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The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) are: 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; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and to prohibit discrimination against persons because of their service in the uniformed services. It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of USERRA.

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## INTRODUCTION

The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 (USERRA or the Act), was signed into law on October 13, 1994. USERRA prohibits discrimination in employment based on an individual's prior service in the uniformed services; current service in the uniformed services; or intent to join the uniformed services. An employer is also prohibited from retaliating against a person because of such person's attempt to enforce their rights under the Act. In addition, an employer may not retaliate against an individual for filing a USERRA claim, testifying, or otherwise providing assistance in any proceeding under the Act. USERRA also provides re-employment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is entitled to be re-employed with the seniority, status, and rate of pay as if they had been continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and State and local governments. It also applies to United States employers operating overseas and foreign employers operating within the United States.

As reported by the Defense Manpower Data Center (DMDC) in its strength accounting reporting, there were a total of 802,245 members of the Reserve Components (RC), which are comprised of Reserve and National Guard troops, and 1,346,651 members of the Active Components of the U.S. Armed Forces, on duty as of September 30, 2020. In addition, 39,477 members of the RC were active in overseas contingency operations in October 2019, the start of the reporting period. In September 2020, at the end of the reporting period, DMDC reports that there were 25,141 (+3,543) National Guard Members and 17,709 (-170) RC members active in overseas contingency operations. These figures represent only those RC members who were activated for Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, Operation New Dawn, Operation Inherent Resolve, and Operation Freedom Sentinel. Additional RC members served on active duty for training and domestic operations during this period.

This Fiscal Year (FY) 2020 report was prepared in accordance with 38 U.S.C. § 4332(a), which requires the Secretary of Labor, after consultation with the Attorney General and the Special Counsel, to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year:

1. The number of cases reviewed by the Department of Labor (DOL) under this chapter during the fiscal year for which the report is made.
2. The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve (ESGR) of the Department of Defense (DOD) during the fiscal year for which the report is made.
3. The number of cases referred to the Attorney General or the Special Counsel pursuant to Section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of Special Counsel (OSC) before the Merit Systems Protection Board (MSPB) pursuant to section 4324 during such fiscal year.
4. The number of complaints filed by the Attorney General pursuant to Section 4323 during such fiscal year.

5. The number of cases reviewed by the Secretary of Labor and the Secretary of Defense through ESGR of DOD which involve the same person.
6. With respect to each of the cases referenced above:
  - A. The number of such cases that involve a disability related issue, and
  - B. The number of such cases that involve a person who has a service-connected disability.
7. The nature and status of each of the cases referenced above.
8. With respect to each of the cases referenced above, the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System (SOCS).
9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter together with an explanation thereof.
10. Recommendations for administrative or legislative action that the Secretary of Labor, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

## **OVERVIEW OF USERRA PROTECTIONS**

USERRA generally requires United States employers regardless of size or location of operation, as well as foreign employers operating in the United States or its territories, to re-employ eligible veterans returning to civilian employment after a period of service in the uniformed services. It requires employers, with certain exceptions, to provide training to restore competency in duties, seniority, status, pay, pensions, and other benefits that would have accrued but for the employee's absence due to uniformed service. Under USERRA, employers are generally liable for funding their share, if any, to the civilian retirement plan(s) of employed service members away on uniformed service.

Eligibility requirements for service members seeking re-employment generally provide that the absence must be due to service; advance notice (oral or in writing) must be provided to the employer; the cumulative period(s) of service while employed by the employer must not exceed five years; the application for reemployment must be timely; and the discharge from service must not be disqualifying.

Employers are also prohibited from discriminating on the basis of service in a uniformed service. Uniformed service includes certain other non-military organizations including the National Disaster Medical System, and the commissioned corps of the Public Health Service. USERRA also protects anyone—veteran or non-veteran, service member or non-service member—from reprisals for either exercising rights or assisting in any proceeding under the Act.

DOL is statutorily tasked with providing assistance to any person with respect to USERRA employment and re-employment rights and benefits and may request the assistance of other Federal

and State agencies engaged in similar or related activities to do so. DOL, DOD, and the Department of Veterans Affairs share responsibility for promoting a clear understanding of USERRA among employers and individuals concerning their respective rights and responsibilities under USERRA. In addition, USERRA requires all Federal agencies to provide USERRA awareness training to human resources personnel, in consultation with the Office of Personnel Management (OPM). OPM issues guidance on ways to improve USERRA protection policies and practices for Federal agencies. DOL's Veterans' Employment and Training Service (VETS) and DOD's ESGR provide extensive public education, outreach, and compliance assistance with the goals of preventing violations caused by ignorance or misunderstanding of the law, and ensuring that protected individuals understand their rights and know what assistance is available to help them secure those rights.

An individual who believes their USERRA rights have been violated may file a complaint with DOL, which will then investigate the claim(s). Alternatively, individuals may seek to informally mediate their claims utilizing ESGR Ombudsman's informal mediation services to try to resolve their USERRA related issues. Informal mediation is not required and an individual may file a complaint with DOL at any time. Additionally, individuals have a private right of action to pursue their USERRA claims without any administrative exhaustion requirements. Once a complaint is filed with DOL, VETS will formally investigate the complaint and attempt to resolve those complaints found meritorious. If, following VETS' investigation there is no resolution of the complaint, the claimant may request referral of their case to the Department of Justice (DOJ) for cases involving a private, State, or local government employer, and to OSC<sup>1</sup> for cases involving a Federal employer.

This report begins by describing the various roles each of the Federal agencies referenced above play in the administration of USERRA. Next, the report responds to each of the statutorily-mandated reporting requirements described in the introduction to this report. In addition, the report contains other information of interest, including USERRA case outcomes for cases closed by DOJ, OSC, and DOL.

## **USERRA SERVICES PROVIDED BY THE DEPARTMENT OF DEFENSE'S EMPLOYER SUPPORT OF THE GUARD AND RESERVE**

### **1. Overview**

ESGR is a DOD program established in 1972 in support of the critical role the National Guard and Reserve play in our nation's defense and readiness. ESGR helps develop and promote supportive civilian work environments for Reserve Component members and increase understanding of applicable laws and DOD policies through employer outreach and recognition, military outreach, and customer service operations to provide information and answer questions. ESGR also offers ombudsman services for service members who request assistance to resolve conflicts or misunderstandings with their civilian employers related to their uniformed service.

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<sup>1</sup> OSC is an independent Federal investigative and prosecutorial agency. OSC's primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, including protections included in USERRA.

ESGR is a volunteer-centric program with a nationwide network of more than 3,360 volunteers that work to ensure all employers support and value the employment of Reserve Component members. Headquarters (HQ) ESGR in Alexandria, Virginia, provides guidance, resources, and support to its volunteers and to its 54 volunteer led state committees. An ESGR state committee is located in each of the 50 States, the District of Columbia, Guam and the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico. Each of the ESGR state committees has its own leadership structure, headed by an ESGR state committee chair. The majority of ESGR's volunteers have previously served in the uniformed services.

In FY 2020, the COVID-19 pandemic halted ESGR's in-person engagements, which significantly impacted outreach operations. Despite the required transition to a virtual environment, ESGR volunteers engaged 34,567 employers and 164,079 service members, educating both groups on their rights and responsibilities under USERRA and associated DOD policy.

## **2. Outreach Programs**

ESGR conducts awareness and recognition programs aimed at the employers of Reserve Component service members to engender positive support for National Guard and Reserve service. ESGR also educates both service members and employers about their rights and responsibilities under USERRA and related DOD policies to assist in preventing or reducing employer/employee conflicts and misunderstandings related to an employee's uniformed service. ESGR engages directly with military units to promote a better understanding of USERRA, ESGR programs and services, and the importance of positive working relationships with employers to increase overall military participation and readiness.

ESGR's outreach efforts towards employers includes voluntary participation in the Statement of Support Program. Employers who sign Statements of Support pledge that they will:

- Fully recognize, honor, and comply with USERRA.
- Provide managers and supervisors with the tools they need to effectively manage employees who serve in the National Guard and Reserve.
- Appreciate the values, leadership, and unique skills service members bring to the workforce, and encourage opportunities to hire members of the National Guard, Reservists, transitioning service members, and veterans.
- Continually recognize and support our country's service members and their families, in peace, in crises, and in war.

Outreach programs also include the ESGR Awards Program, designed to recognize employers for policies and practices that are supportive of their employee's participation in the National Guard and Reserve. Most employer awards originate from nominations submitted by service members recognizing supportive supervisors with the Patriot Award. ESGR administers the Secretary of Defense Employer Support Freedom Award, the U.S. Government's highest honor bestowed on employers. The Freedom Award is presented annually to a maximum of 15 large, small, and public-sector employers that have demonstrated exceptional support to Reserve Component employees.

During FY 2020, ESGR recognized 7,547 supervisors of Reserve Component service members with the Patriot Award, received 2,623 nominations for the 2020 Secretary of Defense Employer Support Freedom Award, and obtained 4,059 Statements of Support from employers across the Nation.



### **3. Ombudsman Services**

ESGR assists National Guard and Reserve members with uniformed-service-related employment conflicts through its nationwide Ombudsman Services program. ESGR provides assistance under USERRA in accordance with a Memorandum of Understanding with VETS that describes the roles of the two agencies in administering their respective responsibilities under USERRA. While ESGR is not a USERRA-enforcement agency and does not participate in formal litigation processes, the Ombudsman Services program provides information, education and neutral, informal third-party mediation services to help resolve employee/employer USERRA conflicts. The program has more than 455 ombudsmen nationwide who are specifically trained on the rights and responsibilities outlined in USERRA, the use of neutral, informal mediation techniques, and how to further an understanding of and compliance with USERRA regulations. In addition to the Ombudsman Services program, ESGR operates a Customer Service Center (CSC) for USERRA-related inquiries and information requests from customers worldwide. The CSC provides prompt, expert telephonic and email responses to service members and civilian employers on USERRA related matters.

During FY 2020, ESGR received 14,631 contacts by telephone and email, of which 1,306 contacts resulted in actual USERRA mediation cases. Despite the increase in mobilizations associated with COVID-19 response efforts and other domestic missions, the CSC's FY 2020 contacts and cases did not significantly change compared with FY 2019. ESGR's mediation efforts covered an array of USERRA related issues that included 536 complaints involving some type of military discrimination; 741 complaints involving job reinstatement; and 29 complaints involving possible retaliation or reprisal. There were 281 USERRA mediation cases in which ESGR was unable to facilitate an agreement between the employee and employer. In those instances, ESGR ombudsman informed both parties that the employee had the right to file a case with DOL or seek assistance through a private attorney. ESGR and DOL coordinate closely on USERRA related issues, track problems, and identify trends as part of their efforts to protect service members' and employers' rights.

### **4. Department of Defense USERRA Working Group**

In June 2017, the Deputy Assistant Secretary of Defense for Reserve Integration (DASD RI) established a DOD USERRA Working Group, led by ESGR, to review USERRA application and policy in the context of current Reserve Component utilization rates. The participants in the USERRA Working Group include representatives from the DASD RI office, ESGR, each of the Military Departments and Reserve Components, and DOL. The working group's efforts in FY 2020 focused on refining DOD policies and processes to assist employers with requests for verification of an employee's uniformed service, and to assist both service members and employers to determine which periods of uniformed service count against the five-year service limitation for re-employment protections as established in USERRA. DOD USERRA policies and processes are published in DOD Instruction 1205.12, "Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services." A significant update to DOD Instruction 1205.12 is pending, and expected to be published and available to the public in FY 2021.

## **DEPARTMENT OF LABOR’S USERRA OUTREACH AND CLAIMS INVESTIGATION**

### **1. VETS’ Public Education and Compliance Assistance Efforts**

VETS conducts a robust public outreach campaign to educate service members, employers, and others on their rights and responsibilities under USERRA. Since the terrorist attacks of September 11, 2001, which resulted in the single greatest mobilization of reserve components, VETS has briefed more than one million individuals on USERRA. VETS continued this outreach in FY 2020, presenting USERRA information to individuals including service members, members of professional groups, and to members of the general public. For example, on April 14, 2020, VETS presented USERRA information via webinar to more than 50 American Job Center (AJC) staff employed by the Commonwealth of Pennsylvania. On September 11, 2020, VETS also presented a virtual USERRA briefing to the Maine ESGR State Chair, and the Maine National Guard TAG at the ESGR Annual Planning and Awards Meeting. VETS’ USERRA website contains a number of educational resource materials on the statute and its application to service members, veterans, employers, employees, employers, and others including the USERRA e-laws Advisor, frequently-asked questions, and other useful information. It can be accessed at: <https://www.dol.gov/agencies/vets/programs/userra>.

Briefings to mobilizing and demobilizing members of the National Guard and Reserve are given in collaboration with ESGR. Together, the two agencies strive to ensure that service members receive a USERRA briefing upon mobilization and demobilization from active military service.

### **2. VETS’ Investigative Process**

USERRA investigations are complaint-driven. An individual who believes that their USERRA rights have been violated may file a complaint (VETS Form 1010) with VETS online or submit a signed form in person, via electronic mail, personal mail, or facsimile. VETS Form 1010 is available to the public online through the VETS’ web page. Upon receipt of an electronically-filed or signed and completed hard-copy VETS Form 1010, VETS immediately opens a formal investigation. A brief notification of process rights, written in easy-to-understand question and answer format, is sent to each claimant within five days of VETS’ receipt of a complaint.

The assigned investigator collects and reviews pertinent documentary evidence, interviews necessary witnesses, and may use an administrative subpoena to obtain the necessary evidence. To ensure investigations are of the highest quality and are conducted in a uniform and timely manner, VETS’ investigators are extensively trained in the legal aspects of USERRA, in investigative techniques, and in the agency’s operating procedures. If the evidence compiled in a USERRA investigation supports the allegations made, the agency will attempt to obtain satisfactory resolution through negotiation or mediation. VETS encourages all parties to resolve disputes promptly and avoid litigation.

VETS has 90 days to complete its investigation, unless VETS obtains an extension of time from the claimant for VETS to continue the investigation and attempt to resolve the case. At any point during the investigative process, the claimant may elect to withdraw the complaint from VETS and pursue the claim with private counsel or on a *pro se* basis.

### **3. Case Referral Process**

Upon completion of the investigation, if VETS does not resolve the case to the claimant's satisfaction, VETS advises the claimant in a written closing letter of their right to have the case referred to either DOJ or to OSC, as appropriate, for consideration of legal representation at no cost to the claimant. If a claimant requests that their case be referred, VETS must refer the claim regardless of whether VETS has found merit in the complaint. Each VETS' case referral contains a memorandum analyzing the USERRA claim and providing an assessment on whether or not the claim has merit. VETS has 60 days to complete this referral process, unless VETS obtains an extension of time from the claimant.

### **4. Program Initiatives**

In FY 2020, VETS engaged in a number of program improvement initiatives including establishing and maintaining training relationships with each State ESGR Ombudsman Program to support National Guard and Reserve members. These relationships were leveraged to provide virtual compliance assistance to National Guard and Reserve members following lockdowns and mobilizations resulting from COVID-19.

Also during FY 2020, VETS completed hiring specialized Regional Investigators – one in each of VETS' six regions – to focus exclusively on compliance-related activities, USERRA investigations, and compliance assistance outreach. Those six specialized Regional Investigators were fully-trained and operational in FY 2020, and provide back-up program support to the regional Senior Investigators.

Additionally in FY 2020, VETS provided the Authorization to Operate (ATO) for the VETS' Case Management System (VCMS), which was put into production on April 1, 2020. VCMS fully replaced all paper and other electronic USERRA case management systems and processes for newly filed claims. The VCMS is entirely electronic, and incorporates all aspects of the investigative and referral processes, making case investigations more efficient and fungible. The VCMS will continue to be updated and improved to create greater efficiency and effectiveness during the upcoming five years.

## **DEPARTMENT OF JUSTICE ENFORCEMENT**

DOJ and DOL work collaboratively to meet the goal of ensuring service members' USERRA rights are protected. If DOL cannot resolve a service member's USERRA claim against a private, State, or local government employer to that individual's satisfaction, the service member may ask DOL to refer the service member's claim to the Attorney General for review. Each DOL referral includes: (1) the VETS' investigative file; and (2) a memorandum analyzing the case and providing an assessment as to whether or not the claim(s) have merit.

Upon receipt of an unresolved USERRA claim from DOL, DOJ conducts an independent review of the complete DOL investigative file and analysis. If the Attorney General is reasonably satisfied that the service member is entitled to relief, the Attorney General may exercise DOJ's prosecutorial authority and commence an action in Federal court on behalf of the service member. If the employer is a State or State agency, the action is brought in the name of the United States. In all other cases, the United States files suit in the name of the service member. DOJ also attempts to seek relief on the service member's behalf and to settle the claims without commencing an action in court. If DOJ

determines that it will not offer legal representation to a claimant, or seek relief on the service member's behalf, it informs the service member of this decision, in writing, and notifies them that they have the right to proceed with private counsel. In all cases, DOJ ensures that each USERRA referral receives careful consideration and is processed as expeditiously as practicable.

DOJ continues to vigorously enforce USERRA against private, State, and local employers, through litigation, facilitated settlements, outreach and advocacy. Since the Division assumed USERRA enforcement authority in 2004 and through the end of FY 2020, it has filed 109 USERRA lawsuits and favorably resolved 200 USERRA complaints either through consent decrees obtained in those suits or through facilitated private settlements. Over the last four years, DOJ filed ten complaints on behalf of twelve service members and filed or negotiated private settlements in excess of \$990,000. For example, on January 7, 2020, DOJ completed a settlement on behalf of Naval Petty Officer Lindsey Hunger, a member of the United States Naval Reserve, resolving her USERRA claim against Walmart. As part of the settlement, which included back pay for Petty Officer Hunger, Walmart agreed to review and revise its employment and internal hiring policies across the corporation. It also agreed to revise the policies to include the following language: "Walmart prohibits discrimination against individuals, including applicants, based on their military service (including required military training obligations) or membership in the uniformed services."

On December 17, 2019 the DOJ filed a complaint in the Northern District of Illinois on behalf of Captain and Judge Advocate Derrick Strong against the City of Chicago Fire Department, alleging that the City violated USERRA when it failed to provide Captain Strong with an opportunity, after his return from active duty military service, to take a promotional examination that he missed while deployed. According to the complaint, Captain Strong is currently assigned to the 416th Theater Engineer Command's (TEC), Office of the Staff Judge Advocate as a Trial Counsel and Administrative Law Attorney, where he provides legal advice and overall legal support to the 416th TEC and its Command. He is also employed as a Cross-Trained Firefighter and Emergency Medical Technician-Basic for the Chicago Fire Department. From September 30, 2016, to June 26, 2017, he was actively deployed with the U.S. Army Reserve in support of Operation Enduring Freedom. While Captain Strong was deployed, the City of Chicago administered a test for firefighters to become fire engineers but did not provide him with an opportunity to take a make-up exam upon his return from military leave. The case is currently in litigation.

DOJ has also worked closely with the Solicitor's Office at DOL in training VETS' investigators through both live and remote training sessions, discussing case trends, and collaborating on USERRA strategy. For example, the DOJ and the Solicitor's Office at DOL have a scheduled monthly call where all case referrals and case resolutions are discussed.

In FY 2021, DOJ will continue to work with DOL to ensure that referrals are promptly and carefully processed and that each meritorious referral is resolved to the satisfaction of the service member and the government. While DOJ will continue to aggressively pursue litigation when warranted, it seeks to resolve meritorious referrals without contested litigation whenever possible, in order to achieve the best possible result for the service member. The United States will also continue to seek out opportunities to participate as *amicus curiae* and file statements of interest on behalf of service members DOJ's continued enforcement powers under the statute.

## OFFICE OF SPECIAL COUNSEL ENFORCEMENT

OSC's enforcement responsibilities apply to Federal-sector USERRA cases. Case referrals from DOL to OSC following a VETS' investigation are addressed in a manner similar to that used in DOJ referrals discussed above.

### USERRA IN THE FEDERAL SECTOR

The Federal Government is committed to being a model employer under USERRA. OPM is responsible for administering USERRA policy for the Federal Government to ensure it meets that goal.

During FY 2020, VETS and OSC professional staff collaborated to provide technical assistance and guidance on a number of highly complex issues to Federal agencies, teaching and training agency staff on the law and best practices set forth in OPM's guidance. VETS and OSC continue to collaborate in this effort, which has earned praise from agency officials who received their guidance. These activities were conducted in furtherance of the idea that the Federal Government should be a model employer, particularly with respect to honoring its commitment to preserving and promoting service members' and veterans' employment rights.

In FY 2021 and future years, VETS will continue its plans to increase these activities. Furthermore, in an effort to broaden and strengthen partnerships with other Federal agencies, VETS, in coordination with OSC, DOD, and OPM, will continue to work together with other Federal partners to identify and share best practices to ensure that our nation's veterans are well served. Through these partnerships, VETS can better respond to requests for assistance, more effectively promote veteran employment in the Federal sector, and develop innovative approaches to collaborate with employers on veteran employment initiatives.

### MANDATED REPORTING REQUIREMENTS

Section 4332 of USERRA, 38 U.S.C. § 4332, requires the Secretary of Labor, after consultation with the Attorney General and the Special Counsel, to prepare and transmit an annual report to Congress containing the following information for the preceding fiscal year.

#### **1. The number of cases reviewed by the Department of Labor under this chapter during the fiscal year for which the report is made**

DOL reviewed 944 new unique<sup>2</sup> cases in FY 2020 opened pursuant to a submitted VETS Form 1010 complaint. The table below provides the numbers of unique USERRA cases reviewed by DOL in FY 2015 – FY 2020.

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<sup>2</sup> This excludes duplicative cases such as cases that are filed multiple times by the same claimant with the same complaint or cases that have been previously investigated and have been reopened.

**Figure 1. Unique USERRA Cases Reviewed by DOL**

Fiscal Year	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Total New Cases	1,123	930	944	917	950	944
Total Cases	1,288	1,107	1,098	1,095	1,127	1,117

During FY 2020, DOL carried over an additional 164 unique cases (open investigations) from 2019. During FY 2020, DOL reopened (at the claimants' request) eight cases from FY 2019 and one from FY 2018 or earlier. In sum, DOL reviewed a total of 1,117 unique cases in FY 2020.

**2. The number of cases reviewed by ESGR, on behalf of the Secretary of Defense, during the fiscal year**

During FY 2020, ESGR received 14,631 contacts by telephone and email. Of those contacts, 1,306 resulted in actual USERRA cases reviewed by ESGR Ombudsman.

**3. The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of the Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year**

In FY 2020, DOL completed referral actions on 41 cases to the Attorney General and 25 cases<sup>3</sup> to OSC. During the fiscal year, OSC did not file any new USERRA appeals with the MSPB, but continues to represent one service member in an appeal filed during a previous fiscal year that remains pending before the MSPB. The nature and status of these referred cases is reflected in mandatory reporting requirement number seven of this report.

**A. Cases referred to the Department of Justice or the Office of Special Counsel<sup>4</sup>**

**i. Cases referred to the Department of Justice**

In FY 2020, the Civil Rights Division received a total of thirty-nine referrals from DOL. Eight were assessed as having merit and 31 were assessed as not having merit. Out of the referrals that were assessed as having merit, DOJ facilitated settlement in one referral, offered representation in another which was still under consideration by DOJ in FY 2020, and one referral involved a State Agency as

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<sup>3</sup> Referral actions completed by DOL may not match the count of referrals accepted by DOJ or OSC during a fiscal year due to the gap in time between the date DOL completes work on a referral request, and the date DOJ or OSC accepts a referral in instances where such a gap crosses between one fiscal year and another.

<sup>4</sup> In contrast with Figure 3 above, this section counts the referrals actually received by DOJ and OSC during FY 2020. Therefore this section includes referrals from requests that were made in FY 2019 that were received in FY 2020, and excludes requests that were made in FY 2020 that were not received until FY 2021.

a potential defendant which also was still under consideration by DOJ in FY 2020. The remaining five referrals assessed as having merit were still under consideration by DOJ in FY 2020.

Out of the 31 cases assessed as having non-merit, based on DOL's assessment and DOJ's independent analysis of the merits of each referral, DOJ declined representation with respect to 23 referrals. Six referrals involved a State agency, two of which DOJ declined to pursue litigation and had been referred as non-merit cases by DOL, and four of which were still under consideration by DOJ in FY 2020. The remaining two referrals were still under consideration by DOJ in FY 2020.

The cases referred to the Civil Rights Division in FY 2020 involved a number of USERRA issues. Approximately 33% (13) of these cases involved allegations of termination and/or discharge, approximately 38% (15) of these cases involved reemployment allegations, such as accommodation and disability; while approximately 13% (5) of these cases involved allegations of loss or denial of benefits, such as loss of pay, assignment, reduction or loss of pension or health benefits, and loss of seniority. The remaining cases involved various forms of discrimination, with approximately 18% (7) involving failure to promote, 3% (1) disparate treatment, and approximately 38% (15) involving actions affecting the service member's terms and conditions of employment, such as hostile work environment, discipline or harassment. The remaining 8% (3) of these cases involved allegations of retaliation for asserting USERRA protection.<sup>5</sup>

#### **ii. Cases Referred to the Office of the Special Counsel**

During FY 2020, DOL referred 24 cases to OSC<sup>6</sup>, at the service member's request, under 38 U.S.C. § 4324. Additionally, six cases referred to OSC during the previous fiscal year remained pending at the beginning of FY 2020. Thus, 30 total referral cases were pending at OSC during the fiscal year. OSC closed or resolved 27 of the 30 cases during the fiscal year (approximately 87% within the initial 60-day time limit), while three cases remained pending at the end of the fiscal year. OSC did not file any new USERRA appeals with the MSPB during FY 2020 but continues to represent one service member in an appeal filed during a previous fiscal year that remains pending before the MSPB.

In 19 of the 24 cases DOL referred to OSC during FY 2020, the service member alleged discrimination based on uniformed service, such as termination, non-promotion, non-selection, or denial of employment benefits; in five cases, violations of reemployment rights; and in two cases, retaliation for exercising USERRA rights (some cases contain multiple allegations).

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<sup>5</sup> Several cases involved multiple issues. Each issue was counted separately.

<sup>6</sup> Referral actions completed by DOL may not match the count of referrals accepted by DOJ or OSC during a fiscal year due to the gap in time between the date DOL completes work on a referral request, and the date DOJ or OSC accepts a referral in instances where such a gap crosses between one fiscal year and another.

**B. Complaints Filed by the Attorney General and Actions Initiated by the Office of Special Counsel**

**i. Complaints Filed by the Attorney General**

The DOJ filed two USERRA complaints in FY 2020. One of those cases, *Hunger v. Walmart*, was settled in FY 2020. The remaining case, *Strong v. City of Chicago*, was in active litigation in FY 2020. The DOJ settled five total USERRA cases in FY 2020 including both in-court and out-of-court settlements. In addition to litigating the *Hunger* and *Strong* cases discussed above, the Department continued its litigation against Coahoma County, Mississippi, in a suit filed in FY 2019 to protect the employment rights of Army Reservist, Staff Sergeant Jason Sims Sr. According to the complaint, Staff Sergeant Sims was employed with the Coahoma County Sheriff's Office from 2014 to 2018 during which time he also performed military service by teaching leadership courses at the United States Army installation at Fort Knox, Kentucky. The complaint alleges that he was fired because of this military service obligation, in violation of USERRA. The lawsuit sought reinstatement of Staff Sergeant Sims to his employment with the Coahoma County Sheriff's Office and the recovery of back wages and other benefits of employment that Sims lost as a result of his termination.

**ii. Actions Initiated by the Office of Special Counsel**

OSC did not file any new USERRA appeals with the MSPB during FY 2020 but continues to represent one service member in an appeal filed during a previous fiscal year that remains pending before the MSPB.

**4. The number of complaints filed by the Attorney General pursuant to section 4323 during such fiscal year**

DOJ filed two USERRA complaints in Federal court in FY 2020.

**5. The number of cases reviewed by the Secretary of Labor and ESGR that involve the same person**

ESGR provided VETS with the names of 1,229 individuals who had filed the 1,306 cases reviewed by ESGR Ombudsmen in FY 2020, and the date of each case. VETS compared the ESGR data to its own data<sup>7</sup> on cases initially opened between October 1, 2019 and September 30, 2020. This comparison resulted in 90 likely matches, thus, it appears that 6.9% of 2020 ESGR cases were subsequently opened as VETS' cases.

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<sup>7</sup> Matches between ESGR and VETS' cases are made by matching names and dates of ESGR interactions against VETS' claimants who self identify as having engaged with ESGR initially. Therefore, matches are likely but not guaranteed without additional provision of personally identifiable information (PII).



**A. Cases Reviewed by ESGR on Behalf of the Secretary of Defense**

ESGR Ombudsman services covered an array of USERRA issues that included 536 complaints involving some type of military discrimination; 741 complaints involving job reinstatement; and 29 complaints involving possible retaliation or reprisal during FY 2020.

ESGR resolved 1,025 of its 1,306 Ombudsman cases. There were 281 USERRA Ombudsman cases in which the employee and employer could not reach an agreement. In these instances, ESGR Ombudsmen informed both parties that the employee had the option to file a case with DOL or seek assistance through a private attorney.

The following crosswalk aligns the issues identified in ESGR case data with VETS' data. It shows the number of cases for each separate issue. For three groupings of issues defined as "Primary Categories" – Discrimination, Reinstatement/Reemployment, and Reprisal – the crosswalk also shows both the total cases, and the percentages of all cases, for each category.

**Figure 2. Crosswalk of USERRA Issues, FY 2020**

**ESGR Ombudsman Services ↔ VETS’ National Guard & Reserve Complaint Cases**

Primary Categories	<b>ESGR</b> <b>Ombudsman Cases</b> <b>“Problem Codes”</b> (Converted to VETS’ Issue Codes)	<b>VETS’</b> <b>Complaint Cases</b> <b>“Issue Codes”<sup>8</sup></b>
<b>Discrimination</b>	Military Obligation Discrimination 489	ID – Military Obligations Discrimination 394
	Initial Hiring Discrimination 47	II – Initial Hiring Discrimination 19
	<b>536 Ombudsman Cases (41%)</b>	<b>413 Issues in 408 Complaint Cases (53.2% of Complaint Cases)</b>
<b>Reinstatement/ Reemployment</b>	Health Benefits 15	IH – Health Benefits 21
	Pension 20	IP - Pension 34
	Seniority 23	IS - Seniority 36
	Other Non-Seniority Benefits 84	IB – Other Non-Seniority Benefits 67
	Status 28	IZ - Status 45
	Layoff 29	IL - Layoff 47
	Vacation 53	IV - Vacation 29
	Reinstatement 325	IR - Reinstatement 169
	Promotion 73	IT - Promotion 55
	Reasonable Accommodations/Retraining for Disabled 9	IA – Reasonable Accommodations/ Retraining for Disabled 10
	Reasonable Accommodation/Retraining for Non-Qualified Non-Disabled 2	IW – Reasonable Accommodations/Retraining for Non-Qualified Non-Disabled 4
	Pay Rate 76	IM – Pay Rate 53
	Special Protected Period Discharge 4	IF – Special Protected Period Discharge 9
<b>741 Ombudsman Cases (57%)</b>	<b>579 Issues in 383 Complaint Cases (50% of Complaint Cases)</b>	
<b>Reprisal</b>	Discrimination as Retaliation for any Action 29	ID2 – Discrimination as Retaliation for any Action 111
	<b>29 Ombudsman Cases (2%)</b>	<b>111 Issues in 111 Complaint Cases (14.5% of Complaint Cases)</b>

<sup>8</sup> To facilitate comparisons with ESGR data, VETS’ data in this chart reflects only National Guard and Reserve (NG&R) complaint cases, whereas all complaint cases were reflected earlier in this report in the “Mandated Reporting Requirements” section. Also, the percentages of NG&R complaint cases among the three primary categories for VETS in this chart total less than 100%, because VETS’ issue and case counts here do not include the uncategorized “Other” problem issue code, thereby excluding 17 “Other” VETS issues and cases from this chart.

**B. Cases Reviewed by DOL and ESGR Involving the Same Person**

DOL's response to paragraph five of the Mandated Reporting Requirements, setting forth the number of cases reviewed by DOL and DOD through ESGR that involve the same person, indicates that in comparing ESGR data on USERRA cases during the fiscal year, 90 likely matches were identified. This figure indicates that first ESGR, and subsequently DOL, handled the same individuals' claims.

DOL closed all but two of these 90 likely matches by September 30, 2020, under the following closure codes: No Merit: 17 (19.3%); Administrative: 5 (5.7%); Claim Granted: 12 (13.6%); Claim Settled: 14 (15.9%); Claim Withdrawn: 32 (36.4%); Not Eligible: 6 (6.8%); Merit, Not Resolved: 2 (2.3%); and none were Merit Undetermined. An explanation of VETS' case closure codes appears in the explanation of the status of cases reviewed by DOL.

The following chart shows how the alleged issues in these 90 likely match cases were distributed among the various VETS' closure codes.

**Figure 3. FY 2020 VETS/ESGR Likely Case Matches**

<b>VETS' DATA For 90 Likely Case Matches with FY 2020 ESGR Cases*</b>											
<b>VETS' USERRA Issue Codes</b>	<b>VETS' Closure Codes</b>										
	<b>No Merit</b>	<b>Administrative</b>	<b>Claim Granted</b>	<b>Claim Settled</b>	<b>Claim Withdrawn</b>	<b>Not Eligible</b>	<b>Merit, Not Resolved</b>	<b>Merit Undetermined</b>	<b>Still Open</b>	<b>Issue Totals</b>	<b>% of Total</b>
<b>Military Obligations Discrimination</b>	9	3	7	4	20	1	0	0	2	46	51.1%
<b>Reinstatement</b>	5	1	3	5	9	3	1	0	0	27	30.0%
<b>Other Non-Seniority Benefits</b>	2	1	1	2	4	1	0	0	0	11	12.2%
<b>Promotion</b>	0	2	1	1	0	1	0	0	0	5	5.6%
<b>Vacation</b>	2	0	0	2	0	0	0	0	0	4	4.4%
<b>Status</b>	1	1	1	3	2	1	0	0	1	10	11.1%
<b>Pay Rate</b>	2	0	2	0	3	1	0	0	0	8	8.9%
<b>Reasonable Accommodation /Retraining for Non-Qualified/Non-Disabled</b>	0	0	0	0	0	0	0	0	0	0	0.0%
<b>Discrimination as Retaliation for any Action</b>	2	1	1	3	6	1	0	0	1	15	16.7%
<b>Seniority</b>	3	0	2	0	1	0	0	0	0	6	6.7%
<b>Pension</b>	0	0	1	1	0	1	0	0	0	3	3.3%
<b>Initial Hiring Discrimination</b>	0	0	0	0	0	0	0	0	1	1	1.1%
<b>Layoff</b>	1	0	0	0	3	0	0	0	1	5	5.6%
<b>Special Protected Period Discharge</b>	0	0	0	2	0	0	1	0	0	3	3.3%
<b>Health Benefits</b>	0	1	0	0	0	0	0	0	0	1	1.1%
<b>Reasonable Accommodation /Retraining for Disabled</b>	0	0	0	0	0	0	0	0	0	0	0.0%
<b>Other</b>	3	1	2	1	0	0	0	0	1	8	8.9%
<b>Closure Code Total</b>	30	11	21	24	48	10	2	0	7	146	
<b>% of Total</b>	33.3%	12.2%	23.3%	26.7%	53.3%	11.1%	2.2%	0.0%	7.8%		162.2%

\*Note: Many USERRA cases involve multiple issues, and VETS records all the USERRA issues involved in a case. As a result, the numbers of cases and issues in this chart exceeds the 90 ESGR and VETS' cases involving the same person, and the combined percentages exceed 100%. Matching of FY 2020 ESGR cases and VETS' cases initially opened October 1, 2019 to September 30, 2020 is based on claim dates and claimant names.

**6. With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5—**

**A. The Number of Such Cases that Involve a Disability-Related Issue**

1. 22 of the new unique cases first reviewed by DOL in FY 2020 (2.3%) involved a disability-related issue.
2. Nine of the ESGR cases first reviewed in FY 2020 (0.7%) involved a disability related issue.
3. Of the 66 referral actions completed by DOL, and transmitted to DOJ and OSC in FY 2020 for consideration of litigation, one of those received by OSC and none of those received by DOJ involved a disability-related issue.
4. Of the two USERRA complaints filed by DOJ in FY 2020, none involved a disability related issue.
5. With respect to the 90 cases reviewed by DOL and ESGR involving the same person in FY 2020, none involved a disability-related issue.

**B. The Number of Such Cases that Involve a Person who has a Service-Connected Disability**

1. In FY 2020, VETS asked claimants whether they had a service-connected disability. Among the 944 new unique cases VETS received, VETS obtained responses from 899 claimants (95.2%), 322 (35.8%) of whom reported having such a disability. Among these 322 claimants, 20 also claimed a USERRA related disability. Among the 577 claimants who responded but did not report having a service-connected disability, two claimed a USERRA-related disability issue.
2. No information is available on the number of cases handled by ESGR that involved a person with a service-connected disability.
3. Of the 41 referral actions completed by DOL, and transmitted to DOJ in FY 2020 for consideration of litigation, 12 involved a claimant who reported a service-connected disability, and none included a USERRA related disability issue.
4. Of the 25 referral actions completed by DOL, and transmitted to OSC in FY 2020 for consideration of litigation, 13 involved a claimant who reported a service-connected disability, and one included a USERRA related disability issue.
5. Of the two USERRA complaints filed by DOJ in FY 2020, none involved a service-connected disability.
6. With respect to the 90 cases reviewed by DOL and ESGR involving the same person in FY 2020, VETS obtained service-connected disability responses from 89 of these claimants, 28 (31.1%) of whom reported having such a disability. None of the claimants among the 28 who reported having a service-connected disability also claimed a USERRA related disability issue.

**7. The nature and status of each case reported pursuant to paragraph 1, 2, 3, 4, or 5—**

**Cases Reviewed by DOL**

The following issues were raised in the new unique USERRA cases reviewed by DOL. Because many USERRA cases involve multiple issues, the number of cases in this chart exceeds the 944 new unique cases reported by VETS in FY 2020 and the combined percentages exceed 100%.

**i. Figure 4. Cases Opened by VETS in FY 2020**

USERRA ISSUE	VETS' CASES ALLEGING ISSUE	
	NUMBER	PERCENT
Military obligations discrimination	423	44.8%
Reinstatement	196	20.8%
Other non-seniority benefits	74	7.8%
Promotion	70	7.4%
Vacation	34	3.6%
Status	54	5.7%
Pay rate	64	6.8%
Reasonable accommodation/retraining for non-qualified/non-disabled	6	0.6%
Discrimination as retaliation for any action	168	17.8%
Seniority	48	5.1%
Pension	39	4.1%
Initial hiring discrimination	32	3.4%
Layoff	60	6.4%
Special protected period discharged	10	1.1%
Health benefits	40	4.2%
Reasonable accommodations/retraining for disabled	22	2.3%
Other	87	9.2%

VETS investigated and closed 1,016 cases in FY 2020, including 825 cases which were new and unique cases in FY 2020, under the following closure codes (each code is explained in Figure 4):

**ii. Figure 5. Investigated and Subsequently Closed by VETS in FY 2020**

CLOSURE CODE	VETS CASES CLOSED	
	NUMBER	PERCENT
No merit	310	30.5%
<i>Referrals requested on cases closed in FY 2020: 35</i>		
Administrative	86	8.5%
<i>Referrals requested on cases closed in FY 2020: 0</i>		
Claim granted	96	9.4%
<i>Referrals requested on cases closed in FY 2020: 2</i>		
Claim Settled	98	9.6%
Claim Withdrawn	315	31%
Claim Withdrawn – Claimant to consult with ESGR	5	0.5%
Not eligible	71	7%
<i>Referrals requested on cases closed in FY 2020: 8</i>		
Merit, not resolved	34	3.3%
<i>Referrals requested on cases closed in FY 2020: 13</i>		
Merit Undetermined	1	0.1%
<i>Referrals requested on cases closed in FY 2020: 1</i>		
<b>TOTAL:</b>	<b>1,016</b>	<b>100.0%</b>
<i>Total referrals requested on cases closed in FY 2020: 59<sup>9</sup></i>		

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<sup>9</sup> In addition to the 59 cases that were investigated and closed by VETS, and requested for referral to DOJ or OSC in FY 2020, there were seven cases that requested for referral to DOJ or OSC in FY 2020 whose cases were closed prior to FY 2020. One case from FY 2011 (“No Merit”), one case from FY 2018 (“Merit, Not Resolved”), and five cases from FY 2019 (two “Merit, Not Resolved”, three “No Merit”). In total there were 66 referrals requested in FY 2020.

### iii. Figure 6. Case Closure Codes Explained

- **ADMINISTRATIVE CLOSURE:** A case should be closed administratively under any of the following circumstances:

**Lack of Interest** – Administrative closure is appropriate when the claimant clearly displays lack of interest or is obviously uncooperative. Examples are failure to reply to multiple VETS’ letters, failure to give VETS a change of address, failure to supply information that could be easily obtained, and failure to attend scheduled meetings or conferences.

**Continued Unauthorized Contact by Third Party with Employer** – Although a claimant is entitled to be represented by a third party under USERRA while the case is investigated by VETS, if the representation interferes with the investigation, they will be informed that VETS can no longer continue its involvement in the case and that the case will be administratively closed.

- **CLAIM GRANTED:** When the employer grants all of the claimant’s entitlements.
- **CLAIM SETTLED:** When the claimant and the employer agree to settle the case potentially for less than the claimant’s full entitlements under USERRA.
- **WITHDRAWN CLAIM:** When the claimant informs VETS in writing of their desire to withdraw the claim.
- **NOT ELIGIBLE:** If a case has already been opened, and VETS finds that the claimant does not meet the eligibility requirements in the statute, the case should be discussed with the claimant and, with their concurrence, closed on the basis of no eligibility.
- **NO MERIT:** The claimant is not entitled to relief for reasons other than failure to meet eligibility requirements.
- **CASES REFERRED:** Unsettled cases are closed only when they are referred by DOL for appropriate referral action.
- **MERIT, NOT RESOLVED:** When the completed investigation finds merit to the complaint, but VETS is unable to obtain a satisfactory resolution.
- **MERIT UNDETERMINED:** When the investigation is not complete but the statutory deadline for case completion (or an extension previously agreed to by the claimant) is reached and the claimant does not agree to a further extension.

## 8. **With respect to the cases reported on pursuant to paragraphs 1, 2, 3, 4, and 5, the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System**

VETS is the only Federal agency that collected occupational data on USERRA claimants and recorded the respective SOCS code in FY 2020. Therefore, SOCS code data is not available for ESGR mediation cases. The chart below shows the full distribution of the SOCS codes in FY 2020 USERRA cases, across four different categories: VETS’ cases, Cases common to VETS and ESGR; Referrals to DOJ; and Referrals to OSC. The predominant occupations found among each of these four categories of cases can be summarized as follows:



1. Out of 916 (97.03%)<sup>10</sup> of the new and unique complaints filed in FY 2020, 21.5% of complaints involved Protective Service occupations; 11.6% involved Office and Administrative Support occupations; and 10.3% Management occupations.
2. Out of 88 (97.78%)<sup>11</sup> of cases reviewed by DOL and ESGR, likely involving the same person in FY 2020, 24.4% of those cases involved Protective Service occupations; 11.1% involved Management occupations; and 10% involved Office and Administrative Support occupations.
3. Out of the 41 referrals processed by DOL and forwarded to the Attorney General in FY 2020, 29.3% of those cases involved Protective Service occupations; 16.6% involved Management occupations and Transportation and Material Moving occupations; and 7.3% involved Computer and Mathematical occupations and Healthcare Practitioners and Technical occupations.
4. Out of the 25 referrals processed by DOL and forwarded to OSC from DOL in FY 2020, 44% of complaints involved Protective Service occupations; 20% involved Office and Administrative Support occupations; and 8% of complaints involved each of the following three occupations: Management; Business and Financial Operations; and Computer and Mathematical occupations.

**Figure 7. Occupations Involved in FY 2020 USERRA Cases - as Designated by the Standard Occupational Classification System (SOCS)**

SOCS Job Family	Percent of Cases involving SOCS Code			
	VETS Cases	Referrals to		Common to VETS & ESGR
		DOJ	OSC	
Protective Service	21.5%	29.3%	44%	24.4%
Office and Administrative Support	11.6%	2.4%	20%	10%
Management	10.3%	14.6%	8%	11.1%
Transportation and Material Moving	7.6%	14.6%	0%	6.7%
Healthcare Practitioners and Technical	4.2%	7.3%	4%	7.8%
Computer and Mathematical	3.8%	7.3%	8%	7.8%
Business and Financial Operations	7.7%	4.9%	8%	4.4%
Production	3.9%	2.4%	0%	6.7%
Sales and Related	2.9%	4.9%	0%	1.1%
Installation, Maintenance, and Repair	3.9%	0%	0%	0%
Educational Instruction and Library	3.2%	0%	0%	4.4%

<sup>10</sup> Total is less than 100% because the SOCS code was not recorded for some cases.

<sup>11</sup> Total is less than 100% because the SOCS code was not recorded for some cases.

SOCS Job Family	Percent of Cases involving SOCS Code			
	VETS Cases	Referrals to		Common to VETS & ESGR
		DOJ	OSC	
Architecture and Engineering	2.7%	0%	0%	2.2%
Construction and Extraction	2.1%	2.4%	0%	1.1%
Life, Physical, and Social Science	1.9%	0%	0%	2.2%
Community and Social Service	1.8%	2.4%	0%	1.1%
Building and Grounds Cleaning and Maintenance	1.7%	2.4%	4%	2.2%
Healthcare Support	1.6%	0%	0%	1.1%
Arts, Design, Entertainment, Sports, and Media	1.5%	2.4%	0%	1.1%
Legal	1.2%	2.4%	4%	1.1%
Food Preparation and Serving	1%	0%	0%	0%
Farming, Fishing, and Forestry	.5%	0%	0%	1.1%
Personal Care and Service	.5%	0%	0%	0%

**9. An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof**

No patterns of violations of USERRA became apparent in FY 2020. DOL will continue to monitor USERRA cases to identify trends as they arise.

**10. Recommendation for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment**

Although the Attorney General and the Special Counsel have not offered any specific recommendations for administrative or legislative action at this time, the Secretary offers the recommendations set forth below.

1. DOL supports changes to USERRA that will strengthen the United States’ ability to enforce USERRA and ensure that the statute is consistent with other civil rights laws. To these ends, DOL offers the following recommendations:
  - a. We request amending USERRA to allow the Attorney General, acting on behalf of the United States, to serve as a plaintiff in all USERRA suits, rather than only in suits filed against State employers.
  - b. We request the grant of independent authority to the Attorney General to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. This amendment would strengthen

significantly DOJ's ability to enforce USERRA to address a systemic violation (such as a policy prohibiting extended absences, including absences for uniformed service) that could adversely affect the employment rights of multiple service members.

- c. To support the proposed pattern-or-practice authority, we request amending USERRA to provide the Attorney General with civil investigative demand authority to compel the production of existing documents and unsworn answers to written questions from the custodian of such documents. DOL has subpoena power in its investigations under USERRA. The Attorney General, however, has no pre-suit investigatory authority. Because the proposal for pattern-or-practice authority includes the authority to initiate an investigation, Congress should provide the Attorney General with the appropriate investigative tools.
2. DOL also supports changes to USERRA that would empower service members to more ably exercise their USERRA rights. To this end, DOL offers the following additional recommendations:
    - a. To guarantee the availability of procedural rights included in the statute, we request that Congress clarify that section 4302(b) of USERRA protects both substantive and procedural rights and benefits from reduction, limitation, or elimination.
    - b. We request that Congress clarify that the definition of "benefit," "benefit of employment," or "rights and benefits" in section 4303(2) includes procedural protections provided by the statute. In particular, to guarantee the procedural right of adjudication of USERRA rights, we recommend explicitly noting that agreements to arbitrate are unenforceable unless all parties consent to arbitration after a complaint on the specific claim has been filed in court or with the MSPB and all parties knowingly and voluntarily consent to have that particular claim subjected to arbitration.
    - c. To support the proposed pattern-or-practice authority, we request amending USERRA to preserve the right of the aggrieved service member to intervene in pattern-or-practice suits or to bring their own suit where the Attorney General has declined to file suit.

DOL looks forward to working with Congress on these proposed USERRA amendments.

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USERRA annual reports are available for fiscal years (FY) 1995-1999 and 2004-2019. No reports are available for FY 2000-2003 because the reporting requirement expired in FY 2000. It was reinstated by Section 202 of the Veterans Benefits Improvement Act of 2004, P.L. 108-454, 118 Stat. 2598 (December 2004).

