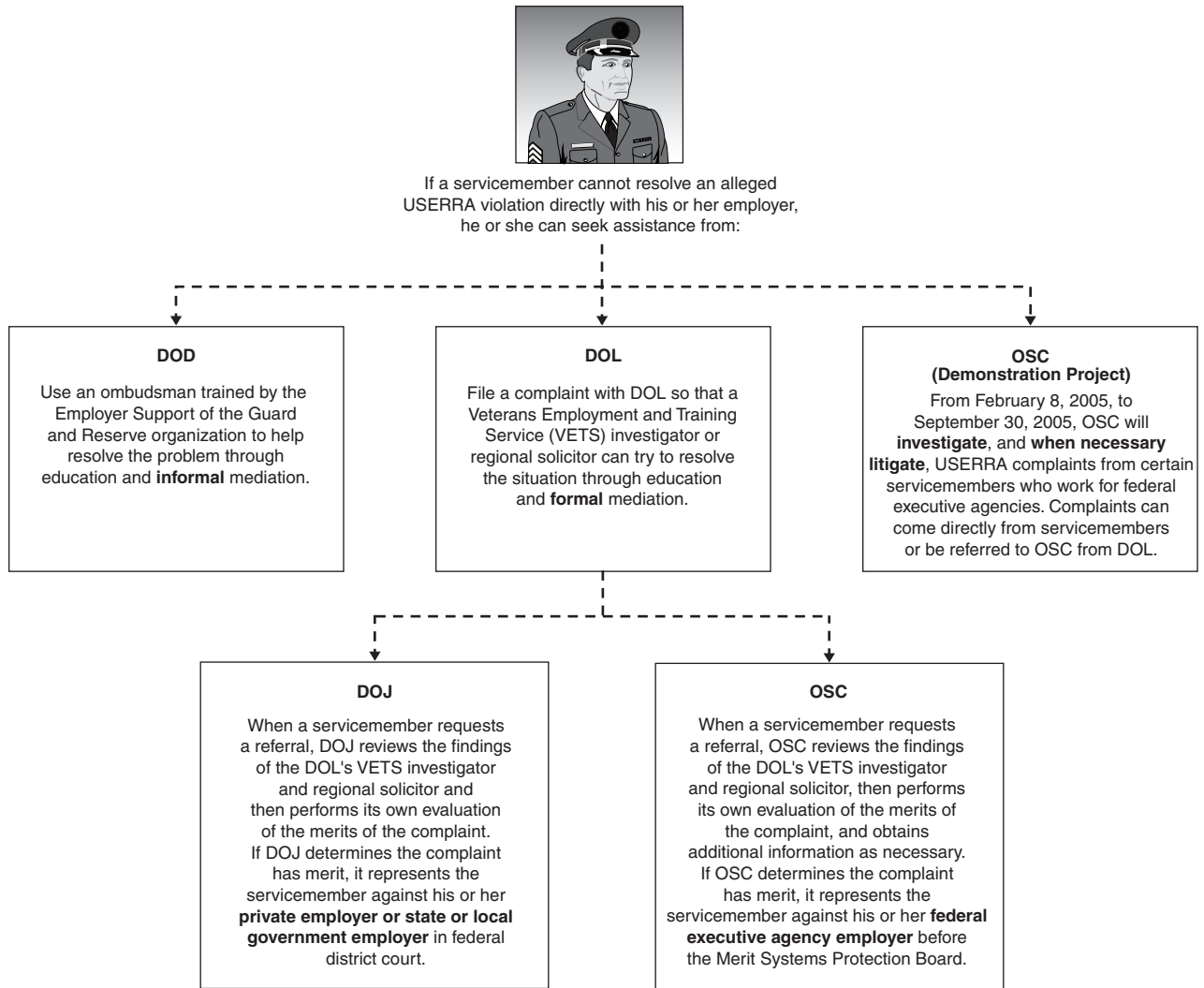
⁸ Under USERRA, reemployment provisions do not apply to brief, nonrecurrent positions that cannot be expected to continue indefinitely or for a significant period of time.

⁹ It is difficult to exceed the 5-year limit because many types of military duties do not count against this limit. For example, none of the time reserve component members spend on active duty supporting Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom counts against the 5-year limit.

-
- periods of protection against discharge based on the length of service; and
 - non-seniority benefits that are available to other employees who are on leaves of absence.

Figure 1 is a flowchart that shows servicemembers' options for receiving federal assistance with their USERRA complaints. While the flowchart shows several different paths for resolving employment problems, the chart does not show all of the options available to servicemembers. Some servicemembers have used members of their military chain-of-command to help them resolve problems with their employers. In addition, the ESGR is available to provide information and informal mediation of USERRA-related employment problems. The DOL offers assistance similar to the ESGR in that it provides information to employers and employees, and works to informally resolve USERRA-related employment problems. The DOL also receives formal complaints from servicemembers under USERRA. Another option that is available to servicemembers at any time is to hire a private attorney and to file a complaint against their employer in court (for private employers and state and local governments) or before the Merit Systems Protection Board (for federal employers). However, a working group from the American Bar Association found that many private attorneys are reluctant to take USERRA complaints because cases are not likely to result in large judgments or settlements.

Figure 1: Process to Resolve a USERRA Complaint Using Federal Assistance



Source: GAO, Art Explosion.

Federal Agencies' USERRA Roles and Responsibilities

The responsibility for enforcing and implementing USERRA is complex, involving several federal agencies. Under USERRA, specific outreach, investigative, and enforcement roles are assigned to DOD, DOL, DOJ, and OSC.

Department of Defense

Most of the people entitled to USERRA rights and benefits earn their entitlement while serving in the military services. The Secretary of Defense shares responsibility with DOL for informing servicemembers and employers of their rights, benefits, and obligations under the act. The ESGR carries out this responsibility for DOD. The ESGR was established in 1972 to manage activities that maintain and enhance employers' support for the reserve components, and it has a goal to inform servicemembers and their employers of their respective USERRA rights and responsibilities. The Office of the Under Secretary of Defense (Personnel and Readiness) develops the policies, plans, and programs that manage the readiness of both active and reserve forces, and within that office, the Assistant Secretary of Defense for Reserve Affairs oversees the activities of the ESGR.

The ESGR has a staff of about 55—18 civilians and 37 military personnel—at its national headquarters in Arlington, Virginia.¹⁰ However, much of the ESGR's work is done through its more than 4,000 volunteers who are organized into state committees.¹¹ These volunteers help to educate both employers and servicemembers about USERRA, and a specially trained subgroup of about 800 volunteers serve as impartial ombudsmen who work to informally mediate USERRA issues that arise between servicemembers and their employers. While many volunteer ombudsmen are attorneys, human relations specialists, or have other backgrounds that assist them in their mediation work, all of the ESGR's ombudsmen are required to attend a 3-day training course before they handle servicemember complaints. (App. II contains additional information about the backgrounds of these volunteer ombudsmen.) Most USERRA-related complaints come to the ESGR through its toll-free telephone number (1-800-336-4590), which is answered at the ESGR's Customer Service Center in Millington, Tennessee. The customer service representatives in Tennessee screen calls, fill requests for information, and forward complaints that appear to have merit to volunteer ombudsmen, who are generally located geographically near the servicemembers. The complaints are often channeled through state

¹⁰ The ESGR had some unfilled civilian positions during our review so its authorized staffing level was slightly higher.

¹¹ While the ESGR refers to these organizations as "state" committees, there are committees in the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and Europe, as well as in the 50 states.

ombudsmen coordinators.¹² The ESGR's volunteer ombudsmen attempt to resolve pay-related USERRA complaints within 7 days and other USERRA complaints within 14 days. When ombudsmen cannot resolve servicemember complaints, they are to notify the servicemembers of the other options that are available to address complaints. The ombudsmen may then pass the complaints to the ESGR headquarters through their state ombudsman coordinators.

Department of Labor

The Secretary of Labor has responsibility for providing assistance to servicemembers who claim USERRA rights and benefits.¹³ This responsibility is carried out primarily through the efforts of VETS. VETS is led by an assistant secretary who is supported by headquarters, regional, and state staff as well as local investigators. When a servicemember leaves active duty and a USERRA-related complaint develops against the servicemember's civilian employer, the servicemember can file a formal complaint at www.vets1010.dol.gov, or can file a printed copy of the complaint form, such as the one included in appendix III, with the Secretary of Labor. The complaint is then assigned to one of VETS's approximately 125 investigators, generally an investigator who is located close to the employer. These VETS investigators examine USERRA complaints and try to help the servicemembers and employers resolve their differences. The investigators also typically have a host of other responsibilities that support veterans' programs but that are not directly related to USERRA. The law gives DOL subpoena power over records and individuals to aid in its investigations, but officials note that subpoenas are used infrequently because the threat alone is usually enough to gain cooperation. The statute also states that the Secretary of Labor may use the assistance of volunteers and may request assistance from other agencies engaged in similar or related activities. When DOL is unable to resolve servicemember complaints, DOL informs the servicemembers that they may request to have their complaints referred. A complaint is referred to DOJ if it involves state or local governments or private employers or to OSC if it involves a federal executive agency. Before complaints are sent to DOJ or OSC, they are reviewed by a VETS regional office, which reviews the memorandums of referral to ensure that the investigations are thorough

¹² Some states do not have state ombudsmen coordinators and in some states the complaints are channeled through full-time program support specialists rather than through volunteer state ombudsman coordinators.

¹³ DOL currently shares this responsibility with OSC under a mandated demonstration project discussed under the section on OSC.

and that the documentation is accurate and sufficient. The referrals are also reviewed by a DOL regional solicitor's office to assess the complaints' legal basis. Both offices render opinions on the merits of the complaints. Even if both offices find that the complaints have no merit, DOL is required by the act to pass the complaints to DOJ or OSC if the servicemembers request referrals.

Along with their investigation and mediation responsibilities, VETS investigators also conduct briefings to educate employers and servicemembers about USERRA requirements and responsibilities, and they field service-related employment and reemployment questions that are directed to their offices. These investigators are required to take three courses that train them in the basics of the USERRA law, advanced investigative techniques, and the differences between veterans' preference issues and USERRA discrimination issues.

Under USERRA, the Secretary of Labor reports USERRA information to Congress on an annual basis,¹⁴ after consulting with the Attorney General and Special Counsel. The Secretary's report includes information about the number of complaints reviewed by DOL during the fiscal year for which the report is filed along with the number of complaints referred to DOJ or OSC. The annual report should also address the nature and status of each complaint and should state "whether there are any apparent patterns of violation." Finally, the report should include any recommendations for administrative or legislative action that the Secretary of Labor, the Attorney General, or Special Counsel consider necessary to effectively implement USERRA. USERRA also granted DOL authority to issue regulations that implement USERRA provisions for state and local government and private employers.¹⁵ In its most recent report to Congress,¹⁶ the department did not note any apparent patterns of violation. DOL did note that it had published draft regulations implementing USERRA for the first time on September 20, 2004, and DOL has completed the evaluation of comments that were submitted in response to these draft regulations. DOL has submitted the

¹⁴ The act specified that the report was to be transmitted by February 1, 1996, and annually thereafter through 2000. The act was amended in 2004 to require a report by February 1, 2005, and annually thereafter.

¹⁵ The Office of Personnel Management, in consultation with DOL and DOD, was given the authority to issue similar regulations for federal executive agencies.

¹⁶ Fiscal year 2004.

final regulations to OMB for formal review prior to publication in the Federal Register, and publication is expected in the near future.

Department of Justice

The Attorney General is assigned enforcement responsibilities under USERRA, but DOJ is not authorized to receive USERRA complaints directly from servicemembers. It investigates, mediates, and litigates only private sector or state or local government complaints that it receives from DOL. The Civil Division in DOJ was responsible for handling USERRA complaints until September 2004, when DOJ transferred responsibility to its Civil Rights Division, which handles other types of employment discrimination complaints not related to military service. The Civil Division procedures called for the division to review the complaint and either (1) decline representation and return the complaint to DOL's regional solicitor's office because the complaint lacked merit or (2) forward the complaint to the U.S. Attorney's Office for possible litigation. If the complaint was forwarded, the U.S. Attorney's Office would assign the complaint to an assistant U.S. attorney who would review the information in the DOL referral,¹⁷ and interview the servicemember and potential witnesses. The assistant U.S. attorney then would make a determination on the merits of the complaint. If the assistant U.S. attorney found that the complaint was meritorious and the U.S. attorney agreed, the U.S. attorney's Office would represent the servicemember. In these situations, the assistant U.S. attorney would contact the employer and try to resolve the matter without litigation. If that failed, the assistant U.S. attorney would file a complaint against the employer in federal district court. If the assistant U.S. attorney found that the complaint was not meritorious and the U.S. attorney agreed, the complaint would be referred back to DOL and the servicemember would have the option of seeking their own legal representation and filing a complaint against the employer in federal district court. A settlement could be negotiated at any stage of the process. In July 2005, the Civil Rights Division was still following these procedures pending sufficient experience with USERRA complaints to decide if new procedures are necessary.

¹⁷ Each DOL referral includes (1) the VETS investigative file, (2) a memorandum prepared by the VETS regional office that makes a recommendation concerning the merits of the complaint, and (3) a letter or memorandum from the regional solicitor that analyzes the merits of the complaint based on the facts and the law. The letter also provides a recommendation as to whether DOJ should represent the servicemember.

DOJ's Civil Rights Division attorneys are trained in handling discrimination complaints because they receive training on Title VII of the Civil Rights Act of 1964. In addition, according to DOJ officials, 37 attorneys in the Employment Litigation Section received training on USERRA in March 2005 and also received a collection of reference documents relevant to USERRA. These attorneys are available to handle both civil rights and USERRA complaints. There are also 18 professional and 8 clerical staff who are trained on USERRA matters.

Office of Special Counsel

Under USERRA, OSC is responsible for enforcing USERRA rights at federal executive agencies. Prior to February 8, 2005, OSC was not authorized to receive USERRA complaints directly from servicemembers and had to wait until DOL referred the complaints. However, under a demonstration project,¹⁸ OSC may now receive USERRA complaints against federal executive agencies directly from certain servicemembers.¹⁹ OSC recently established a six-person USERRA unit to investigate, mediate, and, as necessary, litigate USERRA complaints. Under the traditional procedures, when a servicemember employed by a federal executive agency requests to have his or her DOL complaint referred to OSC, DOL's regional solicitor sends a referral to OSC. While OSC takes the referral information into account, OSC conducts its own review of the facts and the law and comes to its own conclusions on the merits of the complaint. If the complaint is received directly from the servicemember, OSC conducts the investigation without DOL input. In either case, if OSC is satisfied that the servicemember is entitled to corrective action, OSC begins negotiations with the servicemember's federal employer. If an agreement cannot be reached, OSC may represent the servicemember before the Merit Systems Protection Board. If the Merit Systems Protection Board rules against the servicemember, OSC may appeal the decision to the U.S. Court of Appeals for the Federal Circuit. In instances where OSC finds that complaints do not have merit, it informs the servicemembers of its decision not to represent them and informs servicemembers that they have the right to

¹⁸ The demonstration project was authorized by the Veterans Benefits Improvement Act of 2004, Pub. L. No. 108-454, § 204 (2004).

¹⁹ Under the demonstration project, complaints from servicemembers whose Social Security numbers end in odd numbers (1, 3, 5, 7, and 9) are referred to OSC and are no longer investigated by DOL. In addition, USERRA complaints that allege that a federal agency has engaged in prohibited personnel practices over which OSC has jurisdiction may be received directly by OSC regardless of the servicemembers' Social Security number.

take their claims to the Merit Systems Protection Board without OSC representation.

OSC's USERRA unit consists of three investigators, two attorneys, and a unit chief, who is also an attorney. According to the unit chief, the members of the USERRA unit spend most of their time on USERRA complaints but they also handle some other prohibited personnel practice complaints. The specific USERRA training for the unit consists primarily of on-the-job and other informal training.

DOD's Reserve Component Members' Employers

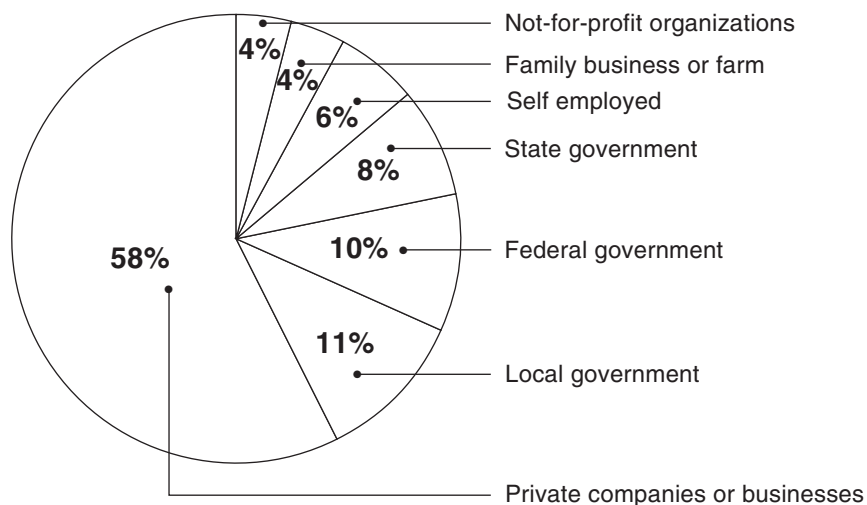
To support the personnel information needs of DOD, DMDC, which reports to the Under Secretary of Defense for Personnel and Readiness, surveys the attitudes and opinions of the DOD community on a wide range of personnel issues. In May 2004,²⁰ DMDC surveyed a random sample of 55,794 Selected Reserve²¹ members who had at least 6 months of service and who were below flag rank.²² Figures 2 and 3 show the projected results from survey questions that asked employed survey respondents about their employers. Figure 2 shows that about 10 percent of employed Selected Reserve members are self-employed or work in family businesses. According to the figure, about 29 percent of Selected Reserve members below flag rank work for federal, state, or local governments. However, the federal government percentage in this figure is understated because DMDC's survey did not ask full-time National Guard and Selected Reserve members and military technicians—DOD civilian employees who must be members of a National Guard or Reserve unit as a condition of their employment—the survey question from which these data are drawn.

²⁰ The Web-based survey was actually conducted from April 12, 2004, and June 3, 2004, but DMDC refers to this as its May 2004 Status of Forces Survey of Reserve Component Members. See appendix I for information about the DMDC survey methodology.

²¹ The Selected Reserve includes approximately 840,000 National Guard or Reserve members who are paid for their participation in regularly scheduled training. Selected Reserve members can be involuntarily called to active duty under a number of different mobilization authorities.

²² Flag officers are officers who have achieved the rank of brigadier general or rear admiral (lower half) or above.

Figure 2: Percentages of Selected Reserve Members Surveyed Who Work for Various Types of Employers

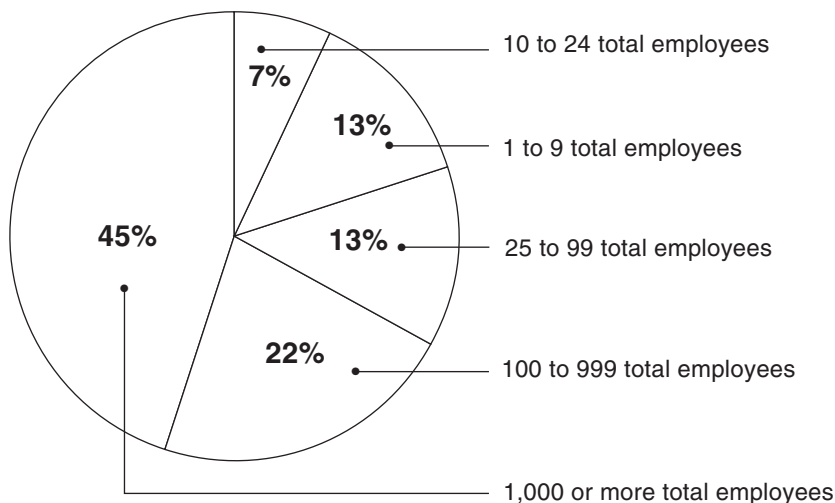


Source: GAO analysis of DMDC survey data.

Note: Percentages add to 101 percent due to rounding. The margins of error for each category are within +/- 2 percent.

Figure 3 shows that an estimated 45 percent of employed Selected Reserve members below flag rank are employed by large employers who have 1,000 or more total employees. The figure also shows that about 13 percent of employed Selected Reserve members work for small employers who have 9 or fewer total employees.

Figure 3: Percentages of Selected Reserve Members Who Work for Employers of Various Sizes



Source: GAO analysis of DMDC data.

Note: Employer size is based on total employees. The margins of error for each category are within +/- 2 percent.

GAO's Prior Reports

We have issued prior reports concerning USERRA and, more generally, about the need for results-oriented government. Our prior USERRA work has examined issues pertaining to employer support and enforcement of USERRA complaints at OSC. Our work on results-oriented government examined how the federal government could shift toward a more results-oriented focus.

Employer Support and USERRA

Since 2002, we have issued two reports related to employer support and USERRA. In our most recent report,²³ we provided information on OSC's role in enforcing USERRA. The report found that

- separate OSC and DOL determinations generally agreed on the merits of servicemember complaints,

²³ GAO, *U.S. Office of Special Counsel's Role in Enforcing Law to Protect Reemployment Rights of Veterans and Reservists in Federal Employment*, [GAO-05-74R](#) (Washington, D.C.: Oct. 6, 2004).

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- OSC took an average of about 145 days to process the 59 complaints it received between 1999 and 2003, and
 - OSC had made changes that were designed to expedite the handling of current USERRA complaints and any influx of new complaints.

In our earlier report,²⁴ we addressed DOD's management of relations between reservists and their employers. Our report stated the following.

- DOD had established a database to collect employer information from reserve component members on a voluntary basis in 2001. However, by May 14, 2002, only about 11,000 servicemembers had entered employer information into the database.
- DOD could not educate all employers concerning their USERRA rights and responsibilities because it viewed the Privacy Act as a constraint that prevented it from requiring reserve component members to provide civilian employer contact information.
- Ombudsmen were not always available to field servicemember phone calls.
- The ESGR did not have good data to determine the effectiveness of its outreach and mediation efforts.

We made a number of recommendations to address these and other findings in the report. In response to our recommendations, DOD reevaluated its interpretation of the Privacy Act and issued a requirement that all Ready Reserve²⁵ members provide contact information for their civilian employers to their military departments. DOD also began funneling calls to its volunteer ombudsmen through a central customer service center

²⁴ GAO, *Reserve Forces: DOD Actions Needed to Better Manage Relations between Reservists and Their Employers*, [GAO-02-608](#) (Washington, D.C.: June 13, 2002).

²⁵ The Ready Reserve includes about 1.1 million members from three groups: the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard. The Selected Reserve members are the only Ready Reserve members who participate in regular training, but members of all three groups can be involuntarily called to active duty under the mobilization authority invoked by President Bush on September 14, 2001, as implemented in Exec. Order No. 13,223, 66 Fed. Reg. 48,201, *reprinted as amended in* 10 U.S.C. § 12302 note (2001).

where information is logged into a database that is used to measure the ESGR's outreach and mediation efforts.

Results-Oriented Government

We have issued a number of reports that address the need for federal agencies to manage for results. In 2004, we issued a report²⁶ that examined, among other things, the challenges agencies face in using performance information in management decisions and how the federal government can continue to shift toward a more results-oriented focus. The report noted that serious weaknesses persist, such as how agencies are coordinating with other entities to address common challenges and achieve common objectives. Moreover, mission fragmentation and overlap contribute to difficulties in addressing crosscutting issues, especially when those issues require a national focus. Other barriers to interagency cooperation include conflicting agency missions, jurisdiction issues, and incompatible procedures, data, and processes. These issues are particularly important in the context of USERRA implementation and enforcement. Since USERRA provisions are administered by four distinct agencies, coordination is imperative to successfully implement this law in the context of results-oriented government.

Agencies' Available Data Provides Limited Insight in Overall USERRA Compliance and Employer Support

DOL, DOJ, OSC, and DOD have formal and informal USERRA complaint data, and some employer support figures. DOL's formal complaint numbers show a possible relationship with the level of reserve component usage and the number of complaints. By design, DOJ and OSC formal complaint numbers are small, and may not provide a fully accurate picture of USERRA compliance or employer support. DOD data indicate that some employers are exceeding USERRA requirements; however, these data have limitations. DOD has only 1 full year of informal complaint data, so it will be several years before it has data that can identify any meaningful trends. Furthermore, data from a DOD survey indicate that most servicemembers do not seek assistance for their USERRA problems, which indicates that complaint data alone cannot fully explain USERRA compliance or employer support.

²⁶ GAO, *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004).

DOL's Formal Complaint Numbers

Formal complaint numbers from DOL show a possible relationship with reserve component usage and the passage of USERRA. Table 1 contains DOL's formal complaint numbers and shows that DOL's formal complaint numbers rose significantly in fiscal year 1991 and remained high in fiscal year 1992. This increase followed DOD's activation²⁷ of almost 270,000 reserve component members for Operations Desert Shield and Desert Storm. The table also shows an increase in complaints between fiscal years 2001 and 2004. This increase followed the activation of more than 300,000 reserve component members for Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom. DOL's formal complaint data also show that complaints were generally lower in the years following USERRA's passage in 1994 than in the years prior to its passage. Table 1 shows that between fiscal years 1989 and 1994, DOL's annual formal complaint figures ranged from 1,208 to 2,537 but between fiscal years 1995 and 2004 the formal complaints were lower, ranging from 895 to 1,465. Finally, if complaints for the fourth quarter of fiscal year 2005 are consistent with the first three quarters, fiscal year 2005 complaint numbers could fall back to between the fiscal year 2002 and 2003 levels.²⁸ However, two recent changes could affect the number of complaints filed with DOL. First, a demonstration project now allows OSC to receive complaints directly from certain servicemembers instead of having the complaints referred to OSC by DOL. Second, DOL implemented an electronic (Form 1010) complaint form that allows servicemembers to file complaints directly from the DOL Web site rather than mailing or hand-delivering complaint forms to their local VETS offices.

²⁷ Activation is the term DOD uses to describe the process by which reserve component personnel are called to active duty. This call may be voluntary or involuntary.

²⁸ Between October 1, 2004, and June 30, 2005, DOL received 862 formal servicemember employment complaints. OSC also received 69 complaints that in previous years would have gone to DOL. If the complaint figures for the fourth quarter are consistent with the figures for the first three quarters, the final fiscal year 2005 complaint number would be 1,241 and would fall between the fiscal year 2002 and 2003 complaint levels.

Table 1: Formal Complaints Opened by the Department of Labor, Fiscal Years 1989 through 2004

Fiscal year	Number of complaints opened
1989	1,370
1990	1,534
1991	2,537
1992	2,332
1993	1,442
1994	1,208
1995	1,387
1996	1,270
1997	1,245
1998	1,051
1999	1,029
2000	929
2001	895
2002	1,195
2003	1,315
2004	1,465
Total	22,204
Average	1,388

Source: GAO analysis of DOL data.

Relatively few formal complaints reach DOJ and OSC each year since the formal process begins at DOL and complaints may be resolved there and not forwarded to DOJ or OSC. Thus, the number of formal complaint data from these two agencies is small and cannot be used to fully explain the relationship between complaints and USERRA compliance or employer support.²⁹ Between fiscal years 1995 and 2004, formal complaints at DOJ ranged from 37 to 59 complaints each year. OSC's annual formal complaint numbers ranged from 1 to 21 over the same period.³⁰

²⁹ However, as noted earlier, the demonstration project will affect the number of complaints filed at OSC since the project allows OSC to receive complaints directly from certain servicemembers.

³⁰ Because USERRA was passed in October 1994, DOJ and OSC would not have received USERRA cases from DOL from 1989 through 1994.

DOD Data Show Some Employers Are Exceeding USERRA Requirements

Data from DMDC and the ESGR show that some employers are exceeding USERRA requirements. DMDC's May 2004 survey found that many employers of Selected Reserve members had provided these members with extra benefits beyond those required by USERRA. Projections, which apply to more than 120,000 Selected Reserve members who were employed and had been activated in the 24 months prior to the survey,³¹ show that more than 26 percent of these members have employers who pay them salaries or differential pay³² for at least part of the time they are away from their civilian jobs performing military duties. Projections also show that more than 32 percent receive medical benefits that are not required by USERRA, and more than 30 percent receive other benefits above and beyond those required by USERRA. While these data indicate that some employers are exceeding USERRA, the DMDC data were collected only in 2004 and therefore cannot establish whether overall employer support is improving, steady, or declining.

The ESGR data show increases in both employer awards and statements of support, but these increasing figures cover a relatively small group of employers. Servicemembers are increasingly nominating their employers for the ESGR's various employer support awards. "Patriot Award" employers may be recognized for simply complying with USERRA. However, higher level awards typically require support above and beyond USERRA requirements. According to the ESGR officials, award nominations have increased over the years, and in fiscal year 2004 servicemembers nominated their employers for more than 20,000 awards. The ESGR's "Above and Beyond" award is one of the higher level awards. It is awarded annually by the ESGR's state committees and recognizes employers who have exceeded USERRA requirements. Many employers have received this award over the years, and in fiscal year 2004 the ESGR's state committees recognized 1,058 employers with "Above and Beyond"

³¹ The projected population excluded reserve component members who were military technicians, on full-time active duty, on state active duty, or currently activated.

³² Differential pay is money that is paid to an employee to make up the difference in lost wages when an employee's civilian salary is higher than his or her military salary.

awards.³³ In addition to increases in awards, the ESGR figures show increases in the numbers of employers signing the ESGR “statements of support.” In signing statements of support, employers acknowledge that they will comply with USERRA. Between 2000 and 2002, 575 employers signed statements of support. In 2003, 1,228 employers signed the statements, and by July 26, 2005, the ESGR records showed that almost 6,000 employers had signed statements of support. The ESGR continues to solicit statements of support, but is now focusing its outreach efforts on a “5-star” program, which encourages employers to move beyond simple USERRA compliance to increasingly higher levels of employer support. (See app. IV for additional details.) Despite encouraging increases in the ESGR’s employer support figures, the thousands of employers who have received awards or signed statements of support do not represent all the employers of the millions of servicemembers covered by USERRA.

Informal Complaint Data

The absence of informal complaint data prevents linking the informal complaint numbers and the total number of complaints. It will be several years before the ESGR can identify any meaningful trends in informal complaint numbers because the ESGR has only 1 full year of informal complaint data in its central database. Until October 2003, the ESGR had a manual complaint tracking system that relied on monthly reports from its state committees to its national headquarters. Our 2002 report³⁴ reviewed the ESGR’s effectiveness and found that the ESGR did not have an accurate count of the complaints handled by its ombudsmen. We found that

³³ Reserve Officers Association data also indicate that some of the nation’s largest employers are providing National Guard and Reserve members with increased support. Since 1990, the Reserve Officers Association has conducted annual surveys of Fortune 500 companies, which identified many corporate policies that exceed USERRA requirements. For example, the survey results published in 2003 showed that 132 companies paid full salaries, pay differentials, or a combination of salaries and differentials to their National Guard and Reserve employees who were called to emergency active duty. While the published Reserve Officers Association survey results show that many companies have increased their benefits to National Guard and Reserve employees over the years, some significant limitations prevent the data from being used to demonstrate trends in overall USERRA compliance or employer support. First, the policies of Fortune 500 companies do not necessarily reflect employers in general. Second, the companies responding to the survey differed from year to year. Third, survey response rates were generally low. For example, the 2003 response chart listed only 154 companies, the 2002 chart 132 companies, and the 2001 chart 119 companies. Finally, some survey responses on health plans did not always clearly distinguish between USERRA compliance and extra benefits.

³⁴ GAO, *Reserve Forces: DOD Actions Needed to Better Manage Relations between Reservists and Their Employers*, [GAO-02-608](#) (Washington, D.C.: June 13, 2002).

reporting by ombudsmen had been sporadic and some states had gone an entire year without reporting any complaints at all. In 2003, the ESGR began funneling calls to its ombudsmen through a central call center where the complaint information is logged into a centralized database before assigning the complaint to an ombudsman. As a result of the changed procedures, the ESGR is now able to track the complaints handled by each of its nearly 800 ombudsmen. After they have been assigned a complaint, ombudsmen can access, review, update, and close assigned complaints, but they cannot create new complaint files in the database. Although the database now captures the informal complaints brought to the ESGR, at the time of our review the ESGR had only collected 1 full year of complaint data—fiscal year 2004. Because informal complaint figures have not been captured annually, agencies cannot know whether informal complaints have been increasing, decreasing, or remaining steady.

Available data suggest that the number of informal complaints handled by the ESGR is large enough that if annual data were available, the volume of informal complaints could overshadow that of DOL's formal complaint data. We conducted a survey to collect information about the workload, backgrounds, and training of the ESGR's ombudsmen because the ESGR lacked complete and accurate ombudsmen data. We surveyed all of the 831 ombudsmen that the ESGR headquarters officials told us were available to handle complaints as of April 6, 2005. Of the 831 ombudsmen, 618 responded to our survey but 52 said they were not available to handle complaints as of April 6, 2005. (See app. V for a complete list of our survey questions and results.) Our survey asked the ombudsmen how many complaints they had handled and resolved since becoming ombudsmen.³⁵ Survey responses showed that the ombudsmen who were available to handle complaints on April 6, 2005, had handled 37,684 complaints. Although this figure does not cover a specific time period, it far exceeds the 22,204 formal complaints handled by DOL between 1989 and 2004. DMDC survey data also suggest that informal complaint numbers could overshadow formal complaint numbers. Projections from DMDC's May 2004 survey show that between 54 and 78 percent of Selected Reserve members with USERRA problems seek assistance from the ESGR but only

³⁵ Because the ESGR has assembled a fluid group of ombudsmen made up primarily of volunteers, we recognized that many of the ombudsmen who were handling complaints in previous years were no longer ombudsmen when we did our survey. Therefore, we did not attempt to capture annual complaint data and asked for total workload figures to obtain a rough estimate of informal complaint numbers that we could compare to the formal complaint data provided by DOL.

between 16 and 36 percent seek assistance from VETS. Cross tabulations of survey responses further showed that servicemembers who had received USERRA briefings were more likely to seek assistance from the ESGR than those who had never been briefed. Conversely, the cross tabulations showed that servicemembers who had received USERRA briefings were less likely to turn to VETS for assistance than those who had never been briefed. If this pattern continues, as more servicemembers are briefed about their USERRA rights, servicemembers may file more informal complaints and fewer formal complaints.

Agency Complaint Numbers Do Not Appear to Capture Most USERRA Problems

DMDC survey data indicate that formal and informal complaint numbers do not capture most USERRA problems experienced by servicemembers because most servicemembers do not seek assistance for their USERRA problems. In the spring of 2004, DMDC surveyed a random sample of 55,794 Selected Reserve members and received responses from more than 19,000 of these members. Survey respondents were asked about their civilian work experiences, reserve component programs and affiliations, and activations, and were asked a series of questions related to USERRA if they

- were not full-time National Guard or Reserve members, or military technicians;
- were not on active duty when they completed the survey;
- were employed during the week prior to the time when they completed the survey, or during the week prior to their activation; and
- had been activated during the 24 months prior to the time when they completed the survey.

The survey respondents who met these criteria were first asked if, despite their USERRA protection, they had experienced any of a series of USERRA problems. The survey projections show that between 4 and 8 percent of the 119,761 Selected Reserve members who met the criteria above did not receive prompt reemployment upon their return from military service; between 9 and 14 percent experienced a loss of seniority, seniority-related pay, or seniority-related benefits; and between 5 and 9 percent did not receive immediate reinstatement of employer-provided health insurance. The survey yielded similar results for other USERRA problems listed in the

survey question.³⁶ The survey respondents who experienced one or more problems were then asked if they had sought assistance for their problems. Survey results show that only between 18 and 28 percent of the 42,119 Selected Reserve members who had USERRA problems sought assistance for the problems. Therefore, at least 72 percent of the Selected Reserve members who had experienced USERRA problems never filed a complaint, either formal or informal, to seek assistance in resolving their problems. In a separate question, all of the Selected Reserve members who had responded to the survey were asked if they had ever filed a formal USERRA complaint with DOL/VETS. The survey results show that less than 2 percent of the more than 776,381 Selected Reserve members in the survey population have ever filed a formal USERRA complaint with DOL/VETS. The large percentage of servicemembers who fail to file either formal or informal complaints indicate that complaint data alone may be insufficient to fully explain USERRA compliance or employer support. Without periodic surveys of employment issues, such as DMDC's May 2004 survey, DOD will continue to have difficulties determining trends in USERRA compliance and employer support.

Agencies Have Conducted Educational Outreach, but Efficiency and Effectiveness of Outreach Has Been Hindered by Lack of Employer Information

Agencies have taken actions to educate hundreds of thousands of servicemembers and employers about USERRA, but the efficiency and effectiveness of agency outreach actions are hindered by a lack of employer information. DOD, DOL, and OSC have conducted educational outreach using a variety of means, such as individual and group briefings, Web sites, and telephone information lines. However, agencies have been restricted in their ability to efficiently and effectively target educational outreach actions to employers who actually have servicemember employees because only limited employer information is available.

Agencies Have Used a Variety of Means to Conduct Outreach

DOD, DOL, and OSC have used a variety of means to educate servicemembers and employers about USERRA, such as individual and group briefings, Web sites, and telephone information lines. According to agency officials and employers, one of the primary reasons employers

³⁶ These other problems included issues related to pensions, upgrade and refresher training, and health insurance (continuance during military service).

violate USERRA is their lack of knowledge about the law's requirements.³⁷ USERRA assigns DOD and DOL responsibilities for informing servicemembers and their employers about their USERRA rights, benefits, and obligations, but it gives the agencies flexibility to determine the appropriate means for conducting this outreach.³⁸ DOD and DOL have used this flexibility to conduct educational outreach through a wide variety of means. Group briefings are one of the primary means these agencies use to educate employers and servicemembers about the law. However, they also have USERRA information on their agency Web sites, and headquarters and field representatives respond to individual requests for information through toll-free phone lines.³⁹ Between September 11, 2001, and June 30, 2005, VETS staff responded to more than 34,000 requests for USERRA information⁴⁰ and conducted briefings for more than 247,000 people. DOL also made a USERRA poster available for employers to post in their workplaces as a means of complying with the requirements set forth in the Veterans Benefits Improvement Act, which was enacted in December 2004. The poster is on the VETS Web site and is included as appendix VI of this report. The poster does not include any information about OSC's role in providing assistance on USERRA problems, even though OSC told us that they have requested that DOL include information about OSC's role. DOD also conducts a wide range of outreach actions. Some activities, such as the ESGR statements of support and awards, were discussed earlier in this report, and appendix IV contains information on many of DOD's other outreach programs. Although not required by USERRA, OSC also has taken actions to educate federal employers about their responsibilities under the law. OSC officials have conducted USERRA briefings for executive branch

³⁷ Data suggest that employer violations of USERRA could be tied not only to employer knowledge of the law but also to servicemember understanding of the law. The May 2004 DMDC survey showed that the incidence of USERRA problems was lower among survey respondents who had received USERRA briefings than among respondents who had not received briefings. However, the cross tabulation of the results from the USERRA briefing question and the USERRA problem question yielded small subgroups and consequently cannot clearly establish a relationship between briefings and problems for the entire Selected Reserve population.

³⁸ 38 U.S.C. § 4333. The Secretary of Veterans Affairs shares these outreach responsibilities with the Secretary of Defense and Secretary of Labor.

³⁹ The ESGR's Web site is www.esgr.mil, and its toll-free telephone number is 800-336-4590. The VETS Web site is www.dol.gov/vets and its toll-free telephone number is 866-487-2365.

⁴⁰ About 50 percent of the requests came from active military or National Guard or Reserve members, about 29 percent from employers, and the remainder from the media and other groups and individuals.

employees and managers and other groups. For example, they have conducted briefings at recent federal dispute resolution conferences and for the District of Columbia Bar Association. OSC's Web site also contains information about USERRA, contact information for complaints or questions, and information about OSC's ongoing demonstration project.⁴¹

Efficiency and Effectiveness of Employer Outreach Efforts Are Hindered by Lack of Employer Information

Agencies have been restricted in their ability to efficiently and effectively target educational outreach actions to employers who actually have servicemember employees, because only limited employer information is available. To accomplish its employer outreach requirements, DOD established a database and a policy requiring collection of these data. However, information collection efforts are incomplete, which impedes agencies' ability to communicate with employers who have servicemember employees.

DOD Has a Policy and Means for Collecting Essential Employer Information

In 2001, DOD established a database to voluntarily collect employer information from reserve component members, but few servicemembers submitted the data, and following a recommendation in our 2002 report,⁴² DOD made the submission of employer information mandatory. On March 21, 2003, the Under Secretary of Defense for Personnel and Readiness signed a memorandum mandating the collection of employer information. The memorandum directed the military departments to immediately implement a civilian employment information program for National Guard and Reserve members subject to involuntary recall to active duty. This memorandum required that all members of the reserve components provide employment-related information upon assignment to the Ready Reserve⁴³ and at other times determined by their respective military

⁴¹ OSC's Web site is www.osc.gov, and the telephone number for its USERRA unit is 202-254-3620.

⁴² GAO, *Reserve Forces: DOD Actions Needed to Better Manage Relations between Reservists and Their Employers*, [GAO-02-608](#) (Washington, D.C.: June 13, 2002).

⁴³ DOD has more than a million Ready Reserve members, who are divided into three groups. The largest group is the Selected Reserve, which contains more than 800,000 members who train regularly for pay. The second group, the Individual Ready Reserve, contains more than 300,000 members. These members were previously trained during periods of active duty service, but do not participate in any regularly scheduled training and are not paid as members of the Individual Ready Reserve. The last and smallest group is the Inactive National Guard, which contains fewer than 2,000 members who are temporarily unable to participate in training but who wish to remain attached to their National Guard units.

departments. According to the Under Secretary's memorandum, one of the purposes for collecting the employer information is to "utilize (the information) on a recurring basis to assist the Department in accomplishing its employer outreach purposes under 38 U.S.C. 4333." The information required by the memorandum included employment status, employer's name, employer's complete mailing address, member's civilian job title, and the servicemember's length of experience in their civilian occupation. The memorandum indicated members who refuse to provide information or who provide false information may be subject to administrative action or punishment for dereliction of duty under the Uniform Code of Military Justice.

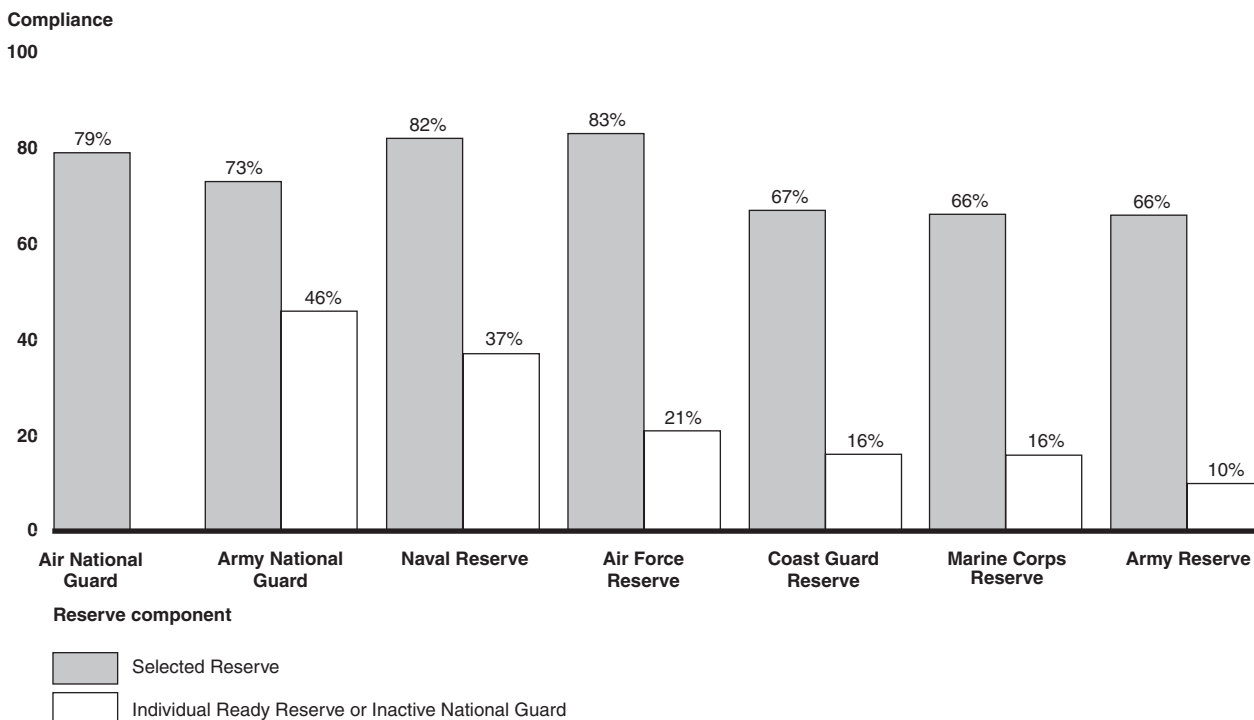
The memorandum assigned unit commanders the responsibility for ensuring that their Selected Reserve members were familiar with the memorandum's requirements and provided adequate time to comply with the requirements during training periods. The military departments were assigned responsibility for ensuring the compliance of other Ready Reserve members. According to DOD officials, reserve component members with a computer and Internet access can enter their employer information into DOD's database from home or they can enter the information at their units during normal training periods. The employer database is linked to the defense enrollment eligibility reporting system. Therefore, if reserve component members check on their dependents' eligibility for health care or enter their dependents into the system, they can also take the opportunity to enter or update their employer information.

Collection of Employer Information Is Improving, but Incomplete Data Impede the Efficiency and Effectiveness of Agencies' Outreach

The collection of employer information is improving but, more than 2 years after the Under Secretary called for the immediate implementation of a civilian employment information program, collection efforts are still incomplete, which impedes the efficiency and effectiveness of agencies' outreach efforts. As of August 2005, about 40 percent of DOD's Ready Reserve members had not entered their civilian employer information into DOD's database. The percentage of Selected Reserve members who have complied with the requirement to enter their employment information into the database has risen substantially over the past year—from 13 percent in October 2004, to 58 percent in April 2005, to 73 percent in August 2005, when we ended our review. Figure 4 shows the compliance rates for Selected Reserve members in each of the seven reserve components, as well as the compliance rates for Individual Ready Reserve and Inactive National Guard members in the six components where they serve. (The Air National Guard does not have any Inactive National Guard or Individual Ready Reserve members.) Figure 4 illustrates that compliance rates vary by

reserve component, supporting the assertion of DOD officials that compliance rates are tied to command attention and enforcement. Compliance rates are substantially lower for Inactive National Guard and Individual Ready Reserve members than they are for Selected Reserve members, further reflecting the lack of enforcement of the policy. Responsible DOD officials said that as far as they knew, the military departments had not enforced this policy by subjecting any servicemembers to punishment or administrative action for failing to comply with the policy.

Figure 4: Percentages of Ready Reserve Members Who Had Supplied Civilian Employment Information as of August 10, 2005



Source: GAO based on Office of the Assistant Secretary of Defense for Reserve Affairs data.

Since Individual Ready Reserve members do not participate in any regular training and have been recalled to active duty less frequently than Selected Reserve members, the employers of Individual Ready Reserve members may be unaware that their employees have a military obligation and that they, as employers of servicemembers, have USERRA obligations.

Therefore, outreach to these employers may be even more important than outreach to employers of Selected Reserve members. Between September 11, 2001, and June 30, 2005, more than 9,500 Individual Ready Reserve members had been recalled to active duty, with more than 4,500 coming from the Army Reserve and more than 4,200 from the Marine Corps Reserve.⁴⁴ Despite these activations, figure 4 shows that only 10 percent of the Individual Ready Reserve members in the Army Reserve and only 16 percent in the Marine Corps Reserve had entered their employer information into DOD's database.

In the absence of full compliance with the requirement for servicemembers to provide civilian employer information, agencies' abilities to conduct outreach to educate employers about USERRA has been hindered. Agencies have conducted many general outreach efforts but have been restricted in their ability to efficiently and effectively target outreach to employers who actually have servicemember employees. With limited employer data available, DOD is unable to share this information with the other federal agencies that perform employer outreach so that agencies can coordinate their activities to reach all the employers of servicemembers who are covered by USERRA. Without complete information about the full expanse of servicemember employers, the federal agencies conducting outreach efforts have no assurance that they have informed all servicemember employers about USERRA rights, benefits, and obligations. Therefore, agency outreach efforts are likely to be reaching some employers who do not have any servicemember employees while neglecting other employers who do have servicemember employees.

⁴⁴ During the same period, 21 Inactive National Guard members were called to active duty.

Agencies' Ability to Efficiently and Effectively Address Complaints Hampered by Incompatible Data Systems, Reliance on Paper Files, and Lack of Visibility

A segmented process with incompatible data systems hampers agencies' abilities to efficiently and effectively address servicemembers' complaints and report results as intended by USERRA. The speed with which servicemembers' USERRA complaints are addressed often hinges on efficient and effective information sharing among the agencies involved in the complaint resolution process; however, DOD, DOL, DOJ, and OSC use incompatible data systems to track USERRA complaints. This impedes information sharing and can lead to duplicative efforts that slow processing times. In addition, the use of paper files to transfer complaints among offices limits the agencies' abilities to efficiently process complaints and increases complaint processing times. Furthermore, agencies' abilities to monitor the extent to which complaints are efficiently and effectively addressed are hampered by a lack of visibility and by the segmentation of responsibilities for addressing complaints among several different agencies.

Incompatible Data Systems Hamper Ability to Address Complaints

The ability of DOD, DOL, DOJ, and OSC to effectively and efficiently address USERRA complaints has been hampered by the use of five different and incompatible automated systems to capture data about USERRA complaints. DOD, OSC, and DOJ⁴⁵ each operate one system and DOL operates two systems, one for its VETS offices and another for its solicitors' offices. Because the systems were created for different purposes, they do not capture the same data. The ESGR and VETS systems are complaint file systems that can contain extensive ombudsmen or investigator notes and details about individual complaints. The other three systems are used primarily for tracking purposes and do not capture extensive details about individual cases. Even when data fields in the different systems bear similar names, the information contained in the fields may not match. For example, in DOJ's Interactive Case Management System, the date closed means that final action has taken place on the complaint. In contrast, in the VETS system, the closed date can mean several different things, such as the date the investigator resolved the complaint, the date the servicemember requested to have his or her complaint referred to DOJ or OSC, or the date the complaint was withdrawn by the servicemember. During the course of our review, we attempted to compare complaint data from the VETS system to data from

⁴⁵ DOJ's Civil and Civil Rights Divisions have separate systems but the divisions' USERRA responsibilities cover different time periods.

the DOL solicitor, DOJ, and OSC systems. Because the systems captured data differently, we were not able to perfectly match the data during any of these attempts. In some cases we were able to match dates from the different systems, in other cases dates differed, and in still other cases we could not even identify the matching complaint files. Because DOL could not identify complaints that had been handled by the ESGR, we did not attempt to match DOL and the ESGR files.⁴⁶

The inability of ombudsmen, investigators, and other officials to share complaint information by electronically transferring information among their systems or accessing each other's systems may result in duplicate efforts to collect identical information that is needed to investigate and process USERRA complaints. For example, during informal mediation efforts, DOD's approximately 800 ombudsmen may gather pertinent information and documentation that concerns servicemember eligibility for USERRA coverage; civilian supervisors; employer policies and organizational structures, including information about who makes employment decisions; circumstances surrounding the alleged USERRA violations; and witness statements. However, if ombudsmen efforts do not resolve the complaints and the servicemembers elect to file formal DOL complaints, the ESGR officials cannot transfer information from their database directly to DOL's database, and DOL investigators do not have access to the ESGR's database. As a result of this inability to share information, VETS investigators sometimes start their investigations with nothing more than the basic information included on the formal complaint form, and they later contact servicemembers and employer representatives to request the exact same information that was previously provided to the ESGR ombudsmen. These duplicative efforts slow complaint processing times, increase the times that servicemembers must wait to have their complaints fully addressed, and may frustrate servicemembers or employers. Likewise, DOL cannot transfer information from the VETS database to DOJ, OSC, or even to DOL's solicitors' offices, and people in these other offices do not have access to the VETS database. As a result, officials in these other offices may contact the servicemember or employer and again request information that had been previously provided to the ESGR or VETS.

⁴⁶ Shortly before we ended our review, VETS began identifying the complaints that had gone to the ESGR prior to coming to DOL.

Reliance on Paper Files Limits Ability to Efficiently Address and Oversee Complaints

As complaints are referred from one office to another, agencies are unable to efficiently process complaints because they are forced to create, maintain, copy, and mail paper files due to the incompatible data systems. For example, when a servicemember asks a VETS investigator to refer his or her complaint to DOJ or OSC, the investigator cannot electronically transfer the complaint information to the requisite offices. Instead, the investigator prepares and mails a paper complaint file to a VETS regional office where the file is reviewed, added to, and then mailed or hand carried to a DOL solicitor's office. The solicitor's office then reviews the file, adds a legal opinion concerning the merits of the complaint, and mails the file to OSC or DOJ. Because VETS investigators cannot electronically transfer information when they refer complaints, they face the administrative burden of maintaining both paper and electronic complaint files that contain much of the same information.

This reliance on paper files results in increased complaint processing times and can limit managers' abilities to provide effective and timely oversight. When complaint numbers are large, managers can exercise more efficient and effective oversight of electronic complaint files that are stored in automated systems with query capabilities than of geographically dispersed paper complaint files. Of the four federal agencies we reviewed, only the agencies that deal with large numbers of complaint files—DOD and DOL—had electronic complaint files that were stored in automated systems with query capabilities that facilitate oversight. However, DOL still considers its paper complaint files its official records, and the VETS operations manual outlines management oversight and internal control procedures that focus on reviews of the investigators' paper files. Because the paper files are located in VETS offices in all 50 states, the District of Columbia, and Puerto Rico, paper file reviews take longer than electronic file reviews, and managers can lose visibility of paper case files. For example, during our visits to two regional VETS offices, we judgmentally selected 64 complaints and asked to review the paper complaint files to compare the data in those files to information in the VETS automated system. Officials located 60⁴⁷ of the 64 paper files we requested, but 8 weeks after our visit to one office, officials were still unable to locate the

⁴⁷ We actually reviewed 59 paper complaint files because one of the files we were given to review contained the wrong complaint number. Officials later located the correct file but we did not review it.

other 4 files and concluded that the files had been misplaced or lost.⁴⁸ In addition, our review of data from the VETS automated database identified a number of issues that warranted management attention. However, the VETS reviews of sample paper files had not addressed the full scope of these problems in a timely manner. For example, we were able to quickly identify more than 430 complaints that had been closed and then reopened, and we were also able to identify that a large portion of these reopened cases occurred in a single region, many with a single investigator.⁴⁹ If VETS oversight procedures had focused on electronic file review rather than paper file review, corrective action could have been taken sooner on cases that were improperly closed.⁵⁰

Segmented Responsibilities and Lack of Visibility Impedes Ability to Monitor and Report the Extent to Which Complaints Are Efficiently and Effectively Addressed

The ability of agencies to monitor the efficiency and effectiveness of the complaint process is hampered by a lack of visibility and by the segmentation of responsibility for addressing complaints among several different agencies. From the time informal complaints are filed with the ESGR through the final resolution of formal complaints at DOL, DOJ, or OSC, no one has visibility over the entire process. The segmented complaint resolution process means that the agency officials who handle the complaint at various stages of the process generally have limited or no visibility over the other parts of the process for which they are not responsible. This prevents any one agency from monitoring the length of time it takes for a servicemember's complaint to be fully addressed, and leads agencies to focus on output figures for their portion of the complaint process rather than on overall federal responsiveness to complaints. As a result, agencies have developed goals that are oriented toward outputs of their agency's portion of the process rather than toward results for an

⁴⁸ Agency officials told us that they had "reconstructed" the four missing files, but we did not review the reconstructed files.

⁴⁹ Officials from this region claimed that they were aware of problems with reopened cases in their region and had addressed the problem. However, one case was closed and reopened six times before the problem was addressed. We did not review all of the more than 430 reopened cases to verify whether or not the cases had been reopened properly or whether problems with reopened cases had been corrected in this region or in DOL's other regions.

⁵⁰ During our review of 59 paper complaint files, we reviewed 28 reopened complaints. We found that some of these complaints were closed and then reopened for valid reasons. However, other case closures simply stopped the processing time clock without addressing the servicemembers' complaints. For example, one case was closed while the investigator was waiting to receive information from an employer. Another was closed to allow the investigator time to consult with the solicitor's office.

individual servicemember's complaint. For example, agency goals address complaint processing times at different stages of the process,⁵¹ but agencies do not measure a result of primary concern to servicemembers—the elapsed time between the bringing of a complaint to a federal agency and the complaint's final resolution. Due to the incompatibility of agency systems and the lack of visibility across agencies, we were not able to track the entire elapsed time that servicemembers wait to have their complaints fully addressed. However, the VETS database attempts to capture processing times from the time a servicemember files a formal complaint until the time the complaint is finally resolved by VETS, DOL's solicitor's office, DOJ, or OSC.⁵² To highlight the difference between agency focuses on processing times and servicemember concerns with elapsed times, we reviewed complaints that had been closed and later reopened by VETS investigators.⁵³ Between October 1, 1996, and June 30, 2005, servicemembers filed 10,061 formal complaints with DOL. More than 430 of these complaints were closed and later reopened, and 52 of the 430 complaints were closed and reopened two or more times. For example, one investigator opened a complaint file on September 30, 2001, and then closed and reopened the complaint six times before finally referring the complaint to the VETS regional office on September 9, 2002. We analyzed the processing times and elapsed times for the 52 complaints that had been closed and reopened two or more times and found substantial differences between the figures. DOL's system assigned separate complaint numbers to the 52 complaints each time the complaint was opened or reopened.⁵⁴ As a

⁵¹ For example, one VETS goal is to close 85 percent of USERRA complaints within 90 days of the date the complaints were filed. However, a complaint may still need to go to DOJ or OSC for final resolution after it has been closed by the VETS investigator. In addition, DOJ's Assistant Attorney General has directed that, where the Civil Rights Division believes representation is warranted, a representation recommendation should be made within 90 days of receipt of the meritorious referral from DOL. Furthermore, the 90 days does not count any time that the ESGR spent trying to resolve the complaint.

⁵² As noted earlier, the dates in the VETS system do not always match the dates in the other systems.

⁵³ VETS procedures specify that if the servicemember provides the investigator with additional evidence for the initial complaint filed, the existing complaint is re-opened and the information is added. However, if the servicemember lodges a new issue, a new complaint is opened.

⁵⁴ Reopened complaints are assigned a complaint number, which begins the same as the original complaint number but which contains a "R" on the end of the number to indicate that it is a reopened complaint. Complaints that are reopened twice contain a "R2" at the end, those that are reopened three times a "R3," etc.

result, the system recorded the average processing time as 103 days. However, from the servicemembers' perspectives, it took much longer for DOL, DOJ, and OSC to address their complaints.⁵⁵ The servicemembers who filed the 52 complaints actually waited an average of 619 days from the time they first filed their initial formal complaints with DOL until the time the complaints were fully addressed by DOL, DOJ, or OSC.⁵⁶ Because agency officials do not have visibility over the entire complaint resolution process and no one has information about the time it takes federal agencies to fully address servicemember complaints, the Secretary of Labor, Attorney General, and Special Counsel cannot evaluate the full range of administrative or legislative actions that may be necessary to effectively implement USERRA, and the Secretary of Labor's annual report to Congress cannot be as accurate and complete as required.⁵⁷

Conclusions

Informal and formal complaint data from the agencies responsible for enforcing and implementing USERRA do not support the analysis needed to determine if employer compliance with USERRA and support for the act's purpose has improved since passage of the act in 1994. The responsible agencies collect data and some insight may be gained from DOL's formal complaint numbers. However, the numbers from DOJ and OSC are small and cannot be used to fully explain the relationship between complaints and USERRA compliance or employer support, and DOD's data collection effort is so new that meaningful trends cannot yet be identified using informal complaint data. Complaint data alone may not accurately reflect the problems servicemembers are experiencing transitioning between their federal service and civilian employment. The vast majority of surveyed National Guard and Reserve members who experienced USERRA-related problems did not seek assistance for their problems. The survey data do not lend themselves to the analysis needed to determine if

⁵⁵ We collected information on the 52 complaints in July 2005. At that time, DOL had closed 24 complaints, DOJ and OSC had closed 20 complaints, 4 complaints were still open at DOL, and 4 complaints were open at DOJ or OSC.

⁵⁶ Because dates in the VETS system do not always match the dates in other systems, the calculated processing and elapsed times may not be accurate for complaints that have been referred from the VETS investigator to DOJ or OSC. Therefore, the figures presented here should not be considered precise reflections of processing times or elapsed times. The figures are presented because they are the best data available to illustrate the difference between the agencies' focuses on outputs and the servicemembers' concern with results.

⁵⁷ 38 U.S.C. § 4332 (2005).

the problems were resolved to the servicemember's satisfaction. DOD periodically conducts these surveys to identify issues that need to be addressed or monitored. However, questions on the surveys vary from year to year and have not always included those pertaining to USERRA compliance and employer support. Periodic, projectable surveys of the servicemembers who are covered by USERRA could provide DOD, DOL, DOJ, and OSC with a means to determine whether or not USERRA compliance and employer support is improving and thus, USERRA's purpose—to minimize employment disadvantages that can result from service in the uniformed service—is being achieved.

Employer violation of USERRA is often attributed to employers' lack of knowledge about the law's requirements. Having a means to identify the civilian employers of servicemembers who are covered by USERRA is essential to effectively and efficiently target the agencies' educational outreach efforts. DOD has made progress establishing a civilian employer database. However, DOD has not taken steps to enforce its requirement for National Guard and Reserve members to enter and maintain their civilian employer data. Until complete employer information is obtained, agency outreach efforts are likely to be reaching some employers who do not have any servicemember employees, while neglecting other employers who do have servicemember employees.

Currently, DOD's ESGR, DOL's VETS and solicitors' offices, DOJ, and OSC all operate their own automated systems for tracking USERRA complaints. Officials from each agency have access to their own system but they cannot access complaint information in the automated systems of the other agencies, and complaint data cannot be electronically transferred from one system to another. As a result, officials from different agencies sometimes spend time collecting information that has already been provided to another agency. This slows the complaint resolution process. In addition, because data systems are incompatible, formal referrals from VETS investigators to DOJ or OSC must be accompanied by a paper file, which is first routed through a VETS regional office and a DOL solicitor's office. The creation, maintenance, and transfer of these paper files add to complaint processing times and the time servicemembers wait to have their complaints addressed. As long as agency systems remain segmented and incompatible and referral information is passed through the mail, complaints will continue to be processed inefficiently.

VETS investigators are geographically dispersed across the country and they maintain both paper and electronic USERRA complaint files.

Managers with the requisite level of authority can have virtually instant access to every electronic complaint file from every investigator across the country. However, DOL considers its paper complaint files its official records. As a result, the VETS operating procedures and internal controls are geared toward the review of the paper complaint files. These paper reviews are time consuming. In addition, paper files can be misplaced or lost when they are moved from office to office. Until VETS switches to electronic files, investigators will continue the inefficient practice of maintaining duplicate records and managers will be limited in their ability to provide timely oversight and effective corrective actions for any problems that arise.

The responsibility for enforcing and implementing USERRA is complex, involving several federal agencies. A single complaint can start at DOD and flow through three different DOL offices before finally being resolved at DOJ or OSC. The segmented complaint resolution process means that the agency officials who handle the complaint at various stages of the process generally have limited or no visibility over the other parts of the process for which they are not responsible. As a result, agency officials have not addressed complaint processing issues that cut across federal agencies or set outcome-oriented goals. Instead, agencies have focused their goals on outputs from their particular portions of the complaint process rather than focusing on overall federal responsiveness to USERRA complaints. Meanwhile, the servicemember knows how much time is passing since the initial complaint was filed. Under USERRA, specific outreach, investigative, and enforcement roles are assigned to DOD, DOL, DOJ, and OSC. However, no agency has visibility over the entire complaint process. Therefore, it is difficult for the responsible agencies to achieve their common goal—to minimize the employment disadvantages that can result from service in the uniformed service, and the time servicemembers wait to have their complaints fully addressed—which is of great importance to servicemembers. Furthermore, the Secretary of Labor's annual reports will not provide Congress with a complete and accurate picture of USERRA violation patterns or the legislative actions that may be necessary to effectively implement the act.

Recommendations for Executive Action

To gauge the effectiveness of federal actions to support USERRA by identifying trends in USERRA compliance and employer support, we recommend that the Secretary of Defense direct the Under Secretary of Defense for Personnel and Readiness to include questions in DOD's periodic Status of Forces Surveys to determine

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- the extent to which servicemembers experience USERRA-related problems;
 - if they experience these problems, from whom they seek assistance;
 - if they do not seek assistance, why not; and
 - the extent to which servicemember employers provide support beyond that required by the law.

To more efficiently and effectively educate employers about USERRA through coordinated outreach efforts, which target employers with servicemember employees, we recommend that the Secretary of Defense take the following two actions:

- Direct the service secretaries to take steps to enforce the requirement for servicemembers to report their civilian employment information and develop a plan to maintain current civilian employment information.
- Direct the Assistant Secretary of Defense for Reserve Affairs to share applicable employer information from DOD's employer database with DOL, OSC, and other federal agencies that educate employers about USERRA, consistent with the Privacy Act.

To increase agency responsiveness to servicemember USERRA complaints, we recommend that the Secretary of Defense, the Secretary of Labor, the Attorney General, and the Special Counsel develop procedures or systems to enable the electronic transfer of complaint information between offices.

To reduce the administrative burden on VETS investigators and improve the ability of VETS managers to provide effective, timely oversight of USERRA complaint processing, we recommend that the Secretary of Labor direct the Assistant Secretary for Veterans' Employment and Training to develop a plan to reduce agency reliance on paper files and fully adopt the agency's automated complaint file system.

Matter for Congressional Consideration

To encourage agencies to focus on results rather than outputs, to improve federal responsiveness to servicemember complaints that are referred from one agency to another, and to improve the completeness and accuracy of the annual USERRA reports to Congress, Congress should consider designating a single individual or office to maintain visibility over the entire

complaint resolution process from DOD through DOL, DOJ, and OSC. For example, the office or individual would track and report the actual time it takes for federal agencies to fully address servicemember USERRA complaints.

Agencies Comments and Our Evaluation

In written comments on a draft of this report, DOD, DOL, and OSC generally concurred with our findings and recommendations to their respective agencies. DOJ reviewed a draft of this report and had no comments on this report. DOD deferred to DOL, DOJ, and OSC regarding our recommendation for the agencies to develop procedures or systems to enable the electronic transfer of complaint information between agencies. DOL and OSC commented on our matter for congressional consideration that Congress should consider designating a single office to maintain visibility over the entire conflict resolution process.

In DOD's written comments, the department concurred with our recommendation for the Secretary of Defense to include questions on servicemembers' employment issues in DOD's continuing Status of Forces surveys that would address (1) the extent to which servicemembers experience USERRA-related problems; (2) from whom the servicemembers sought assistance if they experienced such problems; (3) if they did not seek assistance, why not; and (4) the extent to which the servicemembers' employers provide support beyond that required by law. DOD stated that the department's May 2004 Status of Forces survey asked a series of questions about reemployment after activation that included the areas addressed in our recommendations. We disagree. For this report, we used results from the May 2004 survey that showed at least 72 percent of the Selected Reserve members who had experienced USERRA-related problems never filed a complaint, informal or formal, to seek assistance in resolving the problem. However, the survey did not cover all the areas addressed in our recommendation. For example, the survey did not ask those servicemembers who had experienced USERRA-related problems and never filed a complaint, informal or formal, why they did not seek assistance in resolving the problem. We believe that this would be valuable information, if gathered regularly, to gauge the effectiveness of federal actions to support USERRA by identifying trends in compliance and employer support. DOD also stated that, at the request of DOL, it has agreed to include the series of questions about reemployment after activation in future surveys. OSC generally concurred with this recommendation, but had no specific comment. DOL did not comment on this recommendation.

DOD also concurred with our recommendation for the Secretary of Defense to (1) take steps to enforce compliance with servicemembers' reporting of their civilian employer information and maintain employer information, and (2) share employer information from the database with other federal agencies that educate employers about USERRA. DOD stated that the first objective of this recommendation had already been accomplished. We disagree. In our report, we noted that compliance with the requirement to enter Selected Reserve member employment information into the database has risen substantially during this review—from 13 percent in October 2004, to 58 percent in April 2005, to 73 percent in August 2005. We also noted that compliance varies by component, with the Army Reserve and the Marine Corps Reserve each having the lowest percentage of compliance—66 percent. Further, we noted that compliance rates are substantially lower for the Individual Ready Reserve and the Inactive National Guard—about 24 percent. Individual Ready Reserve and Inactive National Guard members are subject to be recalled to active duty. About 9,500 Individual Ready Reserve members were called to duty between September 11, 2001, and June 30, 2005. Outreach to employers of Individual Ready Reserve members may be even more important than outreach to Selected Reserve members' employers. Individual Ready Reserve members do not participate in regular drilling and their employers may be unaware of the employees' military obligations and USERRA rights. As the war on terrorism continues, DOD may rely more upon Individual Ready Reserve members. DOD also noted that enforcement of compliance is a high priority and is already monitored. As noted in our report, responsible officials told us that as far as they knew, the military departments had not enforced the requirement for servicemembers to comply with reporting their civilian employer information by subjecting any member to punishment or administrative action for failing to comply. We believe DOD has more to accomplish in this area. With regard to the second objective of this recommendation, DOD stated that it is working collectively with DOL and the Department of Veterans Affairs to ensure that their respective systems facilitate consistent reporting capabilities. OSC generally concurred with both objectives of this recommendation, but had no specific comments. DOL did not comment on this recommendation.

DOD deferred to DOL, DOJ, and OSC regarding our recommendation for the Secretary of Defense, along with the Secretary of Labor, the Attorney General, and the Special Counsel, to develop procedures or systems to enable the electronic transfer of complaint information between agencies. DOD stated that the department only tracks "informal inquiries," not complaints that are filed with DOL, with possible referral to the DOJ or the

OSC. Therefore, establishment of a complaint database would fall within the purview of those agencies. DOD noted that it would support the sharing of USERRA information received by DOD with responsible agencies. We note that DOD's system can contain extensive ombudsmen notes and details about informal complaints, not just inquiries for information that are tracked separately, and would be beneficial and time saving to DOL if an informal complaint becomes a formal complaint filed with DOL. DOL concurred with this recommendation and noted that DOL has initiated internal discussions on ways in which DOL offices can ultimately use one electronic case management system. DOL stated that the department will work closely with DOD, DOJ, and OSC in advancing an electronic shared system configured to fit the agencies' responsibilities under USERRA. OSC also concurred with this recommendation, noting that OSC's ability to enforce USERRA has not been adversely affected by the transfer of information by other than electronic means. Nevertheless, OSC noted that the office was dedicated to improving USERRA services to servicemembers and thus generally concurred with the recommendation, although OSC indicated that the development of USERRA-specific electronic files may require additional funding from Congress.

DOL concurred with our recommendation for the Secretary of Labor to develop a plan to reduce agency reliance on paper files and fully adopt the agency's automated complaint file system. DOL noted that the establishment of such electronic files would enhance DOL's ability to more efficiently and effectively share documents and other case-specific data with other agencies, thus advancing accomplishment of our recommendation for DOD, DOL, DOJ, and OSC to develop procedures or systems to enable the electronic transfer of complaint information between agencies.

DOL and OSC commented on our matter for congressional consideration that Congress should consider designating a single office to maintain visibility over the entire complaint resolution process from DOD through DOL, DOJ, and OSC. DOL noted that the mandated OSC demonstration project is ongoing, and therefore, it would be premature to make any suggestions or recommendations for congressional or legislative action until the pilot has been completed. However, DOL stated that its office is uniquely suited to provide an overview of the entire complaint resolution process. OSC supported our matter and stated that OSC has unparalleled experience and expertise in administering federal sector employment complaints and prosecuting meritorious workplace violations before the Merit Systems Protection Board. OSC believes that their office is the best

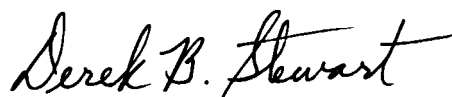
qualified to be the overseer. DOD did not comment on this matter. We believe that the Congress is the best qualified to determine the identity of the overseer and the timing of this matter for congressional consideration.

DOD, DOL, and OSC's written comments are reprinted in their entirety in appendixes VII, VIII, and IX, respectively. All the agencies also provided technical comments, which we incorporated as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We are sending copies of this report to the Secretary of Defense; the Secretary of Labor; the Attorney General; the Special Counsel; the Secretaries of the Army, the Navy, and the Air Force; the Commandant of the Marine Corps; the Chairman of the Joint Chiefs of Staff; the Director, Office of Management and Budget; and other interested congressional committees. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-5559 or stewartd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix XI.

Sincerely yours,



Derek B. Stewart
Director, Defense Capabilities and Management

Scope and Methodology

To assess whether the federal agencies that support or enforce USERRA have data that indicates the level of compliance with USERRA, we gathered and analyzed data from DOL, DOD, DOJ, and OSC. Specifically, we obtained historical data on the numbers of formal complaints handled by DOL and then analyzed the data to determine whether the data showed any trends and whether it was sufficient to demonstrate overall USERRA compliance or employer support. We also analyzed the annual numbers of formal complaints referred from DOL to DOJ and OSC between fiscal year 1997 and the third quarter of fiscal year 2005 to determine whether there were trends in the total referrals, or the referrals to either agency.¹ We also followed up on our 2002 report² to determine whether the ESGR had improved its collection of informal complaint data. We interviewed the ESGR headquarters officials and ombudsmen who handled informal complaints. We observed training for the ESGR's new database and we observed data entry procedures at the ESGR's Customer Support Center. In addition, we analyzed DMDC's projectable Status of Forces Survey of Reserve Component Members, which was conducted in the spring of 2004. This survey included more than 20 questions about servicemember employment and USERRA-related issues. We also analyzed results from the Reserve Officers Association's annual surveys of Fortune 500 companies, which asked about policies that support servicemember employees. We discussed the agency data related to USERRA compliance or employer support, along with the practices and methods used to collect these data, with responsible officials from the

- Department Of Labor, Washington, D.C.;
- Department Of Labor, Veterans Employment and Training Service, Field Offices in Memphis, TN, and Norfolk, VA; and regional offices in Philadelphia, PA; and Atlanta, GA;
- Department Of Labor, Office of the Solicitor, Washington, D.C.; and Regional Offices in Philadelphia, PA, and Atlanta, GA;
- Department of Justice, Washington, D.C.;

¹ Data analysis was performed using DOL's database, which became officially operational beginning fiscal year 1997.

² GAO, *Reserve Forces: DOD Actions Needed to Better Manage Relations between Reservists and Their Employers*, [GAO-02-608](#) (Washington, D.C.: June 13, 2002).

- Office of Special Counsel, Washington, D.C.;
- Department Of Defense, Employer Support of the Guard and Reserve, Arlington, VA; and
- Department Of Defense, Employer Support of the Guard and Reserve, Customer Service Center, Millington, TN.

We also discussed these issues with

- The ESGR's State Ombudsmen Coordinators from AR; IL; KY; MD; TN; UT; and Washington, D.C.,

and with officials who were present at

- The ESGR's Basic Ombudsman Training Session held in Meridian, MS.

To gauge the impact of the ESGR's ombudsmen program, we conducted a survey of ombudsmen nationwide. We wished to survey all ombudsmen who were available to handle servicemember complaints as of April 6, 2005 (the "target" population). To do this, we obtained the list that the ESGR was using to assign USERRA complaints to ombudsmen on that date (the "study" population), which presumably included all of the individuals who were available to handle complaints. We conducted seven pretests of our ombudsmen questionnaire prior to administering the survey. During the pretests we asked the ombudsmen whether (1) the survey questions were clear, (2) the terms used were precise, and (3) the questions were unbiased. We made changes to the content and format of the final questionnaire based on pretest results.

The ombudsmen surveys were conducted using self-administered electronic questionnaires posted on the World Wide Web. The survey questionnaire consisted of 12 questions, and asked ombudsmen how many USERRA complaints they had received and personally resolved. (App. V contains a copy of the survey and the survey results.) On May 3, 2005, we used a list supplied by the ESGR headquarters to send E-mail notifications to 831 ombudsmen in 54 states and territories to inform them that a survey would be forthcoming. Then, on May 9, 2005, we activated the survey, sending each of the 831 members of the study population a unique password and username by E-mail so they could enter and complete the Web-based questionnaire. To encourage ombudsmen to respond, we sent two additional E-mail messages over the following 3 weeks. Those

ombudsmen who were unable to complete the survey online were given the option to respond via fax, phone, or mail. We closed the survey on June 9, 2005.

Although all members of the study population were surveyed, not every member replied to our survey. Specifically, 618 of the 831 members of the study population replied. In addition, 52 of the 618 respondents were out of scope because they indicated they were not serving as volunteer ombudsmen as of April 6, 2005. Table 2 contains a summary of the survey disposition for the surveyed cases. The response rate for our survey was 74 percent.³

Table 2: Data from GAO's Survey of the ESGR Ombudsmen

Ombudsmen in the study population	831
Ombudsmen replying to the survey	618
Ombudsmen replying who were out of scope	52
In scope respondents	566
Response rate	74 percent

Source: GAO.

We obtained responses from volunteer ombudsmen across the country. Although the response rate of ombudsmen differed somewhat across states, we have no reason to expect that the responses on the issues studied in our survey would be associated with the ombudsmen's states. Therefore, our analysis of the survey data treats the respondents as a simple random sample of the population of the ESGR volunteer ombudsmen across the country.

Assuming that the respondents constitute a random sample from the study population, the particular sample of ombudsmen we obtained was only one of a large number of such samples that we might have obtained. To recognize the possibility that other samples might have yielded other

³ This response rate (number of in scope respondents/estimated total number of in scope ombudsmen in the study population) is calculated using the RR3 response rate formula from the American Association for Public Opinion Research. In this formula we assumed that the percentage of nonrespondents who were within the scope was the same as the percentage of the respondents who were within the scope.

results, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. Unless otherwise noted, the percentage estimates from the survey have a margin of error of plus or minus 3 percent or less with a 95 percent level of confidence. All numerical estimates other than percentages have a margin of error of plus or minus 14 percent or less of the value of those numerical estimates with a 95 percent level of confidence, unless otherwise noted.

The practical difficulties of conducting any survey may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in how a particular question is interpreted, in the sources of information that are available to respondents, or in how the data are entered into a database or were analyzed, can introduce unwanted variability into the survey results. We took steps in the development of the questionnaire, the data collection, and the data analysis to minimize these nonsampling errors. For example, social science survey specialists designed the questionnaire in collaboration with GAO staff with subject matter expertise. Then, the draft questionnaire was pretested to ensure that the questions were clearly stated and easy to comprehend. When the data were analyzed, a second, independent analyst checked all computer programs. Since this was a Web-based survey, most respondents entered their answers directly into the electronic questionnaire. This eliminated the need to have the data keyed into a database, thus removing an additional source of error. A GAO analyst entered responses into our database from those ombudsmen who were unable to complete the survey on-line and responded via fax, phone, or mail. All these data were independently verified by a second analyst to ensure their accuracy.

We also assessed the reliability of the data from the May 2004, Status of Forces Survey of Reserve Component Members, by (1) interviewing agency officials from

- the Defense Manpower Data Center, Washington, D.C., and
- the Assistant Secretary of Defense for Reserve Affairs, Washington, D.C.,

who were knowledgeable about the data, (2) reviewing existing information about the data and the system that produced them, and (3) performing electronic testing of required data elements. The response rate for the survey was 39 percent. To the extent that respondents and nonrespondents had different opinions on the questions asked, the

estimates from this survey have the potential to be biased. DOD has previously conducted and reported on research to assess the impact of response rate on overall estimates. DOD found that, among other characteristics, junior enlisted personnel (E1 to E4), servicemembers who do not have a college degree, and members in services other than the Air Force, were more likely to be nonrespondents. We have no reason to believe that potential nonresponse bias not otherwise accounted for by DOD's research is substantial for the variables we studied in this report. All percentage estimates cited from the survey have sampling errors of plus or minus 2.3 percentage points or less, unless otherwise noted. The at least 72 percent of National Guard and Reserve members who never sought assistance for their USERRA problems represents the lower bound of a 95 percent confidence interval around a point estimate (77 percent) that has a plus or minus 5 percent margin of error. Ranges cited from the survey represent a 95 percent confidence interval around point estimates. We used the weighting factors and the sampling error methodology provided by the Defense Manpower Data Center to develop estimates and sampling error estimates, and determined that the data from the May 2004 Status of Forces Survey of Reserve Component Members were sufficiently reliable for the purposes of this report.

To assess the efficiency and effectiveness of federal educational outreach efforts, we reviewed Section 4333 of Title 38 of the United States Code to determine which agencies have outreach responsibilities under USERRA. We interviewed agency officials to determine whether their agencies had any significant educational outreach efforts. Although only two of the four agencies we reviewed had outreach responsibilities under the law—DOD and DOL—officials from three agencies said that they had significant outreach activities—DOD, DOL, and OSC. We obtained information about each agency's activities, and analyzed the available outreach figures for individual programs and total agency outreach. Because DOD has at least nine different formal outreach programs, we devoted an entire appendix (app. IV) to the details of DOD's programs. We also followed up on issues related to the collection of servicemember employer information, which we raised in our 2002 employer support report.⁴ Specifically, we reviewed DOD's policy memoranda that were issued after our 2002 report and which mandated that Ready Reserve members supply information about their civilian employers. We also monitored and analyzed figures that showed

⁴ GAO, *Reserve Forces: DOD Actions Needed to Better Manage Relations between Reservists and Their Employers*, [GAO-02-608](#) (Washington, D.C.: June 13, 2002).

servicemember rates of compliance with the estimates from this survey on these reporting requirements. These compliance figures covered each of the reserve components and various reserve categories.

To assess how efficiently and effectively DOD, DOL, DOJ, and OSC addressed servicemember complaints, we obtained and analyzed information about complaint processing practices, including applicable guidance, regulations, or operations manuals. We also obtained and reviewed the memorandums of understanding between DOL and DOJ, OSC, and the ESGR. To further analyze the entire process, we gathered and analyzed information about how the agencies share information from USERRA complaint files with one another. We exported data from the VETS USERRA Information Management System and analyzed the data to look for trends in processing times. We specifically focused our analysis on cases that had been closed and later reopened, and on cases that had been referred from DOL to DOJ or OSC. We performed multiple sorts of the entire data set, and data subsets, to determine whether there were any common characteristics in complaint files from the group of complaints that remained open for long time periods, or in the complaint files from the group of complaints that were quickly resolved. For example, we sorted complaint data by: type of employer, regional office, type of servicemember, and type of complaint. We used many of the other more than 70 data fields to perform data sorts but much of our analysis did not yield reportable results because substantial amounts of information were missing for certain data fields. However, our analysis of date fields was not hampered by missing data and we were able to calculate elapsed times and processing times from the available data.

We assessed the reliability of formal complaint data provided by DOL, DOJ, and OSC by (1) reviewing existing information about the data and the systems that produced them and (2) interviewing and obtaining written responses from agency officials knowledgeable about the data. We compared data obtained from DOJ and OSC to that captured in the DOL USERRA Information Management System. We also compared data drawn from DOL's USERRA Information Management System at different time periods to determine the consistency of the data. In addition, where available, we compared information from 59 hard copy complaint files to data recorded in the DOL system to assess how accurately information was being entered into the database. We also discussed informal complaint data and its reliability with knowledgeable ESGR officials. On the basis of these assessments, we determined that the data were sufficiently reliable

for the purposes of this report, though agency data systems had some limitations that we discussed in the report.

We conducted our work from October 2004 through August 2005 in accordance with generally accepted government auditing standards.

Professional Backgrounds of the ESGR’s Volunteer Ombudsmen

Between May 9, 2005, and June 9, 2005, we surveyed the ESGR’s volunteer ombudsmen who were available to handle servicemember complaints as of April 6, 2005. We received a 74 percent response rate to our survey. Tables 2 shows that about 58 percent of the volunteer ombudsmen were employed in full-time jobs, and about 30 percent were retired.

Table 3: Employment Status of the ESGR’s Ombudsmen (as of April 6, 2005)

Employment status	Percentage
Employed full-time	58
Employed part-time	11
Retired	30
Not retired or employed	1
Total	100

Source: GAO.
Note: Estimated percentages have a margin of error of plus or minus 3 percent with a 95 percent level of confidence.

Table 3 shows the distribution of ombudsmen by their primary employers. About 44 percent worked for the government or military, and about 56 percent worked for private employers, including the approximately 21 percent who were self-employed.

Appendix II
Professional Backgrounds of the ESGR's
Volunteer Ombudsmen

Table 4: The Primary Employers of the ESGR's Ombudsmen (as of April 6, 2005)

Primary employer	Percentage
Military	15
Federal government (non-military)	9
State government	11
Local government	8
Total government employers	44^a
Large private sector firms	18
Small businesses	11
Non-profit or charitable organizations	6
Self employed	21
Total private employers	56
Grand total	100

Source: GAO.

Note: Estimated percentages have a margin of error of plus or minus 3 percent with a 95 percent level of confidence.

^aThe government and military figures add to 44 percent rather than 43 percent due to rounding.

In addition to the general background employment questions, our survey asked respondents to specify their occupations or backgrounds that they felt were particularly relevant to their ombudsmen duties. The responses were varied and showed that many of the volunteers hold or had previously held paid positions that required: leadership, skillful negotiation, extensive interactions with different types of people, or knowledge of laws and regulations or military operations and procedures. In the information that follows, we have grouped the responses and provided some examples of the occupations the ombudsmen thought were particularly relevant. The ombudsmen said that they had held

- **Legal** positions ranging from paralegals to attorneys, assistant attorney generals and a wide range of judges—administrative law, municipal, district, superior court, and state supreme court;
- **Dispute or resolution** positions as mediators, negotiators, arbitrators, facilitators, and grievance officers;

- **Counseling** positions as veterans' career/employment, vocational rehabilitation, and recruitment/retention counselors;
- **Political** positions ranging from local mayor and city council positions to lobbyist and state legislature and senate positions;
- **Military** positions in the active Army, Navy, Air Force, and Marine Corps; and in the Army Reserve, the Army National Guard, the Air National Guard, the Air Force Reserve, the Naval Reserve, the Marine Corps Reserve, and the Coast Guard Reserve;
- **Federal government** positions in the Departments of: Defense, Justice, Homeland Security, Labor, Veterans Affairs, Education, Health and Human Services, Interior, Corrections, Energy, Agriculture, Treasury, and in the U.S. Postal Service;
- **State and local government** positions in the Departments of Military Affairs, Environmental Management, Public Safety, and Aviation; and in the Adjutant General's office;
- **Education** positions ranging from teachers and college professors, who taught mediation and communications, to principal, school superintendent, and college president positions;
- **Law enforcement** positions as police officers, supervisors, or chiefs; state troopers, marshals, investigators, and as a liaison between the military and a major city police department that employs more than 500 Guard and Reserve members;
- **Religious** positions as chaplain and deacon;
- **Business and management** positions as labor relations specialists, negotiators, human resource managers, public affairs officers, owners, general managers, directors, presidents, vice-presidents, and CEOs; and
- **Trade organization** positions as union officers or shop steward/negotiators.

Department of Labor Form 1010

OMB NO. 1293-0002 (EXP 03/31/2007)
VETS/USERRA/VP Form 1010 (REV 2/99)

ELIGIBILITY DATA FORM: For claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and/or claims under the Veterans' Preference (VP) provisions of the Veterans Employment Opportunities Act of 1998
U.S. Department of Labor, Veterans' Employment and Training Service

PLEASE TYPE OR PRINT

Section I: Claimant Information

1. Name: _____
Last Name First Name M.I.
2. Address: _____
Street City State ZIP
3. Social Security No: _____ 4. Home Phone: _____ 5. Work Phone: _____

Section II: Uniformed Service Information

6. Serve(d) In: ☐ Army ☐ Navy ☐ Marine Corps ☐ Air Force ☐ Coast Guard ☐ National Guard ☐ Reserve
☐ Public Health Service ☐ Other (Explain in "Comments") ☐ None (Retaliation Claim – Explain in "Comments")
7. If Reserve/National Guard:
(a) Name of Unit: _____
(b) Unit Address: _____
(c) Unit Phone: _____
8. Dates of Service (If applicable): (a) From: _____ To: _____
OR (b) Date of Examination/Rejection for Service: _____
9. Type of Discharge or Separation: ☒ Honorable Conditions ☐ Entry Level ☐ Uncharacterized ☐ Medical
☐ Other than Honorable Conditions ☐ Other (Explain in "Comments") ☐ Not Applicable

Section III: Employer Information

10. Employer or Prospective Employer's Name: _____
11. Address: _____
Street City County State ZIP
12. Principal Employer Contact (PEC):
(a) PEC Name/Title: _____ (b) PEC Phone: _____
13. Employment Dates (If applicable): From: _____ To: _____
14. Since beginning work with this employer, has your cumulative uniformed service exceeded 5 years? ☒ Yes ☐ No
If YES, explain in Comments box at end of this claim form.
15. Name of Union(s) That Represent You: _____

Appendix III
Department of Labor Form 1010

Section IV: Claim Information

If Claim Concerns Veterans' Preference in Federal Employment

16. Preference Issue (Check One): ☐ Hiring ☒ Reduction-in-Force (RIF)

If Claim Concerns Employment Discrimination under USERRA

17. Employment Discrimination Issue(s): ☐ Hiring ☒ Reemployment ☐ Promotion ☐ Termination ☐ Benefits of Employment

If Claim Concerns Hiring, Promotion, RIF or Termination

18. Title of Position Held or Applied For: _____

19. Pay Rate: _____

20. Date of Application Employment/Promotion: _____

20a. Vacancy Announcement No.: _____

20b. Date Vacancy Opened: _____ 20c. Date Vacancy Closed: _____

If Claim Concerns Reemployment Following Service

21. Was Prior Notice of Service Provided to Employer? ☐ Yes ☐ No (If "No," Explain in Comments)

22. (a) Who Provided Notice of Service to Employer? ☐ Self ☐ Other (name): _____

(b) Was the Notice of Service: ☐ Written ☐ Oral ☐ Both

(c) Date Notice of Service was given to Employer: _____

23. Name/Title of Person to Whom Notice of Service was Provided: _____

24. Date Applied for Reemployment: _____ OR Date Returned to Work: _____

25. Reemployment Application Made To: Name: _____ Title: _____

26. Reemployed or Reinstated? ☒ Yes (date): _____ ☐ No

(a) If YES, what position? _____ at what pay rate? _____

(b) If NO, Date denied: _____ Reason given: _____

(c) Who denied (name): _____

PUNISHMENT FOR UNLAWFUL STATEMENTS

The information provided in this complaint will be utilized by the U.S. Department of Labor, Veterans' Employment and Training Service (VETS) to initiate an investigation of alleged violations of the Uniformed Service Employment and Reemployment Rights Act (USERRA) and/or the Veterans' Preference (VP) provisions of the Veterans Employment Opportunities Act of 1998 (VEOA). Potential claimants should keep in mind that it is unlawful to "knowingly and willfully" make any "materially false, fictitious, or fraudulent statements or representation" to a federal agency. Violations can be punished under Section 2 of the False Statements Accountability Act of 1996 by a fine and/or imprisonment of not more than 5 years. 18 U.S.C. § 1001.

I certify that the above information is true and correct to the best of my knowledge and belief. I authorize the U.S. Department of Labor to contact my employer or any other person for information concerning this claim. Pursuant to 5 U.S.C., Section 552(b) of the Privacy Act, I consent to the release of the above information and any records necessary for the investigation and prosecution of my claim.

SIGNATURE: _____ **DATE:** _____

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Veterans' Employment and Training Service, Room-S1316, 200 Constitution Avenue, N.W., Washington, DC 20210.

PRIVACY ACT STATEMENT

The primary use of this information is by staff of the Veterans' Employment and Training Service in investigating cases under USERRA or laws/regulations relating to veterans' preference in Federal employment. Disclosure of this information may be made to: a Federal, state or local agency for appropriate reasons; in connection with litigation; and to an individual or contractor performing a Federal function. Furnishing the information on this form, including your Social Security Number, is voluntary. However, failure to provide this information may jeopardize the Department of Labor's ability to provide assistance on your claim.

Continue in Comments box &/or use additional sheet(s) to explain items if needed – Sign and date form (above)

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VETS/USERRA/VP Form 1010 (REV 2/99) – Page 2

Appendix III
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Explain your claim in detail – List all remedies you seek
Use additional sheet(s) if needed – Initial & date each page at bottom

Comments:

INITIALS: _____ DATE: _____

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VETS/USERRA/VP Form 1010 (REV 2/99) – Page 3

DOD's Outreach Programs

The ESGR has responsibility for most DOD outreach programs but DOD also has a public affairs campaign that encourages employer support of servicemember employees. In past years, the ESGR's focus was on educating servicemembers concerning their employment rights. In fiscal year 2005, the ESGR shifted its focus to educating employers. The new focus better aligns with the ESGR's mission—to gain and maintain support for employee military service from all public and private employers of the men and women of the National Guard and Reserve. To fulfill its mission, the ESGR has developed and implemented a number of employer outreach efforts. In addition to the ESGR's "statement of support" and awards programs, which were discussed in the body of this report, the ESGR has a number of other outreach programs that are discussed below. Some of these efforts are well underway, others are relatively new.

The ESGR Outreach Programs

- **Mass Market Outreach.** This ESGR effort has used public service advertising and mass marketing to make employers and the general public aware of the importance of employer support for Guard and Reserve members who are called to military service, and the role that the ESGR can play in encouraging supportive employer relations.
- **Strategic Partnerships.** Through these partnerships with the national headquarters and local chapters of the Chamber of Commerce, Society for Human Resource Management, National Federation of Independent Business, Small Business Administration, and Rotary Club, the ESGR strives to educate employers about USERRA, the ESGR organization, and the different ways employers can support their servicemember employees. The ESGR uses a variety of media, trade show, and speaking opportunities to reach this target audience. The ESGR's goal was to reach at least 430 local chapters of these groups in fiscal year 2005. As of July 2005, the ESGR had met with 250 of its strategic partners.
- **Industry Segment Outreach.** This outreach effort is focused on leaders in industries that employ significant numbers of reserve component members. For about 5 years, DOD leaders have met regularly with key officials from the airline industry to discuss concerns that arise as the military and industry share the same personnel resources. In fiscal year 2005, the ESGR planned to hold three similar symposiums with (1) law enforcement, (2) fire and safety officials, and (3) city and municipal leaders. However, none of the other symposiums had taken place when we ended our review in August 2005.

- **Federal Government Outreach.** USERRA states that the federal government should be a model employer. The ESGR is encouraging the 17 cabinet-level departments and 81 independent federal government agencies to sign the ESGR statements of support as a means to demonstrate their commitment to their servicemember employees. The ESGR established a goal to have 10 federal government agencies sign statements of support in fiscal year 2005. As of August 2005, a total of 20 federal agencies had signed statements of support.
- **5-Star Program.** In the past, the ESGR's outreach efforts were focused on simply asking employers to sign statements of support for their National Guard and Reserve members. The statement of support simply stated that employers would fulfill their obligations by complying with USERRA. Currently in its first year, the 5-Star Program seeks to get employers more actively involved in the management of their National Guard and Reserve employees. The five steps of the 5-Star Program are to
 - (1) sign a statement of support,
 - (2) review employer human resource policies with respect to employer support,
 - (3) train supervisors and managers on USERRA,
 - (4) provide "above and beyond" human resource policies, and
 - (5) advocate for National Guard and Reserve members.
- **Bosslifts.** Bosslifts are usually 2- to 3-day outreach events where employers, civic leaders, and legislators are taken to Guard or Reserve units to observe Guard or Reserve members in action. These events present employers with opportunities to directly observe the technical, organizational, team building, and leadership skills of their employees. They also provide employers with opportunities to observe military training, some of which may be directly related to their employees' civilian jobs. Each ESGR state committee is programmed for one nationally sponsored bosslift each year. However, based on the size and distribution of its reserve component population, California is programmed for two bosslifts. Additional committee-sponsored bosslifts are authorized and encouraged. Some state committees sponsor and fund bosslifts using state funding.
- **Employer Briefings.** Employer briefings provide a forum for local employers, unit commanders, the ESGR members, and community leaders to meet, network, and discuss issues that arise from employee

participation in the National Guard and Reserve. The meeting site can be a local restaurant, hotel, service club, Chamber of Commerce, National Guard Armory, Reserve Center, or military installation. This is a local-level 1-day activity funded at the state level.

Other DOD Outreach Efforts

- **Defense Advisory Board.** In August 2003, the Secretary of Defense created a defense advisory board composed of 15 to 25 industry public and private sector leaders to act as consultants without compensation. The board was established for up to 3 years and provides advice to the Secretary of Defense about issues concerning Reserve component members and their civilian employers. It also recommends policies and priorities for employer support actions and programs. The board meets at least twice a year at the call of the National Chairman, and as needed to address emergent issues. In March 2005, this board met with both the Secretary and Deputy Secretary of Defense. Board members included a state governor, a major city fire chief, and representatives from employer associations, higher education, and the airline, information technology, aircraft repair, transportation, public relations and public affairs, defense and aerospace systems, investment banking, and food industries.
- **America Supports You.** This is a nationwide program launched by DOD's public affairs office to recognize citizens' support for military men and women and to communicate that support to members of the Armed Forces at home and abroad. Participants can join the team at www.americasupportsyouth.mil, share their stories of support with the nation and troops, and download program materials. In turn, military members will access the Web site and learn about America's support for their service. In addition to personal stories of support, the Web site has a section that recognizes employer support for servicemembers and particularly for servicemember employees.

GAO's Survey of the ESGR's Volunteer Ombudsmen Including Results

This appendix presents a facsimile of the actual questions asked in our survey of the ESGR ombudsmen along with aggregate responses. The results presented have been weighted to correspond to the universe of the ESGR ombudsmen. See appendix I, Scope and Methodology, for a detailed discussion of this process.

Appendix V
GAO's Survey of the ESGR's Volunteer
Ombudsmen Including Results

1. Were you serving as an Ombudsman and available to handle cases as of April 6, 2005?
(Select one answer.)

N=754

98% ☐ Yes *(Continue.)*
 2% ☐ No *(Click here to skip to question 12.)*

2. How long have you served as an Ombudsman with the ESGR? *(Select one answer.)*

N=746

16% ☐ Less than 1 year
 35% ☐ 1 to less than 3 years
 27% ☐ 3 to less than 7 years
 21% ☐ 7 or more years
☐ No response ¹

3. Have you received or not received each of the following types of training either prior to or since becoming an Ombudsmen? *(Select one answer in each row.)*

	Yes	No		No response
a. Basic Ombudsman training	97%	3%	N=748	☐
b. Advanced Ombudsman training	34%	66%	N=748	☐
c. Mediation training	20%	80%	N=748	☐
d. Other training related to your Ombudsman duties	40%	60%	N=747	☐

4. If you received any of the above types of training, what was the year of the most recent training you received? *(Enter year of training. Please enter all four digits of the year, e.g., "2004".)*

Basic Ombudsman training

Year 2005-10% 2004-22% 2003-23% 2002 or earlier-45% N=698

Advanced Ombudsman training

Year 2005-8% 2004-33% 2003-26% 2002 or earlier-33% N=244

Mediation training

Year 2005-11% 2004-41% 2003-18% 2002 or earlier-30% N=137

Other Ombudsman-related training

Year 2005-31% 2004-27% 2003-13% 2002 or earlier-29% N=259

¹ Respondents were given the option of not responding to specific survey questions. A small number of respondents selected this option.

Appendix V
GAO's Survey of the ESGR's Volunteer
Ombudsmen Including Results

If you received any “other training related to your Ombudsman duties”, what was included in that training and at what specific location(s) did that training take place?

5. Since becoming an ESGR Ombudsman, what is the **total number of cases that you have handled**?
(Enter number. If none, enter zero.)

Total cases handled Minimum = 0 cases Maximum = 2,000 cases

Mean = 51.4 cases Total = 37,684 cases N=735

Please indicate whether the number you entered in question 5 above was an... (Select one answer.)

N=727

- 44% ☐ Exact number (from records or memory)
- 56% ☐ Estimate
- ☒ No response

6. Since becoming an ESGR Ombudsman, what is the total number of cases that you have **personally resolved**, that is that you brought to closure yourself? (Enter number. If none, enter zero.)

Note: Do **not** include cases that were dropped or referred to other offices, i.e., Department of Labor, Veterans' Employment and Training Service or ESGR national headquarters or state coordinators.

Number personally resolved Minimum = 0 cases Maximum = 1940 cases

Mean = 40.6 cases Total=29,816 cases N=735

Please indicate whether the number you entered in question 5 above was ... (Select one answer.)

N=725

- 50% ☐ Exact number (from records or memory)
- 50% ☐ Estimate
- ☒ No response

7. On average, how many hours do you spend in a typical week on your ESGR Ombudsman duties?
(Enter number.)

Hours Minimum = 0 hours Maximum = 45 hours

Mean = 3.7 hours N=730

Appendix V
GAO's Survey of the ESGR's Volunteer
Ombudsmen Including Results

Apart from your work as an ESGR Ombudsman, we are interested in finding out a few things about your current employment, or if you are retired, your former employment.

8. Other than your work as an ESGR Ombudsman, are you currently employed full-time (35 hours or more per week), employed part-time (34 hours or less per week), retired, or not currently employed? (Select one answer.)

N=742

- | | |
|-----|---|
| 58% | ☐ Employed full-time |
| 11% | ☐ Employed part-time |
| 30% | ☐ Retired |
| 1% | ☐ Not currently employed, but not retired |
| | ☐ No response |

9. Other than your work as an ESGR Ombudsman, which one of the following **best describes your primary employer?** (If you are not currently employed or retired, answer for your former primary employer.) (Select one answer.)

N=730

- | | |
|-----|---|
| 15% | ☐ Military (Answer question 9a below.) |
| 9% | ☐ Federal government (non-military) (Answer question 9a below.) |
| 11% | ☐ State government (Answer question 9a below.) |
| 8% | ☐ Local government (Answer question 9a below.) |
| 18% | ☐ Corporation or large private sector firm |
| 11% | ☐ Small business |
| 6% | ☐ Non-profit or charitable organization |
| 21% | ☐ Self-employed |
| | ☐ No response |

9a. If you answered military, federal government (non-military), state, or local government in question 9 above, in what branch of the military or specific government agency are/were you employed?

--

10. Other than your work as an ESGR Ombudsman, which one of the following **best describes your current primary occupation?** (If you are not currently employed or retired, answer for your former primary occupation.) (Select one answer.)

N=703

- | | |
|-----|--|
| 2% | ☐ Military - attorney/JAG |
| 12% | ☐ Military - non-attorney officer |
| 6% | ☐ Military - enlisted |
| 16% | ☐ Nonmilitary - attorney |
| 64% | ☐ Nonmilitary - not an attorney (Answer question 10a below.) |
| | ☐ No response |

Appendix V
GAO's Survey of the ESGR's Volunteer
Ombudsmen Including Results

10a. If you answered "Nonmilitary - not an attorney" in question 10 above, and your primary or former occupation directly relates to your ESGR ombudsman responsibilities (e.g., mediator, negotiator, etc.), please enter this occupation in the space below.

11. If you have had more than one occupation that directly relates to your ombudsmen responsibilities, please list the secondary occupation (that was not covered by questions 9 and 10) in the box below.

12. If you would like to make any suggestions on how to make the ESGR Ombudsman program more successful, please use the space below. *(You may enter as much text as you like. The space will expand to accommodate your response.)*

Is your survey completed and therefore ready for submission to GAO? (Only completed surveys will be used in our analysis.) *(Select one response.)*

- 1. ☐ Completed
- 2. ☐ Not completed

DOL's USERRA Information Poster









YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.




U.S. Department of Labor
1-866-487-2365



1-800-336-4590
Publication Date—February 2005

Comments from the Department of Defense



RESERVE AFFAIRS

ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, DC 20301-1500

OCT 06 2005

Mr. Derek B. Stewart
Director, Defense Capabilities Management
U. S. Government Accountability Office
Washington, D. C. 20548

Dear Mr. Stewart:

This is the Department of Defense (DoD) response to the GAO draft report GAO-06-60, "MILITARY PERSONNEL: Federal Management of Servicemember Employment Rights Can Be Further Improved. I appreciate the opportunity to review and comment on the draft GAO report.

The Department does not have major issues with the recommendations made by the GAO. We concur with recommendations 1, 2 and 3 and defer to the Department of Labor, the Department of Justice and the Office of Special Counsel on recommendation 4. We continuously seek improvement in our employer outreach programs and our reporting capability. Two significant initiatives that have matured in the past eighteen months – the Ombudsman data base and the Civilian Employment Information data base – will not only enhance the effectiveness of our outreach efforts, they will also provide the information needed to measure and display the degree to which the Department is carrying out its USERRA responsibilities. These initiatives were mentioned in the report, but their significance and importance for the future were not emphasized.

Our approach focuses on educating Reserve component members and their employers and solving problems at the lowest, informal level. While this may make measurement of success difficult for this report, we believe the trend in the number of Department of Labor complaint cases demonstrates that our efforts are effective.

The Department's comments on the draft report recommendations are provided in the enclosure. Technical changes that were identified by reviewers have been provided to the GAO staff separately.

Sincerely,

T. F. Hall

Enclosure:
As stated



GAO DRAFT REPORT – DATED SEPTEMBER 21, 2005
GAO CODE 350609/GAO-06-60

**“MILITARY PERSONNEL: Federal Management of
Servicemember Employment Rights Can Be Further Improved”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE RECOMMENDATIONS**

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Under Secretary of Defense for Personnel and Readiness to include questions in DoD’s periodic Status of Forces Surveys to determine:

- the extent to which servicemembers experience Uniformed Services Employment and Reemployment Rights Act (USERRA)-related problems;
- if they experience these problems, from whom they seek assistance;
- if they do not seek assistance, why not; and
- the extent to which servicemember employers provide support behind that required by the law. (Page 60/GAO Draft Report)

DOD RESPONSE: Concur. In fact, the Department’s May 2004 Status of Forces Survey of Reserve component members asked a series of questions about reemployment after activation/deployment that included the areas addressed in this recommendation. Further, at the request of the Department of Labor (DoL), we have agreed to periodically include this same series of questions in future surveys to help identify trends.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense direct the Service Secretaries to take steps to enforce the requirement for servicemembers to report their civilian employment information and develop a plan to maintain current civilian employment information. (Page 60/GAO Draft Report)

DOD RESPONSE: Concur. This has already been accomplished. Mandatory collection of employer information for Reserve component members was directed in March 2003 by the Under Secretary of Defense for Personnel and Readiness. In a memorandum to the Secretaries of the Military Departments in November 2004, he reemphasized the mandatory reporting requirement and set specific goals for obtaining employer data. Over 78 percent of Selected Reserve members have now entered their employer information in the Civilian Employer Information data base. Enforcement of this requirement is a high priority in DoD and is already monitored.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense direct the Assistant Secretary of Defense for Reserve Affairs to share applicable employer information from DoD’s employer database with Department of Labor, Office of Special Counsel, and other Federal agencies that educate employers about USERRA, consistent with the Privacy Act. (Page 60/GAO Draft Report)

DOD RESPONSE: Concur. DoD, DoL and the Department of Veterans Affairs are working collectively to ensure, to the extent possible, that categories of employers, occupational areas, and codes used in their respective systems facilitate consistent reporting capabilities.

RECOMMENDATION 4: The GAO recommended that the Secretary of Defense, the Secretary of Labor, the Attorney General, and the Special Counsel develop procedures or systems to enable the electronic transfer of complaint information between offices.
(Page 61/GAO Draft Report)

DOD RESPONSE: Defer to DoL, the Department of Justice (DoJ), and the Office of Special Counsel (OSC). The DoD agrees that electronic sharing of information would enhance our understanding of employer issues. However, DoD tracks only informal inquiries, not complaints. Complaints are filed with DoL with possible referral to DoJ, or the OSC. Therefore, establishment and maintenance of a complaint database would fall within the purview of those agencies. DoD would support the sharing of information on USERRA inquiries received by DoD with those agencies and having the ability to receive reports on complaints filed with DoL or OSC, should those agencies agree to undertake such an initiative. However, DoD defers to DoL, DoJ, and OSC with regard to establishing electronic transfer of data among those agencies.

Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Veteran's Employment and Training
Washington, D.C. 20210



OCT - 7 2005

Mr. Derek B. Stewart
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Stewart:

The Department of Labor (DOL) appreciates the opportunity to comment on the draft report entitled, "MILITARY PERSONNEL: Federal Management of Servicemember Employment Rights Can Be Further Improved," (GAO-06-60).

The administration and enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§4301-4334, has taken on increased importance in view of the mobilization of over 500,000 members of the National Guard and Reserve in support of Operation Noble Eagle, Operation Enduring Freedom, and Operation Iraqi Freedom. In response to these mobilizations, DOL has reinforced its commitment to assist employees and employers in ensuring that the non-discrimination and reemployment mandates of USERRA are fully enforced. DOL's effective administration of the statute has included promulgation of the first-ever USERRA regulations for State and private employers. The Veterans' Employment and Training Service (VETS), the DOL agency responsible for USERRA's administration, has developed and enhanced its web-based USERRA advisor and has made available on its website an electronic complaint form, which provide servicemembers with greater access and opportunity to know and understand their rights under USERRA.

USERRA assigns responsibilities to the DOL, the Department of Defense (DOD), the Department of Justice (DOJ) and the Office of Special Counsel (OSC), who each have a role in carrying out USERRA's mandates. We work closely with those agencies in undertaking this crucial mission. To this end, in September, 2004, DOL and DOJ entered into a Memorandum of Understanding that strengthens the close working relationship of the two agencies. Similarly, in September, 2005, DOL memorialized its longstanding cooperative relationship with the Department of Defense's Employer Support of the Guard and Reserve to promote the agencies' goal of early resolution of USERRA employment and reemployment issues.

As noted in the report, the multi-agency administration and enforcement of the statute requires interagency cooperation and a comprehensive approach to ensuring that a servicemember's interaction with the USERRA system is as effective as possible. DOL agrees with the GAO's recommendations for DOL action that emphasizes a more "results-oriented focus." We support all recommendations intended to reduce "mission fragmentation" and other barriers to interagency cooperation that may impede our ultimate goal, which is the support of servicemembers. We also note, however, that the OSC demonstration project mandated by the Veterans Benefits Improvement Act of 2004 (VBIA), Pub. Law No. 108-454 (Dec. 10, 2004) is ongoing. Therefore, it would be premature to make any suggestions or recommendations for Congressional or legislative action until the pilot has been completed.

We agree with GAO's recommendation that DOL, DOD, DOJ and OSC develop procedures or systems to enable the electronic transfer of complaint information among offices. DOL's Office of the Solicitor (SOL) and VETS have already begun to discuss ways in which the two offices can ultimately use one electronic case management system. In addition, DOL is in preliminary discussions with the other agencies regarding the improvement of our inter-agency information exchange and data-sharing capabilities. We envision that all agencies with administrative and enforcement responsibilities under the statute will be able to access from their desktops an electronic shared case-tracking and data management system, and that access to such a system will be configured to fit their responsibilities under the statute. DOL will work closely with DOD, DOJ, and OSC in advancing this goal.

The GAO also recommended that VETS should reduce agency reliance on paper files and fully adopt the agency's automated complaint file system. We agree with this recommendation. Given the advanced capabilities for electronic storage and transmission of documents, we envision a system in which VETS investigators create and store investigative and other records and documents electronically, and that SOL has the ability to immediately access those records. Due regard would of course be given to preserving privacy rights, and assuring that documentary evidence needed for trial would be preserved in a form consistent with the evidentiary requirements of the Federal courts and the Merit Systems Protection Board. The establishment of such electronic "files" would enhance DOL's ability to more efficiently and effectively share documents and other case-specific data with other agencies, thus promoting the goal set out above.

Our Solicitor's Office and the VETS program have developed extraordinary expertise through many years of administering and enforcing USERRA and its predecessor statutes. We think DOL is uniquely suited to provide an overview of the entire complaint resolution process. DOL has extensive experience handling all aspects of USERRA activity, from education and outreach, to technical assistance, to investigation, to legal review and analysis. Further, DOL is the only agency that handles cases involving all employers, whether they are private, State, or Federal Executive Branch employers. The Secretary of Labor has the authority to, and has, promulgated USERRA regulations for State and private employers; regulations for Federal Executive Branch employers, which are the responsibility of the Office of Personnel Management, are required to be consistent with DOL's regulations applicable to State and private employers. The VETS program is uniquely situated to assist in this oversight function, particularly in view of its exemplary information management system, recently further enhanced by the integration of an electronic complaint system.

Thank you for the opportunity to respond to this GAO draft report.

Sincerely,


Charles S. Ciccolella

Comments from the Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
www.osc.gov

The Special Counsel

October 7, 2005

The Honorable David M. Walker
Comptroller General of the United States
U.S. Government Accountability Office
441 G. Street, N.W.
Washington, D.C. 20548

Re: Comments to Draft Report GAO-06-60

Dear Comptroller General Walker:

Thank you for the opportunity to respond to the Government Accountability Office's draft report entitled, "Military Personnel; Federal Management of Servicemember Employment Rights Can be Further Improved" (GAO Report Number 06-60). The Federal government is the largest civilian employer of Guardsmen and Reservists, and Congress intends for it to be a model employer in fulfilling its statutory obligations under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301, *et seq.* As head of the federal agency that has exclusive prosecutorial authority over federal sector USERRA cases, I share fully in Congress' view and will continue to enforce aggressively the employment rights of service members. I generally concur with report's conclusion that service member employment rights can be strengthened with improved federal management over the administrative process, and my specific comments are set forth in part II of this letter. To better appreciate and understand them, however, I have provided background on the U.S. Office of Special Counsel (OSC) and its important role in enforcing USERRA in the federal sector.

I. OSC's Role in Protecting Service Members' Federal Employment Rights

OSC's role in protecting service members' federal employment rights is powerful and unique. As explained in detail below, no other federal agency—including the U.S. Department of Labor's component organizations: Veterans' Employment and Training Service (VETS) and Office of the Solicitor (SOL)—has the statutory authority, experience, and expertise to receive, review, investigate, resolve, and prosecute USERRA violations and prohibited personnel practices occurring in the federal sector. Only OSC can offer the full spectrum of assistance that service members may need, and certainly deserve, to protect their federal employment rights. And, as Special Counsel, I assure you that OSC is ready, willing, and able to protect service members zealously and to the full extent of the law.

The Special Counsel
The Honorable David M. Walker
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A. OSC and the Federal Merit System

OSC is an independent federal investigative and prosecutorial agency established pursuant to 5 U.S.C. § 1211. Its primary mission is to safeguard the federal merit system by protecting federal employees and applicants from prohibited personnel practices occurring in the federal workplace. OSC has a proud history of serving the federal workforce and the public through its tenacious defense of the merit system principles that continue to safeguard the integrity of the executive branch agencies of the United States.

To protect the employment rights of federal workers and applicants, OSC employs personnel specialists, investigators, and attorneys who receive, review, investigate, and resolve allegations of prohibited personnel practices. We are the only federal agency authorized to seek corrective action on behalf of aggrieved claimants and disciplinary action against federal managers for committing prohibited personnel practices. OSC prosecutes such claims before the U.S. Merit Systems Protection Board (MSPB).

In fiscal year 2004, OSC received over 1900 prohibited personnel practice claims with the majority of those claims alleging numerous prohibited personnel practices. OSC's "bread and butter" is the receipt, review, investigation, resolution, and prosecution of allegations of violations of federal employment rights. Further, OSC's Disclosure Unit (DU) complements its prohibited personnel practice mission by serving as a safe conduit for the receipt and evaluation of whistleblower disclosures (which are separate from prohibited personnel practice allegations) from federal employees, former employees and applicants for federal employment.

B. OSC's Role in Enforcing USERRA

With the passage of USERRA in October of 1994, Congress expanded OSC's role as protector of the federal merit system and the federal workplace. USERRA is the law that sets forth the reemployment rights of persons who are absent from their respective civilian employment due to the performance of military duties. USERRA also makes it illegal for an employer to deny any benefit of employment on the basis of past, current, or future performance of military service.

Under USERRA, the U.S. Department of Labor, Veterans' Employment and Training Service (VETS), receives USERRA claims, conducts USERRA investigations, and endeavors to resolve claims with the involved agency. Where VETS is unable to resolve claims, the matter is referred to OSC for review at the claimant's request.

When a claim is referred to OSC at the claimant's request, OSC objectively reviews the facts and laws applicable to each complaint. Where a VETS investigation is deficient, OSC may endeavor to obtain additional information from the involved agency. Where the Special Counsel is satisfied that claimant is entitled to relief, then it may exercise its prosecutorial authority and represent the claimant before the MSPB and, if required, the

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The Honorable David M. Walker

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U.S. Court of Appeals for the Federal Circuit. See 38 U.S.C. §§ 4324(a)(2)(A) and (d)(2). As an experienced prosecutor before the MSPB, OSC seeks to obtain full corrective action on behalf of claimants either by settlements with the involved federal employer or through MSPB litigation.¹ OSC's unique role in enforcing USERRA complements its role in protecting the federal employees and applicants from prohibited personnel practice in the federal workplace.

C. OSC's Role in Enforcing USERRA — Demonstration Project

In late 2004, Congress further expanded OSC's role in enforcing USERRA and protecting the employment rights of federal employees and applicants. Pursuant to a demonstration project established by the Veterans Benefits Improvement Act (VBIA), signed by President Bush on December 10, 2004, OSC, rather than VETS, was given the exclusive authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the project, OSC also receives and investigates all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number (so-called "mixed claims").²

Pursuant to section 204(a) of the VBIA, certain federal sector USERRA claims "are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim." Hence, OSC has the responsibility for providing technical assistance to service members who claim USERRA rights and benefits. OSC fulfills that responsibility, by regularly providing technical and other assistance to employees and employers (e.g., educating employees and employers about their respective rights and responsibilities under the law) in addition to investigating cases under the demonstration project.

OSC is the administrator of the demonstration project, and DOL shall cooperate with OSC in carrying out the demonstration project.³ The demonstration project began on February 8, 2005, and ends on September 30, 2007.

¹ There is currently no provision under USERRA that permits OSC to seek disciplinary action against federal employees who knowingly and willfully violate USERRA. But, because federal sector USERRA violations may involve prohibited personnel practices, OSC always scrutinizes its USERRA cases for possible prohibited personnel practices upon which disciplinary action can be based and brought against agency officials who violate service members' employment rights.

² VETS's investigative authority was limited to federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit and who do not allege a prohibited personnel practice.

³ See section 204(d)(1) of VBIA.

The Special Counsel
The Honorable David M. Walker
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In summary, the demonstration project enables service members to have their USERRA allegations investigated by OSC's experienced and expert staff and, if substantiated, quickly resolved via settlement or by filing an action before the MSPB. For OSC, it is a natural and comfortable extension of what OSC's does best—i.e., protect the employment rights of federal employees and applicants.

D. OSC's USERRA Unit

Given the new, additional investigative responsibilities Congress assigned to OSC with the passing of the demonstration project and my personal desire to revitalize OSC's enforcement of USERRA during my term as Special Counsel, I established the USERRA Unit as part of my January 6, 2005, directive reorganizing the agency. The USERRA Unit is the in-take, investigative, and prosecutorial unit for all matters pertaining to USERRA and veteran-related employment issues. The unit is responsible providing technical assistance to claimants, investigating USERRA claims, and resolving or prosecuting meritorious allegations.⁴

In order to inform service members and federal agencies of OSC's new role in enforcing USERRA, the USERRA Unit substantially modified OSC's web page. It describes OSC's role under the demonstration project and explains the manner in which certain federal claimants may seek OSC's assistance for alleged violation of their USERRA rights.

To make the claim filing process easier and speedier for service members, the USERRA Unit created a new claim form solely for filing USERRA claims with OSC. Form OSC-14 "Complaint of Possible Violation of USERRA" has been approved by the U.S. Office of Management and Budget (OMB) and has been in use since March 2005. So rather than having to file with VETS and wait for VETS to transfer the claim to OSC, the USERRA Unit took the initiative and created a means by which service members can file directly with OSC. To make the process even faster, the USERRA Unit anticipates that claimants will soon be able to file OSC-14 forms electronically.

Finally, the USERRA Unit provides outreach services designed to educate federal personnel on USERRA issues so that agencies comply with the law. Such outreach efforts include USERRA seminars presented by OSC staff to the D.C. Bar in May 2005, at the annual Federal Dispute Resolution Conference in August 2005 in New York, and at an upcoming presentation at the Army's Advanced Labor and Employment Law Course on October 18, 2005, at the Judge Advocate General's Legal Center and School in Charlottesville, Virginia. In addition, I have appeared on the Pentagon Channel, which broadcasts military news and information for the 2.6 million members of the Armed Forces stationed worldwide, and informed our soldiers of their rights under USERRA.

⁴ The Unit is presently comprised of three investigators, two staff attorneys, and a very experienced GS-15 supervisory attorney who serves as Chief of the unit. The USERRA Unit is part of OSC's Special Project Unit, which is headed by the Principal Special Assistant to the Special Counsel.

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I also write and speak frequently about the USERRA accomplishments OSC has achieved for service members during my term as Special Counsel, including prosecuting the first USERRA cases in OSC's history. Finally, in order to be readily available to provide technical assistance to service members and employers, the unit maintains a telephonic and web-based "hotlines" for answering USERRA-related questions from the public and private sectors.

II. Comments to the Draft Report

A. Comments to Specific Points Raised

In addition to commenting on the report's recommendations in paragraph II. B, it is also important that I respond to two points raised in body of the report.

1. Explanation of ESGR's Role

The draft report states, "When ombudsmen cannot resolve servicemembers complaints, they notify the servicemembers of the other options that are available to address complaints." (See page 19 of the draft report.) Based on the USERRA Unit's experience, that statement is incorrect.

ESGR does not obtain information indicating whether the service member has a USERRA claim falling within OSC's exclusive investigative jurisdiction and does not notify service members of the option of filing directly with OSC. Instead, it only informs service members of the right to file claims with DOL.⁵

I believe that service member employment rights can be further improved by ESGR's referring to OSC those federal sector matters over which OSC has exclusive jurisdiction under the demonstration project. By eliminating the unnecessary step of transferring to DOL, which then transfers the claim to OSC, federal management of the process can be enhanced. Thus, I request that you consider amending your report to recommend that ESGR refer cases directly to OSC.

2. USERRA Poster

The report finds that the lack of employer information hinders the efficiency and effectiveness of agency outreach actions (see page 41 of draft report). The draft report comments on the means by which DOL has sought to educate service member and employers about USERRA. With respect to DOL's outreach, the report states, "DOL also made a USERRA poster available for employer to post in their workplaces as a means of complying with the requirements set forth in the Veterans Benefits

⁵ It is the USERRA Unit's understanding that DOL does not want ESGR referring matters directly to OSC. DOL's reasoning for delaying service members' efforts to seek redress is not known.

The Special Counsel
The Honorable David M. Walker
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Improvement Act, which was enacted by Congress in December 2004. The poster is on VETS Web site and is included as appendix VI of this report.”

The information contained on DOL’s USERRA poster is incomplete and inaccurate.⁶ Despite specific, timely requests from OSC to DOL to do so, the USERRA poster does not include any information about OSC’s important role in providing technical assistance, investigating, resolving and prosecuting federal sector USERRA claims during the demonstration project. Nor does it display OSC’s telephone number, webpage, or logo. In short, the poster fails to provide complete information on how to file a complaint against a federal agency.

The poster is especially troublesome given that an employer may satisfy its legal responsibility to inform its employees of their USERRA rights by exhibiting the poster. As mentioned, the Federal government is the largest single employer of guardsmen and reservists. Additionally, recently retired career service members often look to the Federal government for post-military civilian career opportunities. But, the poster neither informs that large segment of service members nor the federal agency that employs them (or considers them for employment) of OSC’s critical role in enforcing USERRA in the federal sector.

I believe that service member employment rights can be further improved by DOL’s changing of the USERRA poster to provide accurate information about the demonstration project. Thus, I request that you consider amending your report to recommend that the USERRA poster be changed to include important, relevant information about OSC’s enforcement role.

B. Comments to Recommendations

The draft report makes several recommendations. (See pages 60-62 of draft report). My succinct responses to each are set forth below.

1. Surveys and Coordination of Outreach Efforts — Concur

I have no specific comment regarding the recommendation that DOD include USERRA questions in its periodic surveys of service members, take steps to enforce the requirement that service members to report their civilian employment information, and share applicable information with DOL, OSC, and other federal agencies. (See page 60 of draft report.) Thus, I generally concur with recommendations that protect service member employment rights under the statute.

⁶ For example, the poster states that DOL is authorized to investigate USERRA complaints. Under the demonstration project, DOL is not authorized to investigate certain USERRA complaints.

The Special Counsel
The Honorable David M. Walker
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2. Electronic Transfer of Information — Concur

The report recommends: (1) DOD, DOL, DOJ, and OSC explore methods of electronically transferring information between offices and (2) DOL develop a plan to reduce agency reliance on paper complaint files. (See page 61 of draft report.)

As mentioned, OSC ability to enforce USERRA has not been adversely affected by the transfer of information by other than electronic means. Nevertheless, I am dedicated to improving services to service members who seek assistance and, therefore, I generally concur with the recommendation. Given that OSC is an agency with a budget significantly smaller than that of DOD, DOL, and DOJ, however, it appears that OSC's development of USERRA-specific electronic files must be funded by Congress.

3. Single Individual or Office to Oversee Complaint Process — Concur

The draft report recommends that Congress consider designating a single office to maintain visibility over the entire conflict resolution process. (See page 61 of draft report.) Undoubtedly, a single overseer may be helpful, and I concur with that the recommendation.⁷

As for selecting a single overseer, Congress established OSC as an *independent* federal executive agency because of the important "watch dog" functions it carries out. OSC has unparalleled experience and expertise in administering federal sector employment complaints and prosecuting meritorious workplace violations before the MSPB. DOL cannot match OSC's qualifications in those areas. Indeed, Congress designated my office as the administrator of the demonstration project. Thus, my agency is qualified to fulfill that important role, and I request that consideration be given to including a specific recommendation that OSC be named as the office that maintains visibility over the entire conflict resolution process for federal sector cases. Such a role for OSC is consistent with the principle of government efficiency through the elimination of duplicative effort and, as important, will allow OSC to utilize its expertise over those claims which do not otherwise fall under the full spectrum of assistance that OSC currently provides to claims service members over which OSC has jurisdiction under the demonstration project.

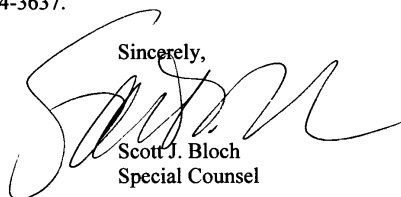
⁷ I also believe, however, that a further means of tackling the federal management issue is to reduce the segmentation of the complaint resolution process. Specifically, the bifurcation of technical assistance and investigation function and the prosecution function creates unnecessary delays. Eliminating that fragmentation will greatly improve service to service members. For example, under the demonstration project, my office now receives USERRA allegations within days of the event, not years later as was the case when cases went from ESGR to DOL to SOL and eventually to OSC.

Appendix IX
Comments from the Office of Special Counsel

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In closing, I again thank you for the opportunity to respond to the draft report. Should you have any questions about this letter, you may telephone USERRA Unit Chief Ronald K. Jaicks at (202) 254-3637.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch", is written over the typed name.

Scott J. Bloch
Special Counsel

GAO Contact and Staff Acknowledgments

GAO Contact

Derek B. Stewart, (202) 512-5559 or stewartd@gao.gov

Acknowledgments

In addition to the contact named above, Brenda S. Farrell, Assistant Director; Renee S. Brown; Jonathan Clark; Michael J. Ferren; Stuart M. Kaufman; Susanna R. Kuebler; Mary Jo Lacasse; Ronald La Due Lake; Susan J. Mason; Jennifer R. Popovic; and Irene A. Robertson made significant contributions to the report.

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