REVIEW OF EXPIRING PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

OF THE

COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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REVIEW OF EXPIRING PROGRAMS

WEDNESDAY, FEBRUARY 13, 2008

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

The Subcommittee met, pursuant to notice, at 2:32 p.m., in Room 340, Cannon House Office Building, Hon. Stephanie Herseth Sandlin [Chairwoman of the Subcommittee] presiding.

Present: Representatives Herseth Sandlin, Donnelly and Boozman.

OPENING STATEMENT OF CHAIRWOMAN HERSETH SANDLIN

Ms. HERSETH SANDLIN. Good afternoon, ladies and gentlemen. The Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing will come to order. I apologize for the late start. Some of us had markups in other committees and the votes have been somewhat unpredictable today. Hopefully we will have about one-half hour to an hour here uninterrupted, and then we will be back with your patience. We appreciate the patience you have already demonstrated.

I would like to call to the attention, to the Subcommittee, to the fact that the Vietnam Veterans of America and the Gold Star Wives of America have asked us to submit written statements for the hearing record. If there is no objection, I ask for unanimous consent that their statements be entered for the record. Hearing no objections, so entered.

[The statements of the Gold Star Wives of America and the Vietnam Veterans of America appear on p. 59 and p. 61.]

Ms. HERSETH SANDLIN. As many of you know, a recent *Associated Press* article dated February 8, 2008, highlighted the troubles encountered by recently released servicemembers in obtaining employment. The article went on to cite an employment histories report published for the U.S. Department of Veterans Affairs (VA), which concludes more can be done by the public and private sectors to ensure servicemembers are successful in obtaining employment after their service to our country. Furthermore, the article refers to a U.S. Department of Labor's (DOL) Uniformed Services Employment and Reemployment Rights Act (USERRA) Annual Report to Congress, which cites a high rate of USERRA complaints by returning Guard and Reserve forces.

I know that I am not alone when I say that this article raises serious concerns about the problems encountered by many of our constituents and today's hearing gives us a venue to reevaluate

several programs that may help them succeed in life after the military. These programs have either recently expired, or are set to expire, or include benefits level rates of which are set to reduce to prior levels from prior years. These programs include the Incarcerated Veterans Transition Program, the Joint Office of Special Counsel (OSC) and U.S. Department of Labor's Veterans' Employment and Training Service (VETS) Demonstration Project, apprenticeship and on-the-job training (OJT) benefit levels, and the Adjustable Rate Mortgage (ARM) Demonstration Projects.

I look forward to working with Mr. Boozman, our Ranking Member, and Mr. Donnelly and other Members of the Subcommittee to continue to improve readjustment benefits available to all servicemembers and veterans. I would now like to recognize our Ranking Member, Mr. Boozman, for any opening remarks he may have.

[The prepared statement of Chairwoman Sandlin appears on p. 29.]

OPENING STATEMENT OF HON. JOHN BOOZMAN

Mr. BOOZMAN. Thank you, Madam Chair. And I thank you for holding this important hearing on expiring authorities in both VA and VETS. When Congress creates new programs within the Federal Government, it is common to include a sunset that requires Congress to reauthorize the program a few years after the enactment of the law for review. This is an important management tool that allows us to review the program and then determine if it should continue. Sunsets are also the result of not having sufficient PAYGO offsets to make a program permanent. In general, I believe there is always room for improvements to any program and each probably also has some faults. That is why I look forward to hearing the suggestions of our witnesses on how we can do this.

I would like to commend the testimony of Mr. Tully. While I have not had time to digest his suggested amendments to USERRA, which we will do, his good example, I think you have a very good example in writing a very effective testimony. He lists specific problems, cites the related U.S. Code, and offers specific recommendations on how to solve these problems. I thank him for the thoughtfulness with which he has addressed the issue and once again I thank you, Madam Chair, for holding this very important hearing and look forward to the testimony of our witnesses.

[The prepared statement of Congressman Boozman appears on p. 29.]

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman. I would now like to welcome all of our panelists who will be testifying this afternoon. Let me first introduce to the Subcommittee our witness on our first panel, Mr. Mathew Tully, partner of Tully Rinckey, PLLC. Welcome to the Subcommittee. We look forward to your testimony. I would like to remind you, and all of the rest of our panelists this afternoon, that your complete written statement has been made a part of the hearing record. Please limit your remarks to 5 minutes so that we have sufficient time to follow up with you and the other panels this afternoon with questions that we may have. That way everyone has ample opportunity not only with their written testimony, but also has sufficient time to respond to some of our questions, most of which are going to be either anticipated, or will not

be out of left field based on your testimony and what we are trying to get at today, as Mr. Boozman described in his opening remarks. Mr. Tully, again, welcome and you are recognized for 5 minutes.

STATEMENT OF MATHEW B. TULLY, ESQ., FOUNDING PARTNER, TULLY RINCKEY PLLC, ALBANY, NY

Mr. TULLY. Thank you, Madam Chairwoman. Thank you Ranking Member Boozman, Members of the Committee, for allowing me to testify today. I am the victim of USERRA discrimination, I am also a survivor of the 9/11 attacks on the World Trade Center, and I am also a disabled veteran of Operation Iraqi Freedom.

In 2004, my law partner, Greg Rinckey, who served as an Army Judge Advocate General (JAG) for 6 years, and I started our law firm with the sole purpose of helping USERRA victims. I think we know the law and all of its flaws better than most. With that said, we support the Office of Special Counsel's continued involvement in the investigation of USERRA complaints. We also believe USERRA could be improved to better protect servicemembers.

Specifically we would ask that the Office of Special Counsel have the power to discipline Federal supervisors who engage in USERRA discrimination. Right now, Federal supervisors routinely engage in USERRA discrimination and are not punished by their agencies unlike other laws, for example Equal Employment Opportunity (EEO) discrimination. If a supervisor were to engage in EEO discrimination,their agency would generally discipline that supervisor for violating the Code of conduct. That does not happen routinely in USERRA cases. And we believe that OSC should have the same powers that it has under the Hatch Act to bring separate disciplinary cases against members of the Federal Government who engage in USERRA discrimination.

Secondly, USERRA is known in the employment law community as "the toothless law" because it does not provide for the same type of damages provided to other, in other employment law States. Servicemembers are treated as second class citizens in this respect. I would specifically point that the Whistle Blower Protection Act has additional damages that can be applied if somebody engages in whistle blower discrimination. EEO laws have very strong damages. They have liquidated damages. They have punitive damages. They have compensatory damages.

Right now we currently have a client who works for the Post Office. His name is Richard Erickson. He is also a Sergeant Major in the Army Reserves. Sergeant Major Erickson was fired from the Post Office and received a letter. And the letter says he is terminated for taking excessive military leave. He has been unemployed for 2 years as his case battles through the Merit Systems Protection Board (MSPB) and through the Federal circuit. We think it is important to have injunctive relief and interim relief, which would allow Sergeant Major Erickson to immediately go to court and get an order reinstating him back to the Post Office before final order of the Merits Systems Protections Board or the Federal circuit is issued. That is common practice in EEO law. If somebody were to send a letter saying, "You're fired because you're an African American," or, "because you're Catholic," or because you're whatever protected class, you would take that letter into court and you would

be able to get an injunctive relief and that person would get returned back to work. And that is what we are talking about here with USERRA being toothless. None of these provisions are in USERRA.

Next I would point out that the attorney fee provisions in USERRA are very weak. Unlike in other discrimination laws that mandate the payment of attorneys fees upon the successful conclusion of a case, USERRA doesn't have that. And what you have is on one hand the number of USERRA attorneys in this country, that actively represent people, outside of my law firm. And that is because most employment lawyers don't want to take on cases where there is no chance of recovering money, or there is a slim chance of recovering money. USERRA needs to have a provision that requires the payment of attorneys fees on a successful completion of the case.

I know I only have a minute left. As a member of the National Guard, I see the hollowing out of the military occurring right now. And I believe the military is being hollowed out for two specific reasons. Employment disputes; you have combat veterans from Iraq and Afghanistan coming back and they are not reenlisting in the National Guard and Reserves because they have problems with their employers. This Committee has the power to change that. Nobody should not have to pick between staying in the National Guard or Reserve or keeping their employment.

The second major dispute, although not on the topic of today, that I see as a common problem in my unit is custody, child custody. Single parents are being forced to pick between their children or the military. And as a father, if I was ever placed in that situation I would pick my child. And I would ask that this Committee review the provisions of the Servicemembers Civil Relief Act to ensure that child custody is addressed. And I know that there has been a change under the National Defense Act of 2008. That doesn't go far enough. The law should be made crystal clear so that a deployment cannot adversely affect a parent in a child custody case. That is my 5 minutes.

[The prepared statement of Mr. Tully appears on p. 29.]

Ms. HERSETH SANDLIN. Well, no disrespect to some of our witnesses that will be following you but you have done a better job than a lot of folks sometimes do in keeping within your 5 minutes. I appreciate that, although I am certain that Mr. Boozman, Mr. Donnelly, and I have some questions for you based on not just what you shared with us in the last 5 minutes but other elements of your written testimony. I will go ahead and recognize our Ranking Member first for his questions. Mr. Boozman.

Mr. BOOZMAN. Thank you for your testimony. Some have expressed concern that if you do increase the enforcement penalties for USERRA, that will make employers reluctant to hire Guardsmen. How do you respond to that?

Mr. TULLY. There is already a provision in USERRA that says you cannot discriminate based on a person's military status. Where the concern here lies, sir, is in Reservists that are on their second, third, or fourth deployment. I am a small businessowner. And I don't know how I would handle a person who in the course of, since

September 11th, has deployed four times overseas. That is where we are running into concrete, intentional violations of USERRA.

As a general rule, I like to hire veterans. I like to hire Reservists, I like to hire National Guardsmen. I think overwhelmingly that is what Americans like to do. So I don't see a problem with the initial hiring. I see a problem when they are actually employed and they are on their third or fourth deployment to Iraq or Afghanistan in 5 years. For small businesses, that is just catastrophic. And I can tell you as a small businessowner who deployed to Iraq, it was very hard for my firm. My firm lost $173,000 because of my deployment. Luckily I has a good partner and several associates that were able to make up the money. But I don't think the issue, Mr. Congressman, is with the initial hiring. It is with once they are there. And educating the employers so that they don't engage in discrimination, and then having strict penalties when they do.

Mr. BOOZMAN. Very good. You mentioned the child custody. Can you give me a for real life example?

Mr. TULLY. Absolutely. Approximately a month ago Specialist Towne, who is in my unit, the Headquarters, 42nd Infantry Division, lost custody of her daughter because she was deployed to Iraq. And the court held that the best interest of the child was that the child were to remain in Virginia of her ex-spouse. So she had custody of the child for approximately 9 years. She deployed to Iraq with me. When she came back she tried to get custody and the judge said, "The child has adjusted well to the schools in Virginia. The child has adjusted well to the new lifestyle. And although both of you are good parents," and this is actually in the court order. "While both of you are good parents, we don't want to uproot the child again and bring her back to New York." So here is a perfectly good soldier, a perfectly good mother, who lost custody because she went to Iraq to fight for her country. And I personally find it disgusting.

Mr. BOOZMAN. And there were no other extenuating circumstances?

Mr. TULLY. No. And it is, Towne is the name of the case. It was decided by the 3rd Appellate Division out of New York. It was pretty well publicized. And that is just the most recent one. And before that there were many that this Committee was aware about because they, you proposed changes in the National Defense Act of 2008 to change the Servicemembers Civil Relief Act. But those minor changes, I believe it was six words, don't, it pertains to temporary custody orders and not a more expansive protection of somebody's custody rights.

Mr. BOOZMAN. Very good. How do you respond to testimony from both OSC and VETS that their role as a Federal agency, with its natural insight into Federal processes, makes them better fit to process USERRA Federal claims?

Mr. TULLY. I don't buy it. In the U.S. Government Accountability Office (GAO) report, they handled approximately 200 cases, OSC about another 200, 300 cases by the Department of Labor. During that exact same timeframe, my law firm handled 1,800 USERRA cases. The vast majority of those were Federal employees. I will tell you this. My budget is a lot less than the Department of Labor, VETS, and I don't have a hundred some odd people that Depart-

ment of Labor VETS has. My firm is doing it much cheaper, much more effective. And that is what private sector does. And by making attorneys fees mandatory you will see a dramatic increase in the number of attorneys that are willing to take these cases.

Right now, if you are an E4 and you have a USERRA complaint, you don't have the money to pay an attorney $5,000, $10,000, $15,000. Now my law firm takes most of our cases on a contingency, or free, because we are trying to help USERRA veterans. But there are only so many cases we can take. If you are the average servicemember, your only two options are DOL VETS or, formerly Office of Special Counsel. And you are stuck with them. And unfortunately the DOL VETS only has a 7 percent success rate, according to the GAO Report. We have a 75 percent success rate. What that means is 75 percent of the clients, 75 percent of those 1,800 clients that we took, we had a favorable settlement or we won their case in court. That is ten times what DOL VETS does. I think private sector is much more acquainted and much more able to handle these type of complaints. And we can do it cheaper. There is no reason why the Federal Government should be involved at all.

Mr. BOOZMAN. You mentioned the 1,800 cases. Of that group, how many would qualify with the knowing, willful, malicious, whatever, would qualify for punitive damages?

Mr. TULLY. I cannot, I don't have it broken down. I would suspect it is——

Mr. BOOZMAN. What percentage do you think?

Mr. TULLY [continuing]. A much smaller number. We don't see on the Federal side a significant number of willful and intentional violations. What we see is a lack of education. And that is why we would hope if OSC were to have disciplinary powers, that would scare people into knowing what the law is. But I would say——

Mr. BOOZMAN. So it would be a small percentage?

Mr. TULLY. Very small percentage. We see a higher percentage in the private employers that are facing the third and fourth deployment. In those cases, it is dramatically higher. But in the Federal Government side, a supervisor doesn't really have an ax to grind. It is more of a lack of knowledge or lack of information.

Mr. BOOZMAN. Thank you very much. Thank you, Madam Chair.

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

Mr. DONNELLY. Thank you, Madam Chairwoman. In regards to your law firm's work, and you may have mentioned this earlier, approximately how many firms would you say around the country specialize in the same type of work that you do, the USERRA work?

Mr. TULLY. I am only familiar with about a handful of attorneys, not law firms, that do full-time USERRA litigation. Now with that said, there are thousands of attorneys that do employment law and they may do one USERRA case a year or two USERRA cases a year, but off the top of my head, I only know of about five private attorneys that work full time doing USERRA enforcement outside of the Federal Government.

Mr. DONNELLY. And the Department of Labor handles cases as well?

Mr. TULLY. Outside of the Federal Government.

Mr. DONNELLY. Right.

Mr. TULLY. So no, including the hundred investigators, and the handful of attorneys that work for DOL VETS.

Mr. DONNELLY. Do you feel that, and please don't rely on modesty, but do you feel that your firm's preparation, that the cases are much better presented and that is why your success rate is so much higher?

Mr. TULLY. Absolutely. This is about a word of mouth. And unfortunately right now, DOL VETS, the word of mouth on the street is not very good. OSC was building a positive reputation among servicemembers. But DOL VETS has had 12 years, 13 years to fix their problems and they haven't. So we have been successful. When you have a 75 percent success rate with 1,800 people that is a lot of happy clients that have a lot of money in their pockets that are telling all of their buddies in the Army Reserve and National Guard about this guy Mat Tully in Albany who can help you out with your employment problems. So the success of our firm, and my firm was started with just me, 5 years go. We are now up to almost twenty attorneys. The success of our firm is solely because of word of mouth and minor advertisement.

Mr. DONNELLY. And do you feel that the awarding of attorneys fees would give veterans in other areas of the country more opportunity and better options in this area?

Mr. TULLY. Absolutely. If there was mandatory attorneys fees, you would see a lot more attorneys get into this field than just the five attorneys that are there now. It would be like EEO law. You know, with all due respect, there is an EEO attorney on every street corner. And that is what I would like to see here with USERRA, is to have a lot of USERRA attorneys out there making sure that people are educated and making sure the laws are enforced. And that would come at no cost to the Federal Government.

As a matter of fact, if there was a large private attorney base out there that was experienced in USERRA, DOL VETS and OSC would probably go out of business because what we are able to provide is immediate access to the court. When we are talking about OSC and DOL VETS, that is just the investigative phase. And that may take 6 months, a year. In one case DOL VETS has had a case from Alaska for 7 years. And that is before they even file in court. And that is assuming that the U.S. Department of Justice (DOJ) files the case in court. Within 2 weeks, we take a case, we are filing either before a court or before the Merit Systems and Protection Board. We bring immediate action, unlike Federal Government agencies, which take time to investigate and have various people who have to approve. DOL VETS has to, after an investigator, and I will turn this over to the Secretary, but there is a long process before it gets turned over to DOJ. In our case, you call in, we do a consult over the phone, you provide us a sworn statement attesting to the facts, and we take your case right into court.

Mr. DONNELLY. Thank you very much. Madam Chairwoman, thank you.

Ms. HERSETH SANDLIN. Thank you, Mr. Donnelly. Mr. Tully, you gave an example in your testimony today about the individual who was with the Postal Service I believe?

Mr. TULLY. Yes, ma'am.

Ms. HERSETH SANDLIN. Would that be an example of willful and knowing violation, right? I think the supervisor stated it was for excessive time away from his job based on military service?

Mr. TULLY. Absolutely.

Ms. HERSETH SANDLIN. In one of the suggestions you made for improving USERRA you mentioned providing for injunctive relief——

Mr. TULLY. Yes.

Ms. HERSETH SANDLIN [continuing]. The way other employment statutes do provide. So that would be, because currently there is no injunctive relief whether it was willful and knowing or whether it was ignorance of the law, correct?

Mr. TULLY. There is injunctive relief on, for State and private employers at the discretion of the court. There is no injunctive relief on the Federal side. What we are asking for is injunctive relief on the Federal side as well as mandatory injunctive relief on the State side. And that is laid out in greater detail in my written statement. But in Mr. Erickson's case, Sergeant Major Erickson's case, if we had injunctive relief on the Federal side, I could have gone to the MSPB and gotten an order reinstating him until his case was finally adjudicated.

Ms. HERSETH SANDLIN. Okay. Well I think that is a very good suggestion and we will pursue this further and perhaps with some of the witnesses on our other panels. Just as we will pursue some of the questions based on the rather stark statistics that you provide on the number of employees you have versus the number of cases that you have taken vis-à-vis the OSC or DOL VETS, the rate of success in those cases. Now you recommend abolishing DOL VETS and shifting resources and responsibilities to the Employer Support of the Guard and Reserve (ESGR). Maybe I am misstating that, but if you could give me a better understanding of what it is you are proposing as it relates to OSC since their authority to be a primary referral has expired. You had mentioned they were building a better reputation among servicemembers in handling and investigating the claims under USERRA. Are you recommending a series of things that we reauthorize that authority so that they can be a primary referral? That we take DOL VETS entirely out of it? That we, in addition to providing for attorneys fees and other changes to USERRA, that there is some way of getting more private firms to take these cases? What exactly is the best case scenario in your opinion for handling the claims? Should we streamline it? Let one entity do the investigation, handle the claims? Or do it all in the private sector?

Mr. TULLY. Thank you. I think the best case is for the ESGR to handle information, which is a significant part of what DOL VETS does. ESGR should get additional funding so that they can provide information to employers so they can be, for example, the good cop. And I believe mandatory attorneys fees would then allow private attorneys to get more active in these cases and enforce USERRA. And finally I believe OSC should be involved with, very similar to the Hatch Act, with the actual disciplining of Federal employees that engage in misconduct. As far as State employees and local employees, they are going to be subjected to punitive damages, liquidated damages, things of that nature so that there is really no

need for an OSC type enforcement there. But in the ideal world, best case scenario, turning this upside down, ESGR should get the funding for education. OSC should be doing discipline of intentional and willful violations of Federal employees, and private law firms should have mandatory attorneys fees when they successfully prove a case. If they take a case and they lose, they shouldn't get attorneys fees, obviously. But if they take a case and win, they should get attorneys fees. That is the ideal situation. But in the meantime, today? I think that OSC should have all Federal employment cases. And I believe DOL VETS should continue with the State. Ideally, you should streamline it so that if you are going to keep one Federal agency involved in enforcement, you are going to have to decide DOL VETS or OSC. And my take on it, OSC in the 2 years or so that they have been doing it they have built a much better reputation in the community than DOL VETS. So if you are going to streamline it, I would say go with OSC.

Ms. HERSETH SANDLIN. Thank you. Thank you very much for answering all of our questions. If we have further ones we will submit those to you in written form.

Mr. TULLY. Thank you.

Ms. HERSETH SANDLIN. We appreciate your perspective. We certainly appreciate the good work that you are doing on behalf of servicemembers and veterans. We appreciate your service to the country and your testimony today.

Mr. TULLY. Thank you.

Ms. HERSETH SANDLIN. Thank you very much for being here.

Mr. TULLY. Thank you.

Ms. HERSETH SANDLIN. Joining us on our second panel is Mr. Ronald Chamrin, Assistant Director on Economic Commission for the American Legion; Mr. Justin Brown, Legislative Associate in the National Legislative Service for the Veterans of Foreign Wars (VFW); Mr. Todd Bowers, Director of Government Affairs for the Iraq and Afghanistan Veterans of America (IAVA); and Colonel Felix Vargas, Senior Advisor to the American GI Forum. Gentlemen, thank you for being here. We appreciate your written testimony that has already been submitted, and look forward to hearing from each of you today. Mr. Chamrin, we will begin with you, and you are recognized for 5 minutes.

STATEMENTS OF RONALD F. CHAMRIN, ASSISTANT DIRECTOR, ECONOMIC COMMISSION, AMERICAN LEGION; JUSTIN M. BROWN, LEGISLATIVE ASSOCIATE, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; TODD BOWERS, DIRECTOR OF GOVERNMENT AFFAIRS, IRAQ AND AFGHANISTAN VETERANS OF AMERICA; AND COLONEL FELIX C. VARGAS, JR., USAR (RET.), SENIOR ADVISOR, AMERICAN GI FORUM

STATEMENT OF RONALD F. CHAMRIN

Mr. CHAMRIN. Thank you Madam Chair and Members of the Subcommittee. Thank you for the opportunity to present the American Legion's view on some of the VA's expiring programs. The majority of the programs discussed today received increased payments by the passage of the Veterans Benefit Improvement Act of 2004,

Public Law 108–454. Due to the expiration of temporary increased payments on January 1, 2008, many veterans will receive a lower monthly payment for earned education benefits. The American Legion opposes any reduction in education assistance payments. The American Legion recommends that the dollar amount of the entitlement be indexed to the average cost of college education, including tuition, fees, textbooks, and other supplies at an accredited university, college, or trade school for which a veteran qualifies.

Approximately 7,000 veterans are immediately affected due to the drop in monthly payments. The American Legion has long advocated for increased education benefits and raising the rates of the entitlement. Lowering benefits is an insult to all veterans, and an extension of the OJT payment rates implemented in Public Law 108–454 should be indefinite. This would cover OJT for the GI Bill, Active Duty and Selective Reserve, the Veterans Education Assistance Program (VEAP), and Survivors and Dependents Educational Assistance Program.

Not every veteran is destined for college. Therefore, the GI Bill needs to be more accessible for those veterans with vocational aspirations other than college. The overall cost of these vocational training and licensing programs far exceed the monthly stipend provided under the traditional college student for 36 months approach in the current GI Bill. Veterans should be afforded the opportunity to attend programs that will lead to the vocation of their choice.

In addition, a high percentage of today's servicemembers are married with children in the majority of cases when they are discharged. Meeting the financial obligations to sustain and maintain a household is paramount and often serve as a major obstacle to their timely use of the GI Bill. Every effort must be made to empower every veteran with options to make the best vocational choice to help them achieve the American Dream.

I will briefly talk about the VA Loan Guarantee Program Projects. The American Legion supports the reinstatement of the Adjustable Rate Mortgage Programs that will expire at the end of this calendar year. Since the VA Home Loan Program was enacted as part of the original Servicemen's Readjustment Act 1944, VA has guaranteed more than 18.2 million home loans totaling nearly $938 billion. From 2001 to 2006 VA assisted more than 1.4 million veterans in obtaining home loan financing, totaling almost $197 billion. About half of these loans, just over 730,000, were to assist veterans to obtain a lower interest rate on existing VA guaranteed home loans through the VA's Interest Rate Reduction Refinancing Loan Program. The American Legion also supports administrative and/or legislative efforts to improve and strengthen the loan guarantee service's ability to serve American's veterans. H.R. 4884, the "Helping Our Veterans To Keep Their Homes Act of 2008," addresses the expiration of these programs.

In reference to the topics before the Committee today, the American Legion supports the following portions of the proposed legislation, H.R 4884, section 2a, the extension of demonstration project on adjustable rate mortgages to 2018 and the extension of Demonstration Project Hybrid Adjustable Rate to 2012.

In conclusion, former President Franklin Delano Roosevelt once said, "The test of our progress is not whether we add more to the abundance of those who have much. It is whether we provide enough for those who have little." Different options for purchases of homes and the ability to afford an education must constantly be provided to veterans. The American Legion looks forward to continue working with the Subcommittee to assist the Nation's veterans. Madam Chair and Members of the Subcommittee, that concludes my testimony.

[The prepared statement of Mr. Chamrin appears on p. 44.]

Ms. HERSETH SANDLIN. Thank you, Mr. Chamrin. Mr. Brown, you are recognized for 5 minutes.

STATEMENT OF JUSTIN M. BROWN

Mr. BROWN. Madam Chairwoman, Ranking Member Boozman, and Members of this Subcommittee, on behalf of the 2.3 million members of the Veterans of Foreign Wars of the United States and our auxiliaries, I would like to thank you for the opportunity to testify before this distinguished body.

Today as we consider veterans issues of transition and stabilization—employment, housing, and education—I ask that we briefly reflect on a historical comparison. In 1973, following the Vietnam War, the all volunteer force was implemented. In order to fill the ranks of a military worn down by fighting in Vietnam, recruitment standards were reduced. In 1976, the Post Vietnam Era Veterans Education Assistance Program, VEAP, was created as a recruitment incentive to help fill the ranks. However, relative to programs that came before VEAP, it provided the least amount of education benefits to veterans.

From 1973 to 1985, the military had lowered recruitment standards and meager transition benefits, resulting in a group of veterans that is three to four times more likely to be homeless than their non-veteran counterparts. In contrast, Vietnam veterans prior to this time period are only one to 1.4 times more likely to be homeless than their non-veteran counterparts. Currently, the most common attribute of a homeless veteran is not combat. It is their age and relation to public policy.

The commonly held notion that the military experience provides young people with job training, educational and other benefits, as well as the maturity needed for a productive life conflicts with the presence of veterans amongst the homeless population.

If we are to use history as a marker we might suggest that a robust, attractive initial education investment would have alleviated many of the issues America and its veterans are coping with today.

If we fail on the front end with hand up programs such as education, job training, and vocational rehabilitation we miss an opportunity to create a sound stabilization and transition program. In the end, the American people pay for expensive programs that are difficult to administer, produce limited results, and often fail to achieve their objectives. We ask that Congress closely monitor and consider the future implications of lowered recruitment standards. Raising the initial education benefit could offset some of the reduction in recruitment standards while providing the best tool to transition from the military to the civilian workforce.

With the War fast approaching its seventh year, veteran educational benefits have not been adjusted to reflect the cost of an education. Almost daily a new media article about the failure of the GI Bill to pay for veterans education can be found nullifying what used to be the U.S. Department of Defense's (DOD's) most effective recruitment tool, the most recent of which aired last night on the *News Hour with Jim Lehrer*. We have been down this weary road before. DOD is lowering recruitment standards and the value of the GI Bill continues to falter. We ask that Congress be proactive in their approach to veterans, the military, and our future.

I will now briefly address the individual programs. The Incarcerated Veterans Transition Program (IVTP): the VFW is supportive of the spirit of the Incarcerated Veterans Transition Program but we need to see assurances of its effectiveness. If DOL can substantiate that IVTP has been effective in helping veterans stay out of prison and/or jail, VFW supports it. The Uniformed Services Employment and Reemployment Rights Act, USERRA: in regards to USERRA, VFW appreciates the vigor that the four departments, DOJ, OSC, DOD, and DOL have taken in ensuring that veterans are not discriminated against based on military status. The VFW agrees with recent testimony from GAO's Brenda Farrell that suggests Congress make a single entity accountable for maintaining visibility over the entire USERRA complaint resolution process. Designating one single entity would, in GAO's view, enhance efforts to improve overall program results. The Demonstration Project on Adjustable Rate Mortgages: the VFW is happy to support legislation that would make permanent the authority to provide increased financing opportunities under the VA Home Loan Program by allowing VA to offer conventional and hybrid adjustable rate mortgages. The Survivor's Independence Educational Assistance, better known as Chapter 35: the VFW strongly supports Chapter 35 educational benefits for eligible dependents of certain veterans, and would like to see its funding continue. The Post Vietnam Era Veterans Educational Assistance Program, VEAP: the VFW believes that this benefit is inequitable relative to other educational benefits available, and future claims should be administered as a Chapter 30 benefit.

Chairwoman Herseth Sandlin, Ranking Member Boozman, thank you for the opportunity to testify. I would be happy to answer any questions that you or the Members of the Committee may have.

[The prepared statement of Mr. Brown appears on p. 46.]

Ms. HERSETH SANDLIN. Mr. Brown, thank you. Mr. Bowers, you are now recognized for 5 minutes.

STATEMENT OF TODD BOWERS

Mr. BOWERS. Madam Chairwoman and Members of the House Veterans' Affairs Committee Subcommittee on Economic Opportunity, on behalf of the Iraq and Afghanistan Veterans of America and our tens of thousands of members nationwide, I thank you for the opportunity to testify today regarding expiring VA programs. In the interest of time I will limit my testimony to the Department of Labor's Veterans Employment and Training Services, or also know as VETS Program.

IAVA is a proud supporter of the Department of Labor VETS Program. I have personally had the opportunity to meet with the staff members who work with this program and I continue to be thoroughly impressed with their dedication. I have also spoken to many veterans who have benefited from DOL programs, such as Hire Vets First. These programs are much needed. According to the Bureau of Labor and Statistics, unemployment among recently discharged veterans is 11.9 percent. The rate is even higher for veterans ages 18 to 24. Approximately 18 percent of these veterans are unemployed. That is three times the national average. For the 1.6 million Iraq and Afghanistan veterans returning home, employment opportunities and protections are a crucial part of their transition into civilian life. This is also the single most effective defense in combating homelessness among our Nation's veterans.

The conflicts in Iraq and Afghanistan have drawn heavily on our reserve component forces. These troops, often the breadwinners of their families, face serious economic burdens during and after deployment. Many are business owners who face tremendous obstacles in ensuring their businesses are appropriately managed while they are gone. One of my fellow Marines, when he was deployed to Iraq, was forced to rely on the goodwill of his community to ensure his family business did not go under while he was deployed. He was a proud business owner, but had serious difficulties staffing his business while he was deployed. Without funding for advertising, he was forced to turn to the media to let them know that he was still open for business.

A Defense Department study in 2000 showed that 40 percent of Reservists lost income when they are called to active duty. Some 12,000 formal and informal Uniformed Services Employment and Redeployment Rights Act, or USERRA, complaints were filed by National Guardsmen and Reservists in fiscal year 2004 and fiscal year 2005, according to the GAO. IAVA has called for better outreach and a more streamlined referral service for USERRA complaints. Currently a servicemember wishing to file a complaint is forced to move through hurdles that cross three Federal agencies and an onslaught of paperwork. We also support tougher enforcement of USERRA protections and believe that employers who consistently violate USERRA should be barred from eligibility for Federal Government contracts and face civil and criminal prosecution. In addition, the GAO has outlined a series of recommendations regarding USERRA claims referrals which we hope the Committee will seriously consider in any reauthorization of the OSC referral program.

Serving your country should not mean sacrificing your civilian livelihood. Troops returning from Iraq and Afghanistan deserve the best possible employment protections. We thank this Committee for their hard work to support and protect our citizen soldiers. I will be more than happy to answer any questions at this time.

[The prepared statement of Mr. Bowers appears on p. 48.]

Ms. HERSETH SANDLIN. Thank you, Mr. Bowers. Colonel Vargas, thank you for being here. We look forward to hearing from you. You are recognized for 5 minutes.

STATEMENT OF COLONEL FELIX C. VARGAS, JR., USAR (RET.)

Colonel VARGAS. Thank you, Madam Chairwoman and distinguished Members of this Committee, the American GI Forum appreciates very much this opportunity to present its views today on the issues before you. My name is Felix Vargas. I am a Vietnam veteran, and a veteran of conflicts in Central America, and in the Balkans during my time as a diplomat. I wish today to acknowledge the presence of our National Commander, Mr. Antonio Morales, who flew in from Dallas to join me for this.

I want to say just briefly that the American GI Forum is a congressional Veterans Service Organization (VSO) founded 60 years ago by Dr. Hector P. Garcia to represent the interests and concerns of American war veterans of Hispanic origin, many of whom were denied their benefits at the conclusion of the Second World War. My father and others were among them. We are here today to add our support to the continuation of important veterans support programs currently managed by the Departments of Labor and Veterans Affairs. In the interest of time, I will talk just about three of them.

First, the Incarcerated Veterans Transition Program, in our view, has provided invaluable assistance to incarcerated veterans to retrain and reenter the workforce. The American GI Forum Residential Center for Homeless Veterans in San Antonio has worked with many such veterans, and it projects that tens of thousands of incarcerated veterans are to be released annually for the foreseeable future. The demonstration project has proved successful and I think we will see that in the numbers presented by the Department of Labor. We recommend that the Congress make permanent this program and provide additional funding, enabling it to reach more communities. We fear that without this program, the problem of homelessness, which is already at an alarming rate, will be exacerbated.

I wish you to know that my home State of Washington has taken an important step to help these veterans. Working closely with VSOs, the State has issued a booklet titled, "An Incarcerated Veterans Guidebook for Washington State." It provides veterans important information on the resources and programs that are available and to which the veteran can connect upon his release. In fact, the booklet has proven so successful that other States have used it as a model for their own guidebooks.

Again, we would like to see this program continue and we believe it needs to be authorized.

Secondly, with respect to the Department of Labor's Veterans Employment and Training Program, VETS, we see this as a pillar in the support structure for veterans. There is no greater assistance that can be provided to our returning warriors than job related training linked to follow on employment. We understand, Madam Chairwoman, that the issue before you concerns extension of the demonstration project allowing both the Office of Special Counsel and Labor to share the work of the processing the Federal claims filed under USERRA. We have no view on the division of labor. Our interest here is limited to seeing that aggressive enforcement of USERRA is carried out across the board by the U.S. Government.

Thirdly, the Apprenticeship and On the Job Training Program run by Veterans Affairs. This provides veterans and their immediate family a great incentive to achieve a coeducational objective. At a time when we see signs of an imminent recession in our country, and the problems that you have noted in the news article that you saw, it is important that we not lose sight of the contribution that this program makes in battling unemployment in a weakened economy. This program is about helping veterans and their families to work and learn while they prepare to fill jobs in both the private and public sectors. We note that the law that increased the OJT payments to 85 percent has expired here at the end of the year, and that without new legislation the rate now drops to 75 percent. We urge you to extend and make permanent the OJT payment rate of 85 percent. You should not allow this rate to revert back to 75 percent. Our veterans who depend on these payments are facing daily increases in housing and other cost of living expenses. They need every cent that can be provided under this program.

The other comment I would make here, Madam Chairman, is that you certainly should consider offering tax incentives to companies who agree to participate in the apprenticeship program. We know that there are all too few companies who do participate.

And so, Madam Chairwoman, the American GI Forum considers the continuation of these programs before your Committee to be a reflection of your strong support for our veterans and their families. Taken as a whole, they go a long way to honoring the commitment made to our men and women who have served honorably in the military. I thank you for allowing us an opportunity to address you today.

[The prepared statement of Colonel Vargas appears on p. 49.]

Ms. HERSETH SANDLIN. Thank you, Colonel, and thank you to all of our witnesses on this panel. I would like to start off with a few questions as a follow-up to Mr. Tully's testimony on USERRA specifically. Because a couple of you mentioned, I think Mr. Brown and Mr. Bowers, both of you specifically mentioned the importance of streamlining this process, and maybe having one single entity or charged with the USERRA complaint resolution process. Do either of you, or Mr. Chamrin, Colonel Vargas, do you have some ideas on which entity is best positioned to do this? Do you have other suggestions on how to streamline the process based on folks you are familiar with, members of your organizations? Do you have any specific comments in response to Mr. Tully's testimony and some of the suggestions he had? Mr. Brown, if you want to start and then Mr. Bowers.

Mr. BROWN. Thank you, Congresswoman. The idea behind streamlining the process as it is right now between the different departments is, what I think you are seeing a lot of, as Mr. Tully kind of outlined, is there is no clarity, there is a lot of bouncing around between the different departments. Between an individual veteran, when he comes into the system he might come in into DOL and then get referred to OSC, and there is no direct individual oversight for that veteran. Or if something does need to be streamlined or expedited, who do they go to? And there is just really not a lot of clarity to the process.

Ms. HERSETH SANDLIN. Are we speaking specifically about individuals who have been employed by Federal agencies?

Mr. BROWN. My understanding is actually both.

Ms. HERSETH SANDLIN. Okay.

Mr. BROWN. Both individuals within State entities and individuals within Federal agencies.

Ms. HERSETH SANDLIN. So your thought would be, look, even if there are multiple, even if there is a primary referral to OSC, or if it is DOL VETS, or if the veteran is being assisted by someone from a private law firm that there should be someone in the Department of Veterans Affairs or someone somewhere that helps oversee the whole process so it just does not get stuck somewhere for that veteran?

Mr. BROWN. Correct. And also so that it doesn't just get bounced to another department.

Ms. HERSETH SANDLIN. Okay. Mr. Bowers.

Mr. BOWERS. Well, I would start off by saying that I think Mr. Tully's testimony was very powerful because it shows that there are definitely gaps in the system. The referral system, as it is set up right now, is extremely complex. I think it almost defines the phrase of having to deal with red tape. With that said, as I mentioned before, I have had the opportunity to work with a lot of folks over at the Department of Labor VETS Program and all of them wake up every morning with the intention of taking care of the veterans that they so rightfully represent. They face tremendous burdens as staff, and it is very difficult for them to take care of their own cases with this continuous referral system that they have to deal with.

What we sort of look at would probably be the most effective measure would be to divide these responsibilities amongst the agencies. Now in no way, shape, or form, am I going to step up and say I am the expert to say, which agencies would best handle these issues, but that might bring some streamlineness to the way the system is currently handled. I have personally had some involvement with the Employers Support of the Guard and Reserve and I completely agree with Mr. Tully that it is an incredible organization. They are one that has really helped out a lot of veterans and the idea of having a level of oversight into watching these claims, and I would almost go as far as to say it may be worth this Committee's time to think about sort of looking at the program for the next year, review and requiring a report at some point to be able to see the effectiveness of some of the changes that will come about. I think that would be extremely effective because as it stands right now it is really hard. We rely tremendously on the Government Accountability Office's numbers and what they have seen, and also Mr. Tully's testimony speaking about, you know, the percentage rates that he has had. But I think we need to take a real good in depth look at the effectiveness of the program and step forward with it.

Ms. HERSETH SANDLIN. Well, I appreciate your thoughts here. Let me get some clarification before turning over to Mr. Boozman. Do you sense with the people that you have worked with at DOL that it is the complexity of the referral process? Or are there other factors coming into play that have resulted in percentages that are

not as favorable as we have seen from the GAO report and Mr. Tully's testimony?

Mr. BOWERS. I think it is the complexities of the referral process, I agree with you there, and also the tremendous increase we have seen of USERRA violations that has come up since these conflicts have started.

Ms. HERSETH SANDLIN. Is it a staffing issue as well?

Mr. BOWERS. I believe that, I have to say, you know, as we have seen in many realms, I believe that they are, yeah, are being pushed. They have a lot of cases that they are dealing with with limited resources, and that is why as I say the staff they wake up every morning, but people can only handle so much. There is only so much an amount of a caseload that they can handle and continue their effectiveness.

Ms. HERSETH SANDLIN. Is it because they are handling cases that are not just in Federal agencies and the Federal Government? They are handling any violation, any complaint——

Mr. BOWERS. Yes.

Ms. HERSETH SANDLIN [continuing]. Whether that occurred with a State agency, private-sector employer, etcetera?

Mr. BOWERS. Yes, ma'am. And one of the, one of the things I would like to bring to this Committee's attention is that on Sunday I had the opportunity to meet with representatives from all of the Veterans Integrated Services Networks (VISNs) throughout the VA system and was hearing about situations within the VA where they were having a lot of these issues coming up. Where veterans were coming back, having difficulties, and in many cases being fired wrongfully based on their deployments. This caught me very off guard. And I just wanted to convey to this Committee that I made it very clear to these individuals as they shared with me some of the stories that I would like to see some of the background, receive some of the paperwork on this, and really get a good understanding of what they are talking about here. And I will be more than happy to share that with the Committee once we have the appropriate information.

Ms. HERSETH SANDLIN. Yes, I think we would appreciate that information. Again, Mr. Chamrin or Colonel Vargas if you want to address this, but one more follow up if you do not mind Mr. Boozman, for Mr. Bowers or any of you. What do you think of the idea of having injunctive relief available? Particularly given it seems from Mr. Tully's testimony, in his experience, that so many of the violations, the vast majority of the violations, are ignorance of the law and ignorance of the protections, versus the willful and intentional decisions that have happened in some more isolated cases. Any initial response? Certainly you might want to take a closer look at it, but initial response to the idea of including injunctive relief?

Mr. CHAMRIN. The American Legion has no position on this, but if we go back to our September 6th testimony regarding veterans' preference we can kind of allude to, omit the knowingly portion. If the veteran is wronged, knowingly or unknowingly, something should be done. And I want to come back to Department of Labor VETS, and Todd was talking about the staff. Disabled Veterans' Outreach Program Specialists (DVOPs) and Directors for Veterans'

Employment and Training (DVETs)—I am sorry. DVOPs and Local Veterans' Employment Representatives (LVERs) are asked to refer everything to the DVET. They are not the experts in USERRA claims. So if someone comes into a one stop career center, they are referred to the DVET. The DVET has a lot on their plate. We have long advocated for full funding for DOL VETS to help the DVET, to increase their training, to maybe have an office within the DVET to help with USERRA claims at the local level. And all of it comes down to the local level. If you have veterans filing claims, they already are financially unstable and insecure. They are looking for further employment. Something is going very wrong. So at the local level, the DVET can use his resources to get them get further employment, further training, and other remedies.

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

Mr. BOOZMAN. Thank you, Madam Chair. Just to follow up on the Chair's question, which is a good one. Mr. Tully, in his testimony, testified that he thought that we should remove the enforcement program from DOL VETS and basically let the lawyers do that. Is that, you are saying that there is a problem? Are you saying that you want to go that far? Or have you not thought about that? I mean, that is kind of something that has come up. Can you comment on that specifically for me?

Mr. BOWERS. Yes. One of the things that we are really looking for this year is exactly what Mr. Tully said. We would like to see some teeth put into the capabilities to enforce USERRA violations. We are seeing this more and more where veterans are being taken advantage of, in regard to things such as binding arbitration agreements, where veterans are being unemployed and it has actually been overruled by the 5th Circuit Court in regards to some of these cases. Because there is no ammunition behind enforcing these laws I would like to see an increase in that. And our membership would like to see more ammo, if you will. The rifle is only as strong as the bullet in it.

Mr. BOOZMAN. And the advocate should be?

Mr. BOWERS. I will defer that a little bit to the experts. As I mentioned before, we do not know who the experts will be in regards to enforcing those laws. Department of Labor VETS, because of the outreach that they have directly to a lot of these employers, in my, my personal opinion, I cannot speak on behalf of IAVA, may be the most appropriate folks to handle that. But, again, Office of Special Counsel may also hold that. So by no means does the end of my name have Esquire behind it so I am hesitant to make those claims.

Mr. BOOZMAN. No, I understand. Does anybody else have a comment in that regard, or is that it?

Colonel VARGAS. Just a comment, here, Mr. Congressman. We, as I stated in our testimony, do not have much of a view on the division of labor here. I, we would sort of be interested in hearing from the Labor representative about this particular issue. We do see a difference between aggressive enforcement and the investigations of the referral claims, and perhaps that is really what we are talking about, is two different functions. And whether one agency can perform both functions as opposed to a division of labor where one function goes to one agency and the other to the other. But, again,

that is not something we are taking a position on. We do support and endorse the most aggressive enforcement of USERRA possible.

I will tell you from my experience in the eighties, living in Europe, that the problem for American Reservists overseas is worse yet. I recall many times where German employers and other European employers would essentially tell our American Reservists, you know, take your pick. Your job with us, or service to your country. But you cannot have both. And so, again, if we talk about protection we need to remember those who serve overseas and the powers that the American Embassy has to work through the host government to get some relief for our people overseas. Again, enforcement is the issue.

Mr. BOOZMAN. Okay, and you guys, do you have a comment?

Mr. CHAMRIN. I would just have to see more clarification of Mr. Tully's statement. I was confused if he wants to abolish the entire DOL VETS which we would be adamantly opposed to, or if he is just referring to the USERRA program. So the American Legion has no position at this time.

Mr. BROWN. We also have no formal position at this time, Congressman.

Mr. BOOZMAN. Okay. Thank you guys, very much.

Ms. HERSETH SANDLIN. Just a couple of other questions. I know that there are copies of Mr. Tully's testimony available but it sounded to me like the proposal was along the lines of a division of responsibilities. Take current resources to DOL VETS, give that to the Employers Support of the Guard and Reserve to basically, almost like an intake of the complaints, right? And then have the OSC charged with the disciplinary authority that he described that we had some questions about in terms of how that might affect the hiring process based on some concerns that we have heard there. And then with the mandatory attorneys fees, if there was a successful case, that there would be more attorneys out there willing to handle the cases. I think we still have to fill in some details if we choose to pursue a proposal such as this based on your testimony, Mr. Tully's, and our next panel's as well as some additional information I think we would like to see. Clearly there is a problem here, and clearly when we are looking at different rates and some of the statistics we want to figure out the best practices and the best way to share information to help our servicemembers most effectively with the resources that we are going to have to do that.

My last question is along the lines of the Incarcerated Veterans Transition Program. Colonel Vargas, I appreciate your testimony in sharing with us some of what Washington State has done. I know that is a State program. Other States have their programs and have perhaps adapted some of the practices of Washington State. Is there any Federal dollars that are going into administering that State program? Any grants from the VA? Any dollars that the Federal Government is putting in?

Colonel VARGAS. Yes, Madam Chairwoman. The information I have is that there has been some VA dollars that have gone into this. The specifics and amounts and the mechanism, whether grants or other, I do not know. But yes, there has been some Federal support for this.

Ms. HERSETH SANDLIN. Okay. I think in light of other reports that we have seen over the last couple of months perhaps exacerbated by the statistics that we are familiar with that Mr. Bowers shared in terms of the relatively high unemployment rate, especially for 18- to 24-year-olds that are returning from deployments, if they are not in an education program, if they are having difficulty finding employment, we know that that can lead to other problems, that can sometimes result in arrest, conviction, and incarceration. I think that we really do have to look at this program, and any others that are being utilized, like Washington State's. Mr. Brown, you had indicated that your organization supports it but would like to see more concrete evidence of the results that are being produced. Did anyone else want to comment on any other programs at the State level they are familiar with? Perhaps Mr. Chamrin, I think you may have mentioned it briefly?

Mr. CHAMRIN. I do have some observations. In California, I am going to read here, they have a program called PREP, the Prisoner Reintegration Program, in San Diego. California has a $5 billion prison system. It costs about $44,000 per prisoner. And less than 5 percent of all 10,000 prisoners released annually have any job training. So what California has done, it has created the Prisoner Reintegration Program. It is not focused exclusively on veterans, but all prisoners. What is significant about this is that they have a 502 percent return on investment. So as proven in California, prevention of recidivism will ease the financial burden on local, State, and Federal prison systems. I can provide some other State evidence after the hearing, if you like.

Ms. HERSETH SANDLIN. Yes, please. Well thank you all. I appreciate your testimony, and we will continue to work with you for additional information as we examine all of these issues even more closely. Again, thank you for your patience and for answering our questions, and for your service to our Nation's veterans and your service to our country. Thank you for being here and traveling a distance, as some of you have done.

Now I would like to invite our third panel to the witness table. Joining us on our third panel of witnesses is the Honorable Charles Ciccolella, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor; the Honorable Scott Bloch, Special Counsel for the U.S. Office of Special Counsel; and Mr. Keith Pedigo, Associate Deputy Under Secretary for the Office of Policy and Program Management, Veterans Benefits Administration, the U.S. Department of Veterans Affairs. I welcome back all of you to the Subcommittee. We look forward to hearing from you and posing some questions based on your written statements that have been made part of the record as well as some of the discussion of the prior two panels. Secretary Ciccolella, thank you as always for being here, you are recognized for 5 minutes.

STATEMENTS OF HON. CHARLES S. CICCOLELLA, ASSISTANT SECRETARY, VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR; HON. SCOTT J. BLOCH, SPECIAL COUNSEL, U.S. OFFICE OF SPECIAL COUNSEL; AND KEITH PEDIGO, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

STATEMENT OF HON. CHARLES CICCOLELLA

Mr. CICCOLELLA. Well thank you very much, Madam Chair, and Congressman Boozman. Thank you very much for holding this hearing. I will confine my comments to the Incarcerated Veterans Transition Program and the Demonstration Project for Referral of certain USERRA cases, Federal-sector USERRA cases to the Office of Special Counsel.

With regard to the Incarcerated Veterans Transition Program, that is a program that targeted veterans who were preparing to leave prison. The program ran from 2004 to 2006, so it ran for three fiscal years. During the demonstration project, about 4,100 incarcerated veterans were assessed. Of those, 2,191 were actually enrolled into the Incarcerated Veterans Programs. We had seven demonstration programs around the country. And the entered employment rate for them was 54 percent, which I think is pretty good. The cost per placement about $4,500, and that sure is a lot cheaper than the $22,000 to keep them in prison. Plus, I mean, you are rebuilding lives and cutting down on recidivism.

The demonstration program showed positive results. It connected veterans not only to employment, but also to their veterans healthcare benefits, to discharge upgrades, and to better preparing them to avoid recidivism. So that is a very positive program in that regard. And one of the other benefits of the program is we trained a whole bunch of disabled veteran outreach specialists and local veteran employment representatives, LVERs and DVOPs, about 124 of them. And they are still doing that sort of work, even though we do not have the demonstration programs still going on. They are doing it with the Homeless Veterans' Reintegration Programs (HVRPs), the homeless vet programs, and right out of the one stops as well.

I would also say that the program was a joint effort. It is a joint effort with DOL and the Department of Veterans Affairs, as well as the Department of Justice's Department of Corrections and that is the only way this program would work. So if it is authorized, not reauthorized, if it is ever authorized again there has got to be that partnership if we want it to work.

Congress passed the Veteran Benefit Improvement Act in 2004. That required the Secretary of Labor and OSC to engage in the USERRA demonstration program. During the demonstration program, about 693 cases Federal sector USERRA claims were received and 312 went over to OSC. I think the demonstration program was very useful. Today VETS and OSC have a much closer working relationship. Staff still meet every 30 days and discuss current, relevant issues and the level of cooperation, in my view, has never been higher. Plus, Government Accountability Office did

a review of this demonstration program and made some pretty good recommendations with regard to the administrative and housekeeping way we handle cases. And a couple of those recommendations were substantive, especially the recommendation piece about making sure that all these veterans are notified of their rights to referral. We have implemented all of those recommendations and they were very useful.

As I said I think the demonstration program was very, very useful. I also think it served its purpose. And I believe that VETS is better prepared today to handle all of the USERRA cases. That concludes my oral statement. I think I am under the 5 minutes. I have about 3½ there. So I will shut up.

[The prepared statement of Hon. Ciccolella appears on p. 51.]

Ms. HERSETH SANDLIN. I am afraid an earlier comment had a chilling effect. I did not mean for that to happen. Mr. Bloch, you are now recognized. Thank you, Secretary Ciccolella. Mr. Bloch.

STATEMENT OF HON. SCOTT BLOCH

Mr. BLOCH. Thank you, Madam Chairman, Ranking Member Boozman. I am Scott Bloch, Special Counsel of the United States and head of the U.S. Office of Special Counsel. Thank you for the opportunity to provide my perspectives on the enforcement of USERRA. The protections the statute provides have not expired. However, there has been a significant change in how it is enforced for Federal employees who are also members of the National Guard and Reserve.

U.S. military members understand their obligations to their country and serve when called. Unfortunately, not all employers understand their obligations to employees. Some servicemembers, mostly members of the National Guard and Reserve, return from active duty only to be turned away by their civilian employers. It is almost as though they were told, "Welcome back. You are fired." It happens even when the employer is the same Federal Government that mobilized the servicemember. About 25 percent of the National Guard and Reserve are Federal civilian employees.

USERRA has protected returning servicemembers turned away by their civilian employers or denied their rights and benefits since 1994. This law provides a strong enforcement mechanism for Federal employees giving jurisdiction to the Merit Systems Protection Board. A complaint under USERRA may be made to the Department of Labor Veterans' Employment and Training Service, DOL VETS. If the employer is a Federal agency and DOL VETS cannot resolve the claim, the complainant may request referral to OSC for possible prosecution. While USERRA expanded OSC's role as protector of the Federal Merit System, it established a bifurcated process. DOL VETS investigates and then the matter may be referred to OSC for prosecution.

I established OSC's USERRA unit and we filed our first prosecution that OSC had filed in its history in June 2004. It had taken about 2 years for that particular case to come to us, after a Ph.D. Nursing Supervisor, fired after lengthy service in VA hospitals, was told she had no case. Her supervisor had said, "We can't have these people going on military leave." We obtained all of her back pay for

her with interest, and private attorneys fees. But after a 3-year struggle for justice her career was over.

I have filed five USERRA prosecutions since becoming the Special Counsel and we have obtained full corrective action in four of those cases. For example, an Army Corps of Engineers employee entered the Air Force, then returned to the Corps and was denied his job. He filed a complaint and was told he had no case. His case was referred to us a year after his initial complaint and months after his requested referral. We determined the Army Corps had violated his rights and filed suit, getting him $85,000 in back pay and his job back.

In 2004, Congress established a USERRA demonstration project. This directed about half the Federal employees who have USERRA claims directly to OSC to demonstrate the potential advantages of having a single agency handle Federal employee claims. GAO evaluated the demonstration project and found that DOL VETS did not always tell servicemembers they could come to OSC when their case had been rejected. Also DOL VETS calculations did not include the time a case sits in a regional solicitor's office, sometimes up to a year.

GAO's evaluation was provided to Congress days before the August 2007 recess. With the demonstration project set to expire September 30, Congress had little time to consider amending USERRA, although it was extended to December 31. But OSC lost the authority to accept direct claims made by Federal employees under USERRA.

OSC still receives cases when USERRA claimants request DOL VETS referral that it cannot resolve, and cases that contain allegations of violations of prohibited personnel practices, which come under our jurisdiction. However, USERRA enforcement capacity has been lost, and just when we may expect more troops to be returning home.

We have obtained corrective action in 25 percent of the USERRA cases under the demonstration project. The demonstration project showed that Federal claimants who come to OSC get significantly better and faster service and aggressive prosecution. We believe that OSC's readiness to be the single point of contact for Federal employees has been validated. As the Federal personnel law specialists, we believe that USERRA should require that all claims by Federal employees be made directly to OSC. And I look forward to your questions.

[The prepared statement of Hon. Bloch appears on p. 54.]

Ms. HERSETH SANDLIN. Thank you very much, Mr. Bloch. Mr. Pedigo, thank you for being here again. We look forward to hearing from you, too. You are recognized.

STATEMENT OF KEITH PEDIGO

Mr. PEDIGO. Madam Chairwoman and Members of the Subcommittee, I appreciate the opportunity to be here this afternoon to discuss expiring VA programs. Under the provision of 38 U.S.C. section 3707, VA was authorized to conduct a demonstration project to guarantee traditional adjustable rate mortgages during fiscal years 1993 through 1995. Congress did not extend this authority when it expired. The Veterans Benefits Improvement Act of

2004 reinstated VA's authority to guarantee traditional ARMs through 2008 and authorized a demonstration project to guarantee hybrid ARMs through fiscal years 2004 through 2008. Traditional ARMs are mortgages in which the interest rate adjustments may occur on an annual basis. The limits on such adjustments vary across non-VA products. In contrast, VA guaranteed ARMs limit the annual interest rate adjustments to a maximum increase or decrease of one percentage point and to a maximum of five percentage points over the life of the loan. Hybrid ARMs are mortgages having an interest rate that is fixed for an initial period of more than 1 year and can adjust annually thereafter. Adjustments are indexed to various indices and, generally speaking, there are no lifelong limits on interest rate increases. In contrast, for VA guaranteed hybrid ARMs, for which the initial contract interest rate remains fixed for less than 5 years, adjustments are limited to a maximum increase or decrease of one percentage point annually and to a life-of-loan interest rate increase of five percentage points. For VA hybrid ARMs, for which the initial contract rate remains fixed for 5 years or more, annual adjustments are limited to 2 percentage points and life-of-loan increases are limited to 6 percentage points. Since VA adjustable rate mortgages are underwritten with the same stringency as VA fixed rate loans, they are not considered subprime products.

VA's authority to offer veterans the option of obtaining VA ARMs and hybrid ARMs expires September 30, 2008. If extended, we estimate that this authority would cost $3 million in fiscal year 2009 and $14 million over 10 years. At this time, we do not object to making the provisions of 3707 and 3707a permanent, provided Congress identifies offsets for the increased direct spending.

Individuals eligible for educational assistance programs administered by VA may use their benefits in approved on-the-job training and apprenticeship training programs. Under the various GI Montgomery Bills, the monthly educational assistance allowance for such training is calculated as a percentage of the full-time monthly institutional benefit. Education assistance allowances under these programs are paid at the rate of 75 percent for a full time student for the first 6 months, 55 percent during the second 6 months, and 35 percent for the remaining months of the program. Under the Dependents Educational Assistance Program, the law sets forth declining rates for such allowances for the various 6-month increments.

Public Law 108–454 provided for a temporary 10 percent increase in the amount of benefits payable for pursuit of OJT and apprenticeship programs for the period October 1, 2005, through December 31, 2007. As of January 1, 2008, payments for OJT and apprenticeship programs reverted to their previous levels. This is the first time VA has been required to reduce a benefit by a significant level during an individual's training. We believe the higher monthly training allowance that the supplement provides is a significant incentive for individuals to accept training positions that might not otherwise be taken by them. We recommend reinstatement of the benefit rate increase and support making the increase permanent.

We defer to the Department of Defense regarding OJT and apprenticeship rates under the Montgomery GI Bill for Select Reserve

as it is a program administered by that Department under Title 10 of U.S.C. While the Reserve Educational Assistance Program is also administered under Title 10, its rates are tied to the Montgomery GI Bill for active duty rates. Therefore, a rate increase or decrease to the Montgomery GI bill active duty rate will have the same corresponding effect on rates payable under the Reserve Educational Assistance Program.

Madam Chairwoman, this concludes my testimony. I greatly appreciate the opportunity to be here today and look forward to answering any questions you may have.

[The prepared statement of Mr. Pedigo appears on p. 58.]

Ms. HERSETH SANDLIN. Well, thank you to all of you for your testimony. We didn't hear the annoying buzzers go off but we do have a pending vote. We do have a few minutes where Mr. Boozman and I would like to pose some questions. So as not to shortchange your time, if it is your preference, because it is five votes and that can take much longer than we sometimes expect, I know I will and Mr. Boozman and other Members may ultimately have more questions we would like to submit to you in writing to follow up on. I think that would certainly be a benefit if we had more time for the other folks from the other panels to hear your responses to some of our questions. We hope that we will be able to work together on this to find the best approach to addressing some of the problems that we have seen.

Mr. Bloch, I would like to start with you. In addition to your recommendation that we amend USERRA to have OSC handle all claims from Federal employees, what is your take on the proposition of also amending USERRA to provide for injunctive relief, in light of the example that you gave of the woman who was a Ph.D. and a nurse at the VA, and the 3 years it took, or was most of that time and then delay in part because it was not referred to you in a timely fashion?

Mr. BLOCH. Thank you, Madam Chair. Yes, the delay was both a function of the time it took to get referred over, and I cannot tell you the exact time, but I seem to recall it was about a year, and then also the time it took in our agency before I took over as the Special Counsel. And when I took over, one of my first priorities was to get a fire lit under what then did not exist as a USERRA unit. And we made that a high priority and filed that prosecution the day I testified before the Veterans' Affairs Committee of the House in June of 2004 we moved forward with that.

The specific answer to your question about injunctive relief, this would be very helpful. We have that now for prohibitive personnel practices, we can get a stay of the intended personnel action, or the failure to reemploy in the case of USERRA. And that is an extremely powerful tool because once you get that employer to take that employee back, that is usually the case, it is over. They are going to settle. It is going to get taken care of. If they are hanging out there unemployed, the employer has all the power. And so I think that would be a tremendous leveler.

Ms. HERSETH SANDLIN. Well I appreciate your perspective on that. Regarding your recommendation to amend USERRA so that OSC can take these claims, based on what you said, has it worked

effectively under you because there has been a dedicated unit within OSC, right?

Mr. BLOCH. Yes, ma'am.

Ms. HERSETH SANDLIN. Okay.

Mr. BLOCH. We have made it a priority to enforce USERRA aggressively and to file prosecutions, and also to advertise in the media——

Ms. HERSETH SANDLIN. Right.

Mr. BLOCH [continuing]. About the effect of USERRA and when people do not do the right thing, we want the world to know it.

Ms. HERSETH SANDLIN. Okay. Mr. Boozman.

Mr. BOOZMAN. In his testimony Mr. Tully cited significant differences in how he felt like his firm was doing in the performance of getting some of these things resolved versus the agency. Can you comment on that, Mr. Secretary, and Mr. Bloch?

Mr. CICCOLELLA. Yeah, not exactly. What do you want to know?

Mr. BOOZMAN. Well, what I was saying was that, Mr. Tully——

Mr. CICCOLELLA. Yes.

Mr. BOOZMAN [continuing]. In his testimony testified that his agency was performing quite well——

Mr. CICCOLELLA. Yes.

Mr. BOOZMAN [continuing]. In regard to getting some of these things rectified.

Mr. CICCOLELLA. Oh, I see.

Mr. BOOZMAN. As opposed to the agency's. Can you comment on that?

Mr. CICCOLELLA. Well sir, I certainly do not object to private attorney companies representing servicemembers with regard to their USERRA claims. I think what, from my point of view, you know, servicemembers today have a choice. They can come to us through ESGR or they come directly to the Department of Labor. Under the demonstration, they could come directly to the Special Counsel or they can go to a private attorney. I think you have to realize that we handle cases nationwide. We have 115 investigators. They are well trained and they deal with not only USERRA, but all veteran employment issues. They are well trained on USERRA, and we spent a lot of time doing that.

Now there are advantages to having a small universe of folks doing USERRA as OSC does. But I think we are more likely to go face to face with an employer and get the information or issue a subpoena or whatever we have to do. But the point is that troops have a choice. And if they decided they want to use a—exercise a private course of action, they can certainly do that. And I do not mind it as long as people in those firms are not fleecing servicemembers.

Mr. BLOCH. Yes, Congressman, I think that Mr. Tully has the freedom that I used to enjoy as a private attorney in a law firm, and it kind of got my juices flowing listening to him, because there is a slight difference in the tools that he has that we may not have enabling him to freely prosecute. We have to receive cases from DOL VETS, we are bound by the statute.

Now there is a slight difference in the content of most of the cases, I think, that Mr. Tully is talking about in this battery of 1,800 cases versus the ones that Mr. Ciccolella and I were handling

in the demonstration project. Most of the demonstration project cases are what we would call a complex employment case, where you have a series of facts about the employment, about notice, about redeployment, about whether the individual's job still exists, things of that nature. And so it requires testimony, investigation, it might have subpoenas, it might require filing a lawsuit. A lot of the cases I think Mr. Tully is handling which, you know, as a private attorney, I would be very desirous of getting, are called Butterbaugh cases. And these cases many of them, you know, over a thousand, I believe, of their cases involve small amounts of back pay for Federal military leave, paid leave that was wrongfully taken from employees back to 1980 under a case called *Butterbaugh v. Department of Justice,* a 2003 Federal circuit case. This generated a slew of litigation which private attorneys can bring on behalf of many, many people and get several hundred dollars back, maybe a thousand, couple thousand dollars back in some cases. But this is not what we handle mainly. We get a few of those, a very small number.

The cases we have are complex and some of them may involve prohibitive personnel practices as well as some unpaid leave or paid leave that was taken away wrongfully. And so there is a very different kind of complexity involved there.

Mr. BOOZMAN. Thank you very much and thanks to all the panels. This has been a very, very good hearing, Madam Chair, I appreciate your leadership on it. And I have learned a lot.

Ms. HERSETH SANDLIN. Well, thank you Mr. Boozman. I have one more question before we have to run down for votes. Mr. Ciccolella, you had said that you thought the demonstration project served its purpose and Mr. Bloch just gave us some additional detail and description of the types of cases that were intended to be referred in the demonstration project. Do you feel like it served its purpose and now the Department of Labor is better positioned to handle the cases? I assume that is contingent upon Congress providing you sufficient staff and resources in light of the witness on the second panel who is somewhat concerned about perhaps an increased caseload with no end in sight to increases in that caseload. I know we are not talking about the budget today.

Mr. CICCOLELLA. Yes.

Ms. HERSETH SANDLIN. I would imagine that if you think you are better positioned based on what we have learned from the demonstration project that we have to make sure that we have the staff resources and the training to do that if indeed, after further discussion we choose to continue to have DOL VETS handling these cases versus some of the other proposals we have heard today.

Mr. CICCOLELLA. Well thank you very much. I am totally supportive of what you said. You have to have the resources to do these cases. I think under the present circumstances with about 1,300 cases this year, I think we have the resources to do that. Where I think we come up short is in terms of whether or not it would be useful to have national USERRA campaign that would help employers better understand the law. That obviously would be a very useful thing. But I think we do have the resources to handle the majority of the cases now.

I would like to go back to Scott's answer to your question. I think what he had to say in his answer to Mr. Boozman's question was very, very well done.

Ms. HERSETH SANDLIN. Well, and I do appreciate that command. I echo Mr. Boozman's comments about how insightful your testimony, our witnesses from the prior panel's testimony have been and the follow up that we look forward to doing with all of you. Most of the questions I will be submitting to you, Secretary Ciccolella, are going to be responses from DOL to the GAO report of July 2007. Again, I appreciate the ideas that you shared, and for the recommendations that you have made. I want to thank staff on both sides of the aisle here in the Subcommittee for the hard work that they have done in working with all of you to prepare for this hearing. And of course the hard work that we will be undertaking to follow up on necessary action that we think will be, and should be taken. Again, thank you for your insights, and your testimony. We value it very much. The hearing stands adjourned.

[No questions were submitted.]

[Whereupon, at 3:57 p.m., the Subcommittee was adjourned.]

A P P E N D I X

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

As many of you know, a recent Associated Press article dated February 8, 2008 highlighted the troubles encountered by recently released servicemembers in obtaining employment. The article went on to cite an Employment Histories Report published for the U.S. Department of Veterans Affairs which concludes more can be done by the public and private sectors to ensure servicemembers are successful in obtaining employment after their service to our country. Furthermore, the article refers to a U.S. Department of Labor's USERRA Annual Report to Congress which cites a high rate of USERRA complaints by returning Guard and Reserve forces.

I know I am not alone when I say that this article raises serious concerns about the problems encountered by many of our constituents. Today's hearing gives us the venue to reevaluate several programs that may help them succeed in life after the military. These programs include the: Incarcerated Veterans Transition Program; Office of Special Counsel and U.S. Department of Labor's—Veterans' Employment and Training Service Demonstration Project; Apprenticeship and On-The-Job Training benefit levels; and Adjustable Rate Mortgage demonstration projects.

I look forward to working with Ranking Member Boozman and Members of this Subcommittee to continue to improve readjustment benefits available to all servicemembers and veterans.

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

Good afternoon Madam Chairwoman and I thank you for holding this important hearing on expiring authorities in both VA and the VETS.

When Congress creates new programs within the Federal Government it is common to include a "sunset" that requires Congress to reauthorize the program a few years after the enactment of the law for review.

This is an important management tool that allows us to review the program and then determine if it should continue. Sunsets are also the result of not having sufficient PAYGO offsets to make a program permanent.

In general I believe there is always room for improvements to any program and each also probably has its faults. That is why I look forward to hearing the suggestions of our witnesses on how we can do this.

I would like to commend Mr. Tully for his testimony. While I have not had time to digest his suggested amendments to USERRA, his is a good example of how to write effective testimony. He lists specific problems, cites the related U.S. Code and offers specific recommendations on how to solve these problems. I thank him for the thoroughness with which he has addressed the issue.

Once again I thank you Madam Chairwoman for holding this hearing and I look forward to the testimony of our witnesses. I yield back.

Prepared Statement of Mathew B. Tully, Esq., Founding Partner, Tully Rinckey PLLC, Albany, NY

Executive Summary

Since the tragic events of September 11, 2001 and our country's involvement in Afghanistan and Iraq, millions of troops have deployed overseas in the interest of protecting our Nation and advancing others. Over seven years of war has caused record high deployment rates of citizen soldiers, who have the responsibility of maintaining employment while waiting for their call to serve our country. Many of

these soldiers, who struggle daily to balance their dual military and civilian lives, have returned home to find that same contract of balance not upheld by their employer. As a result, complaints of military leave violations have been on the rise since 2002 as countless employers have violated the rules laid out in the Uniformed Services Employment and Re-employment Act (USERRA).

It is the responsibility and duty of the federal government to provide these esteemed service members with the best possible resources to combat the employment problems they face back home. From the Department of Labor, Veterans' Employment and Training service to the Office of Special Counsel, the government has failed in this responsibility. These Federal Agencies have proven to be only a maze of bureaucracy and red tape for veterans to navigate upon their return home. Instead of being provided with the immediate assistance they require to transition back into civilian life, the program has held claims in review for years, often encouraging the claimants to withdraw their allegations or simply dismissing them and then having a private attorney get involved to recover damages in the six figures.

The men and women who have so bravely served our country deserve a system that will be responsive and efficient. The only way to have effective enforcement of USERRA is through proper representation, which has not been seen with the Department of Labor and the Office of Special Counsel. Through the aggressive and successful representation by private attorneys, allegations of discrimination under USERRA are prosecuted in a timely manner, giving military personnel the respect they deserve in return for protecting our country.

To improve the effectiveness of USERRA, several initiatives have been proposed. These initiatives include: referring USERRA claims to privately retained attorneys, mandating attorneys' fees when a USERRA allegation is proven, allowing judges to award liquidated, compensatory and punitive damages, and giving the Office of Special Counsel disciplinary authority so that federal supervisors are held personally accountable for their violations of USERRA.

These recommendations will provide military personnel with an outlet to effectively pursue, prosecute and protect the rights they have earned through their service and are the first step toward eliminating claims of military discrimination.

Mr. Chairman and distinguished members of the committee, I am honored to appear before you today to speak about my experiences with the Department of Labor, Veterans' Employment and Training Program Claim Referral Program to the Office of Special Counsel. As a Major in the New York Army National Guard and a veteran of Operation Iraqi Freedom, the matters of today's hearing are of particular importance to me.

In order for you to better understand my connection to the expiring VA program of discussion today, I would like to provide you with some information about myself. From 1991 to 1995, I was enrolled in the Reserve Officer Training Corp (ROTC) at Hofstra University with my current law partner, Greg Rinckey. In May 1995, I was commissioned as a Second Lieutenant in the United States Army and I found myself unemployed while awaiting the Officer Basic Course. I applied for several law enforcement positions with the Federal Bureau of Prisons and was hired on August 20, 1995. In early October of the same year, I was activated to attend military schooling and remained on active duty until April 1998.

During the entire time that I was on active duty, I was placed on leave without pay status under USERRA by the Bureau of Prisons. Almost immediately upon my return from active duty, I was subjected to intentional violations of USERRA by my superiors as a result of my military service. The discrimination varied from receiving poor performance evaluations during the time I was away performing military duty, which is a period of time that should not be evaluated, to being publicly ridiculed for making the Bureau of Prisons fill my position with overtime employees and "Blowing the Budget".

Throughout late 1999 to early 2000, I filed numerous complaints with the Merit Systems Protection Board (MSPB) against the Bureau of Prisons alleging violations of USERRA. I pursued this avenue after being told, repeatedly, by Labor Law attorneys that going through the Department of Labor would only result in delays. This was confirmed by various members of my military unit, who had gone through employment issues as well. As a result, I chose to exercise my rights under USERRA and to file my allegations of USERRA violations directly with the MSPB. Very shortly after the claims were filed, the Bureau of Prisons conducted an internal investigation. It can be assumed that the investigation found merit to my allegations, as I was offered a substantial cash settlement and paid leave to withdraw my claims and resign from employment with the agency.

The large sum of money and extended paid time off were too enticing to turn down, given my recent enrollment in law school. As such, I entered into a settlement agreement with the agency, which contains a confidentiality clause and prevents discussing the details of the case.

While out on extended paid leave pursuant to the agreement, I began looking for other employment opportunities. Without many prospects on the horizon, I sought a vacant position at another Bureau of Prisons institution in August 2000. In late 2000, I found out that, once the institution became aware of my prior protected USERRA activities, they refused to process my application for employment.

While I had already found employment as a paralegal with Morgan Stanley, I was deeply disturbed that I was being subjected to further retaliation by the Bureau of Prisons only months after they had entered into a settlement agreement with me. It was my understanding that this agreement reflected their implicit acknowledgement of supervisory employees violating USERRA. As a result, I filed another USERRA complaint, which continued for many years against the Department of Justice and alleged, inter alia, that my application for employment was not processed in retaliation of my prior protected USERRA activities.

In the meantime, on September 11, 2001 my office on the 65th floor of the World Trade Center came under attack. After September 11th, I served with the New York Army National Guard at Ground Zero for many weeks. In May 2002, I graduated from law school and was admitted to practice law before the New York State Courts.

In January 2003, I sold my cooperative apartment overlooking New York Harbor and moved with my wife Kimberly to our ski condo in upstate New York. It was at that point that I opened a law firm out of the back bedroom of my house. Some of my earliest clients were colleagues from the Bureau of Prisons, who asked me to represent them in employment matters, including allegations of EEO violations, whistle blowing violations and disciplinary actions.

In February 2004, my current law partner and long time friend, Greg Rinckey, returned from active duty and we entered into a law partnership together. Throughout 2004, the number of cases we received from federal employees increased so dramatically that we hired several associates to accommodate the influx of clients.

In June of 2005, I received orders to report to Iraq with the 42nd Infantry Division. On July 30, 2006, I reported to Fort Drum, New York for deployment training and was subsequently deployed to Iraq, where I served as the Division Chief of Operations. This deployment, as determined by the United States Small Business Administration, resulted in my law firm suffering financial losses in the amount of $173,000.00. The Small Business Administration provided my firm with a Disaster Assistance Loan for the above-mentioned amount to help recover from my deployment. In addition to the financial suffering, I was also injured and have subsequently been rated by the United States Department of Veterans Affairs to be 60% disabled.

On March 21, 2007, nearly seven years after I originally filed my complaint with the MSPB alleging that the Bureau of Prisons retaliated against me by failing to process my application, the New York Regional Office of the MSPB awarded me nearly $300,000.00 in back pay and benefits. The Board also ordered the Bureau of Prisons to appoint me, effective August 22, 2002, to the position of Correctional Officer. The initial decision of the Board became final on April 5th, 2007, when neither the Agency nor I appealed. As of this date, the Bureau of Prisons has not reinstated me to the position of Correctional Officer, nor has it timely paid me the back pay, interest and accrued leave that I am owed. I believe, as evidenced by the MSPB's decision in my favor awarding me substantial back pay as well as the original settlement agreement with the Bureau of Prisons in 2000, that all of my allegations of misconduct by Department of Justice officials have been vindicated.

Due to my personal experiences as a victim of USERRA discrimination as well as being a member of the New York Army National Guard and an Iraqi War Veteran, I have over the past several years built a considerable law practice, primarily representing others who have been victimized by their employers in violation of USERRA.

As such, I have dealt with the Department of Labor extensively, on both a personal and professional level. While the overall focus should be to eliminate discrimination against military personnel as a whole, the first step toward achieving that goal is to maintain a harsh and critical review of USERRA complaints.

FROM FEBRUARY 8, 2005 THROUGH DECEMBER 30, 2006

According to the U.S. Government Accountability Office, report number GAO–07–907, during the time period February 8, 2005 to September 30, 2006 the Department of Labor investigated 166 allegations of USERRA discrimination by federal

employees. During that same time period, the Office of Special Counsel investigated 269 allegations for USERRA discrimination. I would point out that, during the same time, my law firm not only investigated but prosecuted before the MSPB a total of 1,802 cases. That represents more than four times the combined number of cases that the Department of Labor and the Office of Special Counsel handled.

I would also point out that, on page 9 of the GAO report, it listed 189 employees with the Department of Labor who are responsible for investigating USERRA complaints (my firm has under 20). On page 16 of the GAO report, the Department of Labor said only about 7% of those 166 cases were referred for prosecution. That means only approximately 12 cases during the time period relevant to the GAO report was a DOL case actually prosecuted. By contrast, in a July 6th, 2007 response to the GAO report, the Office of Special Counsel was proud of its 25% corrective rate, which translates into 67 times during the relevant time period that a federal employee received corrective action from the Office of Special Counsel.

I find these numbers to be astonishing, given my firm's experience and success in helping federal employees win USERRA claims before the MSPB. I would point out that, of the 1,802 cases prosecuted by my firm during the relevant time period, our clients received the remedy they sought in approximately 73% of the cases. That translates into a success rate nearly three times that of the Office of Special Counsel and at least ten times better than the Department of Labor.

Further, I would respectively point out that the GAO report referenced above does not provide the proper context as to how a claim is investigated to any of the Committees it reported to. Specifically, I would note that, on page 38 of the report, it admits that it did not contact any private law firm or attorneys that specialize in USERRA litigation. Had it contacted my firm or the handful of others who concentrate their practice in USERRA enforcement, they would have learned that very few service members who believe they are a victim of USERRA discrimination go to the Department of Labor. In my opinion, the Department of Labor has developed a reputation of poor investigative work and poor use of investigative tools, such as ordering subpoenas and sworn testimony by employers. Further, the non-responsive nature of investigators and outrageously long processing times have only caused additional decline in the agency's status.

I would also point out that the GAO report incorrectly shows figures describing how USERRA claims are processed. I note on page 8 of the report that it fails to list the retention of a private attorney for the investigation and prosecution of claims. I believe that it is important to address that private attorneys, like myself and the others within my firm, handle many more cases per year than the Department of Labor, the Department of Justice and the Office of Special Counsel combined.

THE THREE METHODS OF BRINGING A USERRA COMPLAINT

A. Department of Labor

In my opinion, the Department of Labor has proven time after time that they do not aggressively investigate allegations of USERRA discrimination or retaliation. This is evidenced by the low number of Reservists and National Guardsman who go to the Department of Labor for help. I find it obscene that the Department of Labor has 189 personnel assigned in various capacities to investigate USERRA violations and yet my firm consistently investigates more allegations of USERRA violations with an astronomically higher corrective rate.

As such, committee members and others on Capital Hill should consider abolishing this program and shifting the resources going to DOL VETS to the Department of Defense, Employers' Support of the Guard and Reserve (ESGR). ESGR could handle all of the educational briefings that DOL Vets claims it does. In fact, I believe the Federal Government could save millions of dollars over the next decade by simply abolishing the Department of Labor's involvement in USERRA enforcement and mandating the award of attorneys' fees and litigation costs when a victim successfully proves his or her case of discrimination or retaliation.

B. Office of Special Counsel

In 2000, the Demonstration Project fundamentally altered the manner in which USERRA claims are processed by granting the Office of Special Counsel (OSC) the authority to receive and investigate claims when the filing servicemember had a Social Security number ending with an odd integer or the matter deals with a violation of veterans' preference rights under 5 U.S.C. § 2302(b)(11), effectively dividing USERRA review between VETS and OSC. VETS investigates all other claims and remains responsible for referring unresolved claimant matters to OSC or the Department of Justice (DOJ) at the election of the filing claimant.

While the Office of Special Counsel has a more successful history of investigating and prosecuting violations of USERRA than the Department of Labor, they have still failed to provide efficient and timely representation for claimants. Their success rate is sub par and average processing time is delayed beyond excuse. The inadequacies of the appeal process cannot be corrected by merely implementing a DOL VETS referral system. The tangible effect of which would merely result in an additional bureaucratic layer, which will increase the processing time of USERRA complaints.

Moreover, the referral system failed to provide remedies for those claimants who are dissuaded from pursuing their claim with OSC. My law firm is consistently contacted by claimants who were encouraged to withdraw their claims from the OSC or have had their cases held up in review only to see them dismissed. I am glad to hear that the demonstration project with OSC ended in January 2008.

C. Private Law Firms

Currently, Tully Rinckey is the largest firm in the country that handles extensive numbers of USERRA cases. We handle USERRA cases not only against the Federal Government, but against states and private employers as well. Our track record of success is well documented and has resulted in the firm receiving an average of forty-five new USERRA allegations per week.

Despite the dramatically higher number of cases we investigated during the period of time relevant to the GAO report, we also had a substantially higher success rate in comparison to the Department of Labor and Office of Special Counsel. While the ultimate goal should be to end discrimination against members of the National Guard and Reserves, these numbers clearly indicate that the best practice for handling matters of military discrimination is through private attorneys, not government entities.

If this Committee wants to protect today's military personnel and ensure that allegations under USERRA are properly prosecuted and investigated, it must not limit its research to the Department of Labor and the Office of Special Counsel. It must also focus on the overwhelming success of persons who retain private attorneys.

THE SOLUTION

Not only am I going to provide this Committee with my opinions, observations, and thoughts, but also common sense solutions that will achieve Congress' intent of making the Federal Government the model employer, while dramatically reducing the number of people discriminated against because of their military service. In the absence of the referral program, these recommendations will provide an efficient and effective system of representation for USERRA claimants. My suggestions are as follows:

1. Make attorneys' fees mandatory when a victim proves his/her allegations.
2. Give USERRA teeth by allowing judges to award liquidated, compensatory and punitive damages.
3. Give the Office of Special Counsel disciplinary authority and make federal supervisors personally accountable for their violation of USERRA, as is provided under the Hatch Act.
4. Implement strict deadlines for the processing and completion of USERRA claims.

In order for the above suggestions to be implemented, USERRA must incorporate the following amendments:

USERRA should be amended to mandate the payment of reasonable attorneys' fees, expert witness fees and other litigation expenses where the claimant has procured an Order directing the employer to comply with the provisions of the statute after a hearing or adjudication.

In a recent decision, the Court of Appeals for the Federal Circuit determined that while the MSPB *may* award attorneys' fees and litigation costs to successful USERRA claimants, such awards are *not* mandatory under 38 U.S.C. § 4324(c)(4). *See, Jacobsen v. Department of Justice,* 2007 U.S. App LEXIS 22412. The statute should be amended to specifically overrule this interpretation.

The award of reasonable attorneys' fees and litigation costs is par-for-the-course in virtually all other forms of employment discrimination and veterans' benefits legislation. For example, 33 U.S.C. § 918 entitles Longshoremen and harbor workers to attorneys' fees in successful employment discrimination and workers' compensation claims. Similarly, whistleblowers and veterans discriminated against in violation of the Veterans Employment Opportunities Act are also entitled to an award

of attorneys' fees and litigation costs, just to name a few.[1] Congress clearly intended to ensure that veterans who have meritorious employment discrimination complaints will not be deterred from bringing such claims due to costs associated with the effective assistance of counsel.

This intent must be stated in an amendment to USERRA so that no deserving claimant will be forced to bear the burden of his or her own legal representation or worse, be deterred from bringing the claim due to economic hardship. Congress enacted USERRA to protect veterans from unlawful discrimination in their employment because of their military service. An essential aspect of that protection is ensuring that aggrieved Veterans have access to affordable, skilled and experienced legal counsel to successfully enforce their rights under USERRA.

Furthermore, over the past two years, the GAO has conducted multiple investigations into the efficiency of USSERA enforcement.[2] The reports unanimously conclude that the Department of Labor (DOL) and the Department of Justice (DOJ) are failing our service men and women in their administration of USERRA. The GAO found deficiencies in the manner in which both departments advised claimants, processed claims and enforced claimants' rights.[3]

The current enforcement scheme and the program in question fail to provide adequately for victims of USERRA violations. Such a systematic failure to properly administer the provisions and protections of the Act cannot be justified. Under the circumstances, the only efficient and effective method of redress for victims of USERRA violations is representation by private counsel who will zealously pursue their claim. Given this fact, a mandatory award of attorneys' fees is imperative in the interest of justice. No victim of a USERRA violation should have to endure two harms as a result of an unlawful employment practice, namely, the denial of a benefit of employment and the financial burden of enforcing his or her rights in the face of such a violation.

With this in mind, I propose that 38 U.S.C. § 4324(c)(4) be deleted and replaced with the following language:

> (c)(4) If the Merit Systems Protection Board determines as a result of a hearing or adjudication that the claimant is entitled to an order referred to in paragraph (2), the Board shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. A successful claimant SHALL be awarded reasonable attorneys' fees, expert witness fees, and other litigation expenses. (Emphasis added).

Similarly, I propose that 38 U.S.C. § 4323(h)(2), which governs the remedies available to State and private employees, be amended to read as follows:

> (h)(2) In any action or proceeding to enforce a provision of this chapter [38 USCS §§ 4301 et seq.] by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court **SHALL** award any such person who prevails in such action or proceeding reasonable attorneys' fees, expert witness fees, and other litigation expenses. (Emphasis added.)

These amendments are a cost-neutral and minimally restrictive method for achieving congressional goals. By mandating the payment of reasonable attorneys' fees and litigation costs, the amendment will effectively overrule the prejudicial holding in *Jacobsen* and eliminate the barrier between aggrieved veterans and the legal counsel they need to adequately pursue their rights. It would also finally place USERRA on equal ground with other employment discrimination and Veterans' benefits statutes, thereby effectuating the intent of Congress. This minor revision will provide veterans the best option for enforcing their rights, enabling them to retain private counsel and bypass the failed referral system.

Moreover, the change will prevent malicious and detrimental agency action. By making attorneys' fees a statutory benefit under the Act, we can prevent the malicious and injurious agency conduct, which occurred in *Seitz v. Department of Veterans Affairs.*[4] In *Seitz,* the agency intentionally protracted the litigation, thereby increasing the amount of the claimant's litigation costs and attorneys' fees. On the eve of the hearing, however, the agency paid the claimant the disputed amount of damages and sought to moot the claim. As a result of the agency's litigation tactics,

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[1] *See,* 5 U.S.C. § 1221(g)(2); 5 U.S.C. § 3330c(b); 29 U.S.C. § 626; 29 U.S.C. § 216(b); 10 U.S.C. § 2409; 12 U.S.C. § 1975; 14 U.S.C. § 425; and 16 U.S.C. § 3117.

[2] *See,* GAO–06–60, October 2005; GAO–07–259; and, GAO–07–907, July 2007. All of these reports elucidate the ineptitude with which the DOL and DOJ administer USERRA.

[3] *Id.*

[4] *See,* Final Order dated March 7, 2007.

an award only in the amount of the claimant's disputed damages was grossly insufficient to return the claimant to the *Status Quo Ante*. The Board ultimately concluded that the inappropriate conduct of the agency entitled the claimant to litigate the issue of attorneys' fees.

Nonetheless, codification of this principle is essential. Only by expressly incorporating the claimant's statutory entitlement to attorneys' fees can we prevent the aforementioned disingenuous conduct. An agency must not be allowed to take actions that facilitate unnecessary legal expenses and then, at the last minute, pay the claimant damages in order to render the claim moot. This conduct places the burden of legal representation on the claimant, in violation of Congressional intent and the prevailing equitable considerations favoring retention of private counsel by USERRA claimants.

USERRA must be amended to expand the availability of liquidated damages for successful claimants.

USERRA currently provides limited instances where a successful claimant may be awarded liquidated damages. Pursuant to section 4323(d)(1)(C), if a claimant was found to be the victim of a willful violation, he or she is entitled to liquidated damages in the amount of his or her actual damages. The provision, however, applies only to servicemen and women employed by state or local governments or private employers.

H.R. 3393, proposes to amend section 4323(d) by extending its coverage to federal government employees and by ensuring that liquidated damages will always be available to victims of willful USERRA violations. The bill seeks to increase the amount of liquidated damages available to a successful claimant from the amount of his/her actual damages to the greater of either $20,000.00 or the claimant's actual damages. I support these proposals and hope to see both of them implemented.

The payment of liquidated damages is often the only true award granted to victims of USERRA violations. For example, if the victim of a wrongful termination under USERRA promptly finds comparable work, his or her actual damages may be quite small. As a result, an award of additional liquidated damages that merely doubles his or her miniscule actual damages award is an insufficient deterrent to employers who would discriminate against military personnel in civilian employment. Liquidated damages of the greater of either $20,000.00 or the claimant's actual damages should be available to USERRA claimants in every case.

It is imperative that the language in H.R. 3393 extend this provision is adopted to protect federal employees in the same manner as state and private employees. The purpose of USERRA is to protect ALL veterans, reservists and National Guard members irrespective of their place of employment. By treating our service men and women differently by virtue of their employer we are defeating the very basis of the statute. USERRA demands parity. Justice demands parity. Equitable treatment among all USERRA eligible employees is an ethical absolute and is necessary to fulfill the intent of Congress by extending the promise of USERRA protections to all eligible employees.

Therefore, I propose that section 4323(d) be amended to read as follows:

> (1) In any action under this section, the court may award relief as follows: (C) If the court determines that an employer has failed to comply with the provisions of this chapter, the court **SHALL** require the employer to pay the person as liquidated damages an amount equal to the greater of: . . . (i) the amount referred to in subparagraph (B); or (ii) $20,000.00. (Emphasis added).

Additionally, section 4324(c) must be amended, pursuant to 38 U.S.C. §§ 4301 and 4331, to provide the same protection. I propose that 38 U.S.C. 4324(c) be amended to add a new subsection (7) which reads as follows:

> (7) In any action under this section, the court may award relief as follows: (i) if the court determines that an employer has failed to comply with the provisions of this chapter, the court **SHALL** require the employer to pay the person as liquidated damages an amount equal to the greater of: (A) the amount referred to in subparagraph(C)(2); or (B) $20,000.00. (Emphasis added).

USERRA must be amended to mandate the payment of complete compensatory damages for successful claimants.

Currently, USERRA does not provide a statutory entitlement to compensatory damages for successful claimants. This is an anomaly in employment discrimination

and veterans' benefits legislation.[5] Pursuant to 38 U.S.C. §§ 4301 and 4331, USERRA must be amended to provide comparable relief to federal employees for violations of the Act. Law and equity demand that USERRA eligible employees receive the same quality anti-discrimination protection as all other employees.

Title VII was amended to provide for compensatory damages because Congress recognized that a financial award, typically consisting of back pay, is often insufficient by itself to fully compensate the victim for his or her injuries. Discrimination cases commonly involve complex, non-pecuniary injuries. Successful claimants should be entitled to compensation for these injuries in addition to their financial damages. For example, section 102 of the Civil Rights Act 1991 has been held to allow recovery for the following non-pecuniary injuries under its compensatory damages remedy: "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses."[6] The same remedies available to victims of unlawful employment practices under the Civil Rights Act 1991 should be available to victims of discrimination under USERRA.

Therefore, I propose that 38 U.S.C. § 4324(c) be amended to add a new subsection (9) to read as follows:

> (9) In any claim brought pursuant to the laws of this chapter [38 U.S.C. §§ 4301 et seq.], where the Merit Systems Protection Board or Administrative Judge determines that an employer failed to comply with the provisions of this chapter, the Board or Judge shall award the claimant compensatory damages in addition to, but not including, any other relief granted pursuant to this chapter.

Additionally, I propose that 38 U.S.C. § 4323(d)(1) be amended to add a new subsection (E), which reads as follows:

> (E) In any action brought pursuant to the laws of this chapter [38 U.S.C. §§ 4301 et seq.], where the court determines that an employer failed to comply with the provision of this chapter, the court shall award the claimant compensatory damages in addition to, but not including, any other relief granted pursuant to this chapter.

USERRA must be amended to provide for punitive damages in the worst cases of discrimination.

Presently, USERRA does not provide for an award of punitive damages. As mentioned above, section 4323(d) allows for liquidated damages in only the most limited of instances. Representative Davis' RAJA proposals in H.R. 3393, however, include a provision that would allow for punitive damage awards to victims of the worst kinds of discrimination.

H.R. 3393 proposes to amend USERRA section 4323(d) to provide for the availability of punitive damages, in addition to liquidated damages, where the court finds that the violation was committed with "malice or reckless indifference to the federally protected rights of the person." The proposal would apply only to state and local governments and private employers with more than fifteen (15) employees. I support these proposals. However, I believe that punitive damage awards need to be expanded even further.

Punitive damage awards should be available in all cases where the employer knowingly, willfully, maliciously or with reckless indifference violated an employees protected USERRA rights. Punitive damages are imposed as a deterrent to future egregious behavior. Any act taken by an employer of his or her own volition with the knowledge that he or she is denying a member of the military his or her protected rights offends the most sacred principles of our society. Such behavior must be discouraged in the clearest and strongest manner possible. A simple amendment to the existing law unambiguously granting employees a right to punitive damages in such cases will greatly reduce the number of employers willing to flout the law.

Moreover, limiting the availability of punitive damage awards to cases against state and local governments and private employers of 15 or more persons leaves a vast number of USERRA-eligible employees unprotected. Congress intended for veterans benefit and employment discrimination statutes to apply to all eligible parties equally, regardless of their employer. By allowing punitive damage awards only for employees of state and local governments and large private employers, the H.R. 3933 proposal discriminates against an enormous number of veterans, reservists

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[5] *See,* 42 U.S.C. §§ 2000e–1 et seq.; and, 5 U.S.C. §§ 3330 et seq.

[6] Gilbert, Gary. "Compensatory Damages and Other Remedies in Federal Sector Employment Discrimination Case." 2nd ed. Dewey Publications, Inc: Arlington, 2003. Page 97.

and National Guard members who are employed either by federal agencies or by smaller private employers. USERRA, to be effective, demands parity. How can we look a veteran in the eye and tell him or her that we value his or her service less because he or she is employed by a ten (10)-person construction crew and not by the Commonwealth of Massachusetts or Morgan Stanley?

Therefore, I propose that 38 U.S.C. § 4323 be amended to read as follows:

> (d)(1)(D) If the court determines that the employer willfully, knowingly, maliciously, or with reckless indifference failed to comply with the provisions of this chapter, in violation of the employee's federally protected rights, the person shall be entitled to an award of punitive damages in addition to all other remedies outlined in this chapter.

Likewise, 38 U.S.C. § 4324(c) must also be amended to provide for punitive damages awards in cases of willful or malicious discrimination. I propose section 4324(c) be amended to add a new subsection (8) to read as follows:

> (8) If the court determines that the employer willfully, knowingly, maliciously, or with reckless indifference failed to comply with the provisions of this chapter, in violation of the employee's federally protected rights, the person shall be entitled to an award of punitive damages in addition to all other remedies outlined in this chapter.

USERRA must be amended to permit the investigation and discipline of Federal Employees who violate the Act.

5 U.S.C. § 1215 provides the Office of Special Counsel (OSC) broad powers to investigate and discipline Federal employees who violate any "law, rule or regulation" falling within its vast jurisdiction. Unfortunately, USERRA violators have not yet been subject to the oversight and disciplinary authority of the OSC. USERRA should be amended to empower OSC to investigate and punish violators personally for their unlawful discriminatory acts. Personal liability is the ultimate deterrent and its implementation would have a profound effect on those unsavory individuals who might otherwise commit a USERRA violation.

Thus, I propose that 38 U.S.C. § 4324 be amended to provide for three (3) new subparagraphs (f), (g), and (h) which read as follows:

(f)(1) Except as provided in subsection (g), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

> (A) committed a prohibited personnel practice, adverse or unlawful employment practice, or violated any provisions of this chapter;
> (B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the scope of this chapter [37 U.S.C. §§ 4301 et seq.];
> (C) knowing fully and willfully refused or failed to comply with an order of the Merit Systems Protection Board, the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

> (A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;
> (B) be represented by an attorney or other representative;
> (C) a hearing before the Board or an administrative law judge as prescribed by 38 U.S.C. § 4324(c)(1)(A);
> (D) have a transcript kept of any hearing under subparagraph (C); and
> (E) a written decision and reasons therefore at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

(4) There may be no administrative appeal from an order of the Board.

An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefore with such court, and within such time, as provided for under section 7703(b) [5 USCS § 7703(b)].

(g) In the case of an employee in a confidential, policymaking, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (f)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (f).

(h)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

USERRA must be amended to provide strict timelines for the investigation and processing of complaints brought before DOL VETS

A servicemember who believes that he or she fell victim to a USERRA violation may choose to file a complaint with the Merit Systems Protection Board or with the Secretary of Labor. 38 U.S.C. § 4324(b); 38 U.S.C. § 4322; 5 CFR § 1208.11. As currently drafted, USERRA fails to provide a mechanism for the timely investigation and resolution of complaints for individuals who elect the latter option. The length of time DOL VETS requires to investigate and process a single USERRA claim is unacceptable, constituting an affront to Congressional intent and the plain meaning of the Act, which unambiguously provides for "the prompt reemployment" of servicemembers, in order to "minimize the disruption" to the civilian lives of servicemembers. 38 U.S.C. § 4301. If DOL VETS is not disbanded, I implore you to amend 38 U.S.C. § 4322 to provide strict timelines that will require DOL VETS to provide relief for our Nations veterans within a one hundred and eighty day (180) time period.

Thus, I propose that 38 U.S.C. § 4322 be amended to read as follows:

c. The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer.
d. The Secretary shall investigate each complaint submitted pursuant to subsection (a). ***Such investigation shall in no circumstance extend beyond one hundred and eighty days (180) days.*** If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter. (Emphasis added)
e. If the efforts of the Secretary with respect to any complaint filed under subsection (a) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint of—
    1. the results of the Secretary's investigation; and
    2. the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323 (in the case of a person submitting a complaint against a State or private employer) or section 4324 (in the case of a person submitting a complaint against a Federal executive agency or the Office of Personnel Management).

USERRA must be amended to require the payment of pre-judgment interest on all back pay awards.

As currently drafted, 38 U.S.C. § 4323(d)(1)(B) provides that, "[t]he court may require the employer to compensate the person [claimant] for any loss of wages or benefits suffered by reason of the employer's failure to comply with the provisions of this chapter." This section should be amended to specifically provide for the payment of pre-judgment interest on back pay awards for three (3) reasons: (i) an award of pre-judgment interest is necessary to fully compensate the victim; (ii) Congress intended for awards of back pay to include an award of pre-judgment interest; and, (iii) it is necessary in order to provide the same level of protection to victims of USERRA violations that Congress has extended to all other victims of employment discrimination.

An award of back pay lacking accrued interest fails to properly compensate the victim for his or her actual damages. For example, paying someone in 2007 for a loss that was suffered in 2002 does not take into account two (2) undeniable market

forces that effect the contemporary value of money: inflation and opportunity cost or time value. If an aggrieved veteran receives an award of back pay in 2007 for lost wages occurring in 2002, inflation will have devalued that sum to a measurable extent. Furthermore, not having had that money in his or her possession over the past five (5) years caused the victim to lose his or her opportunity to invest that sum and earn interest.

It is true that neither §§ 4323(d)(1)(B) nor 4324(c)(2) expressly guarantees a successful claimant interest on an award of back pay. Nonetheless, Congress clearly intended that veterans discriminated against in violation of USERRA should receive interest on awards. Section 4323(d)(3) expressly provides for the payment of prejudgment interest for awards against State and private employers. Additionally, under USERRA's predecessor, the Veterans' Reemployment Rights Law 1940 (VRR), prejudgment interest was commonly awarded, a fact that was well known to Congress at the time of USERRA's enactment.[7] Prejudgment interest is routinely awarded in all other employment discrimination cases.

> Prejudgment interest serves to compensate for the loss of money due as damages from the time a claim accrues until judgment is entered, thereby achieving full compensation for the injury these damages are intended to redress . . . [T]o the extent the damages awarded to the plaintiff represent compensation for lost wages, it is ordinarily an abuse of discretion not to include prejudgment interest. *Fink v. City of New York,* 129 F.Supp 511, 525–26 (E.D.N.Y. 2001) (Addressing interest on back pay awards under USERRA).

Until the statutory language is amended to unambiguously include interest on awards for USERRA violations, zealous agency attorneys will continue to argue that the absence of an express entitlement to an award of interest is evidence that such an award is NOT mandatory. Given the regularity with which these cases take years to resolve, prejudgment interest is an essential part of any compensatory remedy.

Therefore, I propose that 38 U.S.C. § 4323(d)(1)(B) be amended to read as follows:

> The court may require the employer to compensate the person [claimant] for any loss of wages or benefits, **INCLUDING INTEREST,** suffered by reason of the employer's failure to comply with the provisions of this chapter. (Emphasis added)

As noted above, sections 4301(b) and 4331(b)(1) demand that Federal employees receive at least the same degree of protection and quality of benefits as all other employees under USERRA. Consequently, I propose that § 4324(c)(2) also be amended, and that it read as follows:

(2) If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter [38 USCS §§ 4301 et seq.] relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits, **INCLUDING INTEREST,** suffered by such person by reason of such lack of compliance. (Emphasis added).

USERRA must be amended to make injunctive and interim relief mandatory where appropriate.

Under the current statutory structure, section 4323(e) of USERRA permits courts to invoke their full equity powers to remedy violations at the courts' discretion. Section 4324 contains no provision regarding the courts' power to grant equitable relief. In 2005 the Seventh Circuit Court of Appeals upheld a lower court decision denying injunctive relief under section 4323(e) in *Bedrossian v. Northwestern Memorial Hospital,* 409 F.3d 840 (7th Cir 2005). Dr. Bedrossian, in addition to his military service in the Air Force Reserves, was employed as a physician and professor at Northwestern Memorial Hospital. The Hospital sought to fire Dr. Bedrossian because of the inconvenience caused by his military service and the Doctor responded by seeking an injunction. The trial court held, and the Seventh Circuit affirmed, that regardless of the strength of the claimant's case, an injunction was not an available remedy. This decision should be overruled.

By merely, changing the word "may" in section 4323(e) to "shall", Congress could ensure that equitable relief is available to all USERRA victims when appropriate. The claimant would still need to demonstrate his or her entitlement to equitable re-

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[7] *See,* Captain Samuel F. Wright, JAGC, USNR article, "Does USERRA Provide Interest on Back Pay Awards?" Law Review No. 0611, http://www.roa.org (last visited April 2006).

lief in the form of an injunction. However, under the proposed amendment, once the claimant has established that an injunction is appropriate, the court would be required to grant it.

This proposal is one of many contained in H.R. 3393, the Reservists Access to Justice Act (RAJA), sponsored by Representative Artur Davis (D–AL). RAJA recognizes that the driving force behind the enactment of USERRA was to support and protect the members of our armed forces. The national defense interests of our country require that the segment of our military composed of civilian employees is supported by their civilian employers. We are currently fighting a global war on terror on multiple fronts. For the first time in our Nation's history, we are waging war on a grand scale without conscription and in reliance on an all volunteer military. Congress recognizes this and strongly supports this Nation's commitment to voluntary military service. Nonetheless:

> Congress also recognizes that the reliance on volunteers means that we must include substantial incentives for young men and women to join and remain in our Nation's uniformed services. We also must mitigate the disincentives to service, including the realistic fear that "if I sign up, I will lose my civilian job."[8]

Thus, I, too, propose that 38 U.S.C. § 4323 be amended to add a new subsection (e) which reads as follows:

> The court **SHALL** use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter. (Emphasis added)

Pursuant to 38 U.S.C. § 4301(b), "It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter [38 USCS §§ 4301 et seq.]" With this in mind, Congress enacted 38 U.S.C. § 4331(b)(1) which states, in relevant part:

> The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter [38 USCS §§ 4301 et seq.] with regard to the application of this chapter [38 USCS §§ 4301 et seq.] to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. *Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers, except that employees of the Federal Government may be given greater or additional rights.* (Emphasis added).

Therefore, any amendment to § 4323 resulting in greater benefits to an employee must also, by law, be reflected in a comparable amendment to § 4324. As a result, I also propose that section 4324(c) be amended to provide a new subsection (5) that reads as follows:

> The Merit System Protection Board or Presiding Administrative Judge **SHALL** use its full equity powers, including temporary or permanent injunctions, temporary restraining orders and contempt orders, to vindicate fully the rights or benefits of persons under this chapter. (Emphasis added)

Additionally, USERRA should be amended to provide for interim relief comparable to that afforded to other employees under 5 U.S.C. § 7701(b)(2) for deserving section 4324 claimants. 5 U.S.C. § 7701(b)(2) directs the Merit Systems Protection Board (MSPB or Board) to award successful Appellants, "the relief provided in the decision effective upon making the decision, and remaining in effect pending the outcome of any petition for review under subsection (e)." In contrast, USERRA does not require a Federal Executive Agency under section 4324 to furnish any relief until a final decision has been entered.

Thus, a claimant who successfully established an unlawful employment practice may be required to remain unemployed and uncompensated for a period of up to two (2) years until the MSPB enters a final decision, whereas, an otherwise identical claimant who files an action before the Equal Employment Opportunity Commission is entitled to interim relief immediately upon the entering of an initial decision. This inequity cannot be justified and must be remedied.

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[8] *See,* Captain Samuel F. Wright, JAGC, USNR article, "Firmer Teeth: Legislation introduced to enhance USERRA enforcement" Law Review No. 0754, http://www.roa.org (last visited, October 2007).

The MSPB's interim relief authority pursuant to 5 U.S.C. § 7701(b)(2) must be extended to USERRA claims. Therefore, I propose that 38 U.S.C. § 4324(c) be amended to provide a new subsection (6) that reads as follows:

> (e)(1) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (d), unless—
>
> (A)(i) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and
>
> (ii) the employing agency, subject to the provisions of subparagraph (a), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.
>
> (2) If an agency makes a determination under subparagraph (A) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (d).

USERRA must be amended to unambiguously preclude USERRA claims from binding arbitration agreements.

38 U.S.C. § 4302(b) expressly states that any law, agreement, or practice which, "reduces, limits, or eliminates in any manner any right or benefit" provided under USERRA is preempted by the statute. Nonetheless, the Fifth Circuit Court of Appeals recently held that this provision only preempts agreements limiting the claimants' substantive rights and not his or her procedural rights (e.g. the right to pursue a lawsuit in federal court as opposed to being required to proceed via arbitration). *See, Garrett v. Circuit City Stores, Inc.,* 449 F.2d 672 (5th Cir. 2006). This is an egregious misapplication of the text and purpose and intent of USERRA and must be overturned by legislative mandate. Veterans must not be denied the procedural due process of law as a result of employment agreements contradicting federal law.

Accordingly, I implore you to support H.R. 3393, and its proposed amendment to Chapter 1 of Title 9 of the United States Code, which would unambiguously exempt USERRA disputes from binding arbitration agreements and expressly overrule *Garrett*. In that vein, I too propose that 38 U.S.C. § 4322 be amended to add a new subsection that reads as follows:

> (g) Chapter 1 of title 9 shall not apply with respect to employment or reemployment rights or benefits claimed under this subchapter.

USERRA must be amended to adopt two additional exceptions to section 4312's five-year limitation on section 4313 reemployment rights.

As currently drafted, USERRA's reemployment protections lapse after a five-year period of consecutive active duty service. Section 4312(c) establishes eight specific exceptions to this five-year limitation, thereby enabling employees to serve five or more years of continuous active duty while working for a single employer and retaining his or her reemployment rights under the Act. Additionally, the Department of Labor (DOL) regulations implementing USERRA recognize a ninth exception.

DOL USERRA regulation § 1002.103 applies to service members who are forced to mitigate economic losses suffered as a result of an employer's USERRA violation. The regulation provides, in relevant part, that a service member who remains or returns to the armed services in an attempt to "mitigate economic losses caused by the employer's unlawful refusal to reemploy that person,"[9] shall not be required to count the time "against the five-year limit."[10] The regulation is grounded in equitable considerations. Those same considerations demand that the exception created by the regulation be fully incorporated into the text of the statute.

I propose that 38 U.S.C. § 4312(c) be amended to add a new subsection (5) which reads as follows:

> (5) which is undertaken by an individual who remains in or returns to uniformed service in order to mitigate economic damages suffered as a consequence of the employer's unlawful failure to comply with the provisions of this chapter.

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[9] 20 C.F.R. 1002.103

[10] *Id.*

An additional exception should also be added for National Guard members who are called to state active duty service in response to homeland emergencies. As currently drafted, time spent fulfilling active duty training commitments, time on active duty support for critical missions and time called upon for Federal active duty National Guard service are all exempt from consideration in calculating a person's 4312 time. Presumably, these missions are considered so important that they warrant preferential treatment. Under this reasoning, active duty service in furtherance of a State's emergency response is an equally compelling interest and should receive equivalent treatment.

Homeland emergency response is an integral component of our homeland security strategy. The fact that disasters and emergencies requiring the mobilization of active duty National Guard forces are generally unforeseeable adds weight to the argument that service men and women should not be penalized in their USERRA reemployment rights because they were required to answer the call to service. USERRA must be amended to take into account the sacrifices of guardsmen and their families during times of crisis. National Guard members who respond to such crises in State service should be entitled to the same protections as their federal counterparts.

Therefore, I propose that 38 U.S.C. § 4312(c) be amended to provide for a new subsection (6) that reads as follows:

> (6) service in the National Guard under competent state military authority while in support of the homeland, in response to a natural disaster, in response to aid to civil authorities, or for any other reason that the governor of the state declares the need for a state activation of the National Guard is necessary.

USERRA must be amended so that the term "adjudication" in § 4324(c)(1) is defined as providing the same procedures available to appellants under 5 U.S.C. § 7701.

In its current incarnation, USERRA does not expressly outline the formal due process to which claimants are entitled when bringing a claim for relief of an alleged violation of the Act. In *Kirkendall v. Department of the Army,* the Court of Appeals for the Federal Circuit concluded that every USERRA claimant has a right to a hearing and that he or she is entitled to the same procedures as an "appellant" under 5 U.S.C. § 7701(a). *See, Kirkendall v. Department of the Army,* 479 F.3d 380 (Fed. Cir. 2007).

5 U.S.C. § 7701(a) expressly provides for basic due process formalities in other appeals brought before the MSPB. USERRA should be amended so that both sections 4323 and 4324 unambiguously state the due process rights afforded to claimants. USERRA claimants must be granted the same procedural protections that the United States Code extends to other employees. Codification of the holding in *Kirkendall* will effectively extend the due process protections of 5 U.S.C. § 7701(a) to USERRA claimants and correct any enduring ambiguities.

Therefore, I propose that 38 U.S.C. § 4323(a) be amended to incorporate a new subsection (3) which reads as follows:

> (3) Any employee, or applicant for employment, who submits any claim or action for relief pursuant to the rights outlined in this chapter [38 U.S.C. §§ 4301 et seq.] shall have the right:
> (A) to a trial by Judge or Jury, for which a transcript will be kept; and
> (B) to be represented by an attorney or other representative.

In addition, I propose that 38 U.S.C. § 4324(c)(1) be amended to provide for a new subparagraph (A) which reads as follows:

> (A) Any employee, or applicant for employment, who submits any claim or action for relief pursuant to the rights outlined in this chapter [38 U.S.C. §§ 4301 et seq.] shall have the right:
> (i) to an in person hearing for which a transcript will be kept; and
> (ii) to be represented by an attorney or other representative.
> (iii) the employee shall receive official time off to prosecute his/her appeal to include time to request and respond to Discovery Demands and/or orders from the MSPB or Federal Circuit.

USERRA section 4324 must be amended to state unequivocally that there is no Statute of Limitations provision governing the time period in which to bring a claim under the Act.

Section 4323(i) clearly states that "[n]o Statute of Limitations shall apply to any proceeding under this chapter [38 USCS §§ 4301 et seq.]." Sections 4301 and 4331

compel Congress to amend section 4324 to provide the same protection to Federal government employees.

The United States Courts of Appeals for the Federal Circuit has already held that no Statute of Limitations applies to cases brought under § 4324. *See, Hernandez v. Department of the Air Force,* 2007 U.S. App. Lexis 20280 (August 27, 2007). Nonetheless, codification of this principle is the only way to ensure that future Federal Executive Agencies will not successfully overturn this ruling and reinstate the arbitrary distinction between Federal employees and all other employees for the purpose of USERRA Statute of Limitations claims.

Therefore, I propose that 38 U.S.C. § 4324 be amended to add a new subsection (e) which reads as follows:

> (e) Inapplicability of statute of limitations. No statute of limitations shall apply to any proceeding under this chapter [*38 USCS §§ 4301* et seq.].

CONCLUSION

Army Chief of Staff General George W. Casey Jr. once remarked that "Our reserve components are performing magnificently, but in an operational role for which they were neither designed nor resourced . . . They are no longer a strategic reserve, mobilized only in national emergencies. They are now an operational reserve deployed on a cyclical basis," enabling the Army to sustain operations. "Operationalizing" the reserve components ***"will require national and state consensus, as well as the continued commitment from employers***, soldiers and families," Casey said (emphasis added). "It will require changes to the way we train, equip, resource and mobilize."

I could not agree with the above statement more. As the National Guard and Reserves change to an operational reserve, it is vital to our national security and homeland defense to ensure members of these units are protected from losing their full-time careers while defending the country at home and abroad. The extensive deployment of Reservists and members of the National Guard in furtherance of the Global War against Terrorism has only compounded the inequity and made the need for congressional intervention more pronounced. The time for a major overhaul of the laws that protect the employment rights of members of the National Guard and Reserves is upon us.

Our national defense and homeland security depend on the men and women in our National Guard and Reserves and, while they are protecting us, we should be protecting their civilian jobs. We never want to be in the situation where members of the reserves need to pick between our national defense and their civilian careers, as that will undermine our security. Unfortunately, too many have been placed in that situation and after many deployments, both overseas and stateside guarding our bridges, tunnels, nuclear power plants, and responding to natural disasters, many have chosen their civilian careers over their service to our country. This exodus of highly skilled and trained personnel could undermine our recruiting efforts and result in a hollowed out military force unless Congress takes immediate action to strengthen the weak links. Fixing USERRA is a good first step to taking away the fear of a deployment and how that deployment will have a negative impact on their civilian careers.

The proposed recommendations outlined above are pivotal in advancing our national defense interests and achieving parity and equity in the workplace. USERRA was designed and implemented to provide comprehensive anti-discrimination protection for military personnel in civilian employment. In order to effectuate this congressional mandate, we must improve opportunities for injured veterans to pursue their rights under the Act, increase the statutory mechanisms that serve as deterrents to unlawful employer behavior and create uniformity in the law's protections to all USERRA-eligible employees, regardless of their employer.

If these changes are not made to USERRA, the situation will only remain the same, whether it is the Department of Labor or the Office of Special Counsel handling the investigation of complaints. Significant measures must be taken by Federal agencies, state employers and private employers to protect members of the military service. As soldiers called to duty have begun to return home and re-enter the workforce, my firm has already seen an influx in USERRA allegations. With the Global War on Terrorism continuing with no clear end in sight, the number of National Guardsmen and Reservists called to second, third and fourth tours of duty will force an increase in the number of discrimination cases.

I ask you to place yourself in the shoes of a Reservist or National Guardsman who has been deployed twice since 2001 to serve his country for a year or longer and was subsequently passed over for a position with the Federal government due to

that same service. Who would you want to assist you? The Department of Labor, where only 7% of the cases are referred for prosecution? The Office of Special Counsel, which has a 25% correction rate? Or a highly skilled privately retained attorney with a 70% correction rate? Clearly, the answer is for the Federal government to rely on private attorneys to protect our fighting men and women. The only way for private attorneys to properly bear that burden is for Congress to pass a law that mandates attorneys' fees so more firms like mine would be willing to provide legal services at no cost to our citizen soldiers.

USERRA should no longer be a second-class anti-discrimination statute; we owe it to our service men and women to provide them with the premier anti-discrimination law in the land. The only way to have this become a reality is through proper representation, which has not been demonstrated by the Department of Labor and the Office of Special Counsel. Through the aggressive and successful representation of private attorneys, allegations of discrimination under USERRA will be prosecuted in a timely and efficient manner, giving military personnel the respect they deserve in return for protecting our country. Instead of holding claims up in a referral program filled with bureaucracy and red tape, establishing the above recommendations will allow private attorneys to freely offer their representation and eliminate a source of unnecessary frustration to those who have served. This type of representation will encourage military service in our all-volunteer forces and ensure that those who have served are properly cared for upon their return home, now more than ever. The proposed changes represent the least restrictive means possible for effectuating legitimate equality in the workplace and guaranteeing that no one other than a USERRA violator will bear the costs of the improved enforcement.

As currently drafted, the Uniformed Services Employment and Reemployment Rights Act 1994 (USERRA) fails to adequately support military personnel upon their return to civilian employment. Hon. Representative Artur Davis (D–AL) recently sponsored new legislation, H.R. 3393, to address some of the law's deficiencies. I urge you to demonstrate your strong commitment to the brave men and women who serve in the armed forces by supporting these amendments and by incorporating the additional proposals contained within this correspondence into a new more comprehensive updating of USERRA. Please fight to get this updated USERRA bill passed as quickly as possible. Thank you.

Prepared Statement of Ronald F. Chamrin, Assistant Director, Economic Commission, American Legion

Madam Chairwoman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's view on some of the Department of Veterans Affairs (VA) expiring programs. The majority of the programs discussed today received increased payments via the passage of the *Veterans Benefits Improvement Act of 2004,* Public Law (P.L.) 108–454. Due to the expiration of temporary increased payments on January 1, 2008, many veterans will receive a lower monthly payment for earned education benefits. The American Legion opposes any reduction in education assistance payments. The American Legion recommends that the dollar amount of the entitlement be indexed to the average cost of college education including tuition, fees, textbooks and other supplies for a commuter student at an accredited university, college or trade school for which a veteran qualifies.

Demonstration Project of Adjustable Rate Mortgages—Section 3707 and Demonstration Project on Hybrid Adjustable Rate Mortgages—Section 3707a

The American Legion supports the reinstatement of the Adjustable Rate Mortgage Programs that will expire at the end of this calendar year. Since the VA Home Loan program was enacted as part of the original *Servicemen's Readjustment Act of 1944* (the GI Bill), VA has guaranteed more than 18.2 million home loans totaling nearly $938 billion for veterans to purchase or construct a home, or to refinance another home loan on more favorable terms. In the last five years (2001–2006), VA has assisted more than 1.4 million veterans in obtaining home loan financing totaling almost $197 billion. About half of these loans, just over 730,000, were to assist veterans to obtain a lower interest rate on an existing VA guaranteed home loan through VA's *Interest Rate Reduction Refinancing Loan Program.*

The American Legion also supports administrative and/or legislative efforts that will improve and strengthen the Loan Guaranty Service's ability to serve America's veterans. H.R. 4884, *The Helping Our Veterans to Keep Their Homes Act of 2008,*

addresses the expiration of these programs. In reference to the topics before this Committee today, The American Legion supports the following portions of the proposed legislation in H.R. 4884:

Section 2(A)

(c) **Extension of demonstration project on adjustable rate mortgages.**—Section 3707(a) of such title is amended by striking "2008" and inserting "2018".

(d) **Extension of demonstration project on hybrid adjustable rate mortgages.**—Section 3707A(a) of such title is amended by striking "2008" and inserting "2012".

PROGRAMS AFFECTED BY THE VETERANS BENEFITS IMPROVEMENT ACT OF 2004 (P.L. 108–454)

Apprenticeship and On-Job-Training (OJT)

The American Legion opposes any reduction in education assistance payments. Due to the expiration of temporary law that increased the OJT payment to 85 percent of the Montgomery GI Bill (MGIB) payment rate in 2005, the OJT payment rate dropped to 75 percent on January 1, 2008. The OJT payment rates have dropped to $825.75, $605.55, and $385.35. The American Legion recommends that the dollar amount of the entitlement should be indexed to the average cost of college education including tuition, fees, textbooks and other supplies for a commuter student at an accredited university, college or trade school for which a veteran qualifies.

Approximately 7,000 veterans are immediately affected due to the drop in monthly payment rates. The American Legion has long advocated for increased education benefits and raising the rates of the entitlement. Lowering benefits is an insult to all veterans and an extension of the OJT payment rates implemented in P.L. 108–454 should be indefinite.

Not every veteran is destined for college; therefore, the MGIB needs to be more accessible for those veterans with vocational aspirations other than college. The overall costs of these vocational training and licensing programs far exceed the monthly stipend provided under the traditional "college-student-for-36-months" approach in the current MGIB.

Veterans should be afforded the opportunity to attend programs that will lead to the vocation of their choice. In addition, a higher percentage of today's servicemembers are married (with children in the majority of cases) when they are discharged. Meeting the financial obligations to sustain and maintain a household is paramount and often serves as a major obstacle to their timely use of the MGIB. Every effort must be made to empower every veteran with options to make the best vocational choice to help them achieve the American dream.

P.L. 108–454 amended Title 38, U.S.C. section 3032 subsection (c) from October 1, 2005 to January 1, 2008. (MGIB–AD):

(1) The reference to "75 percent" in subparagraph (A) were a reference to "85 percent";
(2) The reference to "55 percent" in subparagraph (B) were a reference to "65 percent"; and
(3) The reference to "35 percent" in subparagraph (C) were a reference to "45 percent".

P.L. 108–454 amended Title 10, U.S.C. section 16131, subsection (d) from October 1, 2005 to January 1, 2008. (MGIB–SR):

(1) the reference to "75 percent" in subparagraph (A) were a reference to "85 percent";
(2) the reference to "55 percent" in subparagraph (B) were a reference to "65 percent"; and
(3) the reference to "35 percent" in subparagraph (C) were a reference to "45 percent".

Post-Vietnam Era Veteran's Educational Assistance Program (VEAP)

The American Legion opposes any reduction in education assistance payments. Due to the expiration of the P.L. 108–454 that increased the OJT payment to 85 percent of the VEAP payment rate in 2005, the OJT payment rate dropped to 75 percent on January 1, 2008. The American Legion recommends that the dollar amount of the entitlement should be indexed to the average cost of college education

including tuition, fees, textbooks and other supplies for a commuter student at an accredited university, college or trade school for which a veteran qualifies.

P.L. 108–454 amended Title 38, U.S.C. section 3233, subsection (a) from October 1, 2005 to January 1, 2008.

(1) the reference to "75 percent" in paragraph (1) were a reference to "85 percent";
(2) the reference to "55 percent" in paragraph (2) were a reference to "65 percent"; and
(3) the reference to "35 percent" in paragraph (3) were a reference to "45 percent".

Survivors and Dependents Educational Assistance (DEA)

The American Legion opposes any reduction in education assistance payments due to the expiration of the P.L. 108–454 that increased the OJT payment of DEA recipients in 2005 and dropped on January 1, 2008.

P.L. 108–454 amended Title 38, U.S.C. section 3687, subsection (b)(2) from October 1, 2005 to January 1, 2008.

(A) the reference to "$574 for the first six months" were a reference to "$650 for the first six months";
(B) the reference to "$429 for the second six months" were a reference to "$507 for the second six months"; and
(C) the reference to "$285 for the third six months" were a reference to "$366 for the third six months".

Incarcerated Veterans Transition Program (IVTP)

The American Legion does not have a position regarding the Incarcerated Veterans Transition Program.

Department of Labor (DOL) Veterans Employment and Training Program (VETS) Claim Referral Program to the Office of Special Counsel (OSC)

The American Legion does not have a position regarding the expiration of the Demonstration Project with the Department of Justice (DOJ) Office of Special Counsel (OSC) with Uniformed Services Employment and Reemployment Rights Act (USERRA) claims.

CONCLUSION

Former President Franklin Delano Roosevelt once said, "The test of our progress is not whether we add more to the abundance of those who have much, it is whether we provide enough for those who have little." Different options for purchase of homes and the ability to afford an education must constantly be provided to veterans.

The American Legion looks forward to continue working with the Subcommittee to assist the nation's veterans. Madam Chairwoman and Members of the Subcommittee, this concludes my testimony.

Prepared Statement of Justin M. Brown, Legislative Associate, National Legislative Service, Veterans of Foreign Wars of the United States

MADAM CHAIRWOMAN AND MEMBERS OF THIS SUBCOMMITTEE:

On behalf of the 2.3 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, I would like to thank you for the opportunity to testify before this distinguished body.

Today, as we consider the veterans' issues of transition and stabilization—employment, housing and education—I ask that we briefly reflect on a historical comparison.

In 1973, following the Vietnam War, the all-volunteer force was implemented. In order to fill the ranks of a military worn down by years of fighting in Vietnam, recruitment standards were reduced. In 1976, the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) was created as a recruitment incentive to help fill the ranks. However, relative to programs that came before VEAP, it provided the least amount of education benefits to veterans.

From 1973–1985, the military had lowered recruitment standards and meager transition benefits, resulting in a group of veterans that is three to four times more likely to be homeless than their non-veteran counterparts. In contrast, Vietnam veterans prior to this time period are only 1 to 1.4 times more likely to be homeless

than their non-veteran counterparts. Currently, the most common attribute of a homeless veteran is not combat, it is their age and relation to public policy.

"The commonly held notion that the military experience provides young people with job training, educational and other benefits, as well as the maturity needed for a productive life, conflicts with the presence of veterans among the homeless population."—*Libby Perl, CRS Report RL34024*

If we are to use history as a marker, we might suggest that a robust, attractive, initial education investment would have alleviated many of the issues America and its veterans are coping with today.

If we fail on the front end with hand-up programs such as education, job training, and vocational rehabilitation, we miss an opportunity to create a sound stabilization and transition program. In the end, the American people pay for expensive programs that are difficult to administer, produce limited results, and often fail to achieve their objectives.

We ask that Congress closely monitor and consider the future implications of lowered recruiting standards. Raising the initial educational benefit could offset some of the reduction in recruitment standards while providing the best tool to transition from the military to the civilian workforce. With the war fast approaching its fifth year, veteran educational benefits have not been adjusted to reflect the cost of an education. Almost daily, a new media article about the failure of the GI–Bill to pay for veterans' education can be found nullifying what used to be the DOD's most effective recruitment tool.

We have been down this weary road before; DOD is lowering recruitment standards, and the value of the GI–Bill continues to falter. We ask that Congress be proactive in their approach to veterans, the military, and our future.

Incarcerated Veterans Transition Program (IVTP)

According to the Department of Labor (DOL), the Incarcerated Veterans Transition Program, managed by DOL and Veterans' Employment and Training Service (VETS), is designed to help ex-offender veterans who are at risk of homelessness to reenter the workforce. The program provides direct services—through a case management approach—to link incarcerated veterans with appropriate employment and life skills support as they transition from a correctional facility into the community.

We are supportive of the spirit of the program, but we need to see assurances of its effectiveness. If DOL can substantiate that IVTP has been effective in helping veterans stay out of prison and/or jail the VFW supports IVTP.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

According to the Office of Special Counsel (OSC), USERRA prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment based on an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

The VFW appreciates the rigor that the four departments (DOJ, OSC, DOD, DOL) have taken in ensuring that veterans are not discriminated against based on military status. The VFW agrees with recent testimony from the GAO's Brenda Farrell that "suggests Congress make a single entity accountable for maintaining visibility over the entire USERRA complaint resolution process. Designating one single entity would, in GAO's view, enhance efforts to improve overall program results."

Demonstration Project on Adjustable Rate Mortgages

The VFW is happy to support legislation that would make permanent the authority to provide increased financing opportunities to veterans under the VA Home Loan Program by allowing VA to offer conventional and hybrid Adjustable Rate Mortgages (ARMs). Under P.L. 102–547, the VA Secretary was authorized to begin a demonstration project to begin offering adjustable rate mortgages through the VA Home Loan program that are similar to the Department of Housing and Urban Development's (HUD) programs.

ARMs allow the mortgagee to periodically adjust the interest rate in accordance with the provisions of the mortgage. ARMs have proven to be very popular alternatives to conventional home financing. They typically offer a lower-than-normal initial interest rate, which may make it easier for our veterans to obtain affordable financing. Moreover, if interest rates drop, the home buyer can save thousands of dollars above what they would pay using a conventional mortgage.

Despite these advantages, there are some drawbacks. If the interest rates increase, the home buyer may end up paying more than they normally would, even with the reduced initial interest rate.

We feel that Title 38, section 3707 does an excellent job of safeguarding our veterans from some of the negative consequences this type of mortgage can have. The law contains both periodic and overall interest rate caps to help protect the borrower. Periodic caps limit the amount that interest may increase from one year to the next, while overall caps prevent the interest rate from increasing above a certain amount over the life of the loan. The current VA program limits the periodic cap to one percent and the overall cap to five percent over the life of the loan.

The VFW believes that permanently expanding the financing opportunities for our veterans is the right thing to do as it helps assure them of the opportunity to pursue the American Dream of homeownership. The advantages of the ARM program may make it a viable alternative for many of our veterans, while the safeguards in the program lessen their chances of harm and, further, it brings veterans in line with what is available to non-veterans through HUD.

Post-Vietnam Era Veterans' Educational Assistance Program (VEAP)

The Post-Vietnam Era Veterans' Educational Assistance Program was the first educational benefit created as a recruiting tool. If the veteran contributed a total of $2,700.00 he/she could receive up to $8,100.00. If the $2,700 contribution is deducted this equates to roughly $150.00 a month for 36 months.

The VFW believes that this benefit is inequitable relative to other educational benefits available.

A $150 monthly benefit would cover roughly 9% of the average cost of education at a four-year public institution. Only 1% of all VA educational claims are administered through VEAP and the VFW believes that remaining and future claims should be administered as a Chapter 30 benefit.

Survivors and Dependants Educational Assistance (Chapter 35)

According to the VA, Dependents' Educational Assistance provides education and training opportunities to eligible dependents of certain veterans. The program offers up to 45 months of education benefits. These benefits may be used for degree and certificate programs, apprenticeship, and on-the-job training. If you are a spouse, you may take a correspondence course. Remedial, deficiency, and refresher courses may be approved under certain circumstances.

Chapter 35 benefits make up 14.78% of the educational benefits used in 2007. The VFW strongly supports this program, and would like to see its funding continued.

Thank you for the opportunity to testify. I would be happy to answer any questions that you or the members of the Committee may have.

Prepared Statement of Todd Bowers, Director of Government Affairs, Iraq and Afghanistan Veterans of America

Madam Chairwoman and members of the House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, on behalf of Iraq and Afghanistan Veterans of America and our tens of thousands of members nationwide, I thank you for the opportunity to testify today regarding the expiring VA programs.

In the interest of time, I will limit my testimony to the Department of Labor's Veterans Employment & Training Services VETS program.

IAVA is a proud supporter of the DOL VETS program. I have personally had the opportunity to meet with staff members that work with this program and I continue to be thoroughly impressed with their dedication. I have also spoken to many veterans who have benefited from DOL programs such as Hire Vets First. These programs are much-needed. According to the Bureau of Labor Statistics, unemployment among recently discharged veterans is 11.9%. The rate is even higher for veterans 18 to 24; 18% of these veterans are unemployed—that's three times the national average. For the 1.5 million Iraq and Afghanistan veterans returning home, employment opportunities and protections are a crucial part of their transition to civilian life. This is also the single most effective defense in combating homelessness among our nation's veterans.

The conflicts in Iraq and Afghanistan have drawn heavily on our reserve component forces. These troops, often the breadwinners of their families, face serious economic burdens during and after deployment. Many are businessowners who face tremendous obstacles in ensuring their businesses are appropriately managed while they are gone. One of my fellow Marines, when we deployed to Iraq, was forced to rely on the good-will of his community to ensure his family business did not go

under while he was deployed. He was a proud businessowner, but had serious difficulties staffing his business while he was deployed. Without funding for advertising, he was forced to turn to the media to let them know that he was still open for business.

A Defense Department study in 2000 showed that 40% of reservists lose income when they are called to active duty. Some 12,000 formal and informal Uniformed Services Employment and Reemployment Rights Act (USERRA) complaints were filed by National Guardsmen and Reservists in FY2004 and FY2005, according to the GAO.

IAVA has called for better outreach and more streamlined referral system for USERRA complaints. Currently, a service member wishing to file a complaint is forced to move through hurdles that cross three federal agencies and an onslaught of paperwork. We also support tougher enforcement of USERRA protections, and believe that employers who consistently violate USERRA should be barred from eligibility for federal government contracts and should face civil and criminal prosecution. In addition, the GAO has outlined a series of recommendations regarding USERRA claims referrals, which we hope the committee will seriously consider in any reauthorization of the OSC referral program.

Serving your country should not mean sacrificing your civilian livelihood. Troops returning from Iraq and Afghanistan deserve the best possible employment protections. We thank this committee for their work to support and protect our "citizen soldiers."

Thank you for your time.

Prepared Statement of Colonel Felix C. Vargas, Jr., USAR (Ret.)
Senior Advisor, American GI Forum of the United States

Madame Chairwoman, Ranking Member Boozman, and distinguished Members of this Committee, the American GI Forum (AGIF) appreciates this opportunity to present its views today regarding the issue of expiring Veterans Affairs programs. The AGIF traditionally has not been invited to testify before congressional committees on issues of importance to our men and women who have served and are serving in our country's armed forces. If my memory serves me correctly, we last appeared before the U.S. House of Representatives Veterans' Affairs Committee on 18 May 2004, to update you on our AGIF National Veterans Outreach Program.

As you may know, the AGIF is a congressionally chartered Veteran Service Organization (VSO), founded 60 years ago by Dr. Hector P. Garcia principally to represent the interests and concerns of American war veterans of Hispanic origin, many of whom were denied their veterans benefits following the end of World War II. Today, AGIF remains a vibrant non-profit organization working in concert with all VSOs to ensure that our nation's commitments to all our returning military men and women and their families are honored. This includes especially our newest generation of veterans coming home from the Global War on Terrorism (GWOT).

Today, we are here to add our support to the continuation of important veterans support programs, currently managed by the Departments of Labor and Veterans Affairs. In the interests of time, we will only address the following programs:

- Incarcerated Veterans Transition Program (IVTP)
- Department of Labor (DOL) Veterans Employment and Training Program (VETS) Claim Referral
- Apprenticeship and On-Job-Training
- Post-Vietnam Era Veterans' Educational Assistance Program, and
- Survivors and Dependents Educational Assistance

Incarcerated Veterans Transition Program (IVTP)

We believe that this program has provided invaluable assistance to incarcerated veterans, who are within 18 months of release and who are at risk of homelessness, to re-train and re-enter the workforce. The funding provided has enabled many such veterans to receive training and related support services to make a successful transition back into the workforce and back into their communities.

While the IVTP concept and objectives are sound, we have heard of instances where incarcerated veterans, once released to the streets, have fallen through bureaucratic cracks, receiving little if any help. They have been told that to get follow on assistance, they need to call the VA, make an appointment, and show up with their DD–214. In these instances, no efforts were made prior to their release to connect them to medical facilities, for any needed treatment or medication; to housing

options; or to employment opportunities. One sister VSO informed us that in cases of released veterans who are terminally ill, that often no support is given.

We do not believe that any such neglect represents the true intent of the IVTP. It is important, however, for the Department of Labor to investigate any reported failure to provide needed follow on transition support services to an incarcerated veteran upon release.

I am pleased to inform the Subcommittee that my home State of Washington has taken an important step to help these veterans. Washington State, working closely with VSOs, issues a booklet to incarcerated veterans, titled An Incarcerated Veterans Guidebook for Washington State. The booklet helps the veteran plan for his release and provides important information, such as addresses, phone numbers, and Web sites that the veteran can use to connect to programs and other assistance that are available upon the veteran's release. The booklet has proved to be such a successful resource that other states have used it as a model for their own guidebooks for incarcerated veterans.

Again, we support the IVTP and see it as a great support program for incarcerated veterans. The bugs in the program and any deficiencies should be corrected to ensure that no incarcerated veteran falls through the cracks or worse yet is left behind.

DOL Veterans Employment and Training Program (VETS) Claim Referral

The Department of Labor (DOL) Veterans Employment and Training Program (VETS) constitutes a pillar in the support structure for veterans. There is no greater assistance that can be provided to our returning warriors than job-related training, linked to follow-on employment.

The men and women of our national Guard and Reserve face a unique employment challenge when they return from active duty to their communities. All returning reservists are NOT guaranteed that their old jobs will be waiting for them. I saw this first-hand in Germany in the late 1980's, where German and other European employers would essentially give American reservists a hard choice: active duty with your American military unit or your job in Europe. You cannot have both. Such was the callous attitude of our so-called allies whose freedom we had achieved during two world wars and ever since.

Fortunately, in the U.S., we have through the DOL's VETS program the enforcement of the Uniformed Services Employment and Reemployment Act (USERRA). USERRA fights discrimination against veterans, individuals entering military service, and members of the National Guard and Reserve. The law protects our veterans against retaliation by employers simply because a veteran attempts to exercise a USERRA right. Further, the law requires that veterans and others who perform qualifying service in the uniformed services, including the National Guard and Reserve, be reemployed by their pre-service employers with the seniority, status and rate of pay they would have attained if employment had been continuous.

We understand, Madame Chairwoman, that an issue before your Subcommittee concerns extension of a demonstration project giving the Office of Special Counsel (OSC) authority to investigate federal sector USERRA claims brought by persons whose Social Security number ends in an odd-numbered digit. We are also informed that under the project, OSC will also receive and investigate 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.

Our interest here is limited to seeing that aggressive enforcement of USERRA is carried out across the board, both by DOL and OSC. We would also like to receive assurances that our reservists living in foreign countries are covered by a USERRA-like agreement through the host government.

Assuming that the demonstration project, as administered by OSC, has shown good results, we would support its extension. We respectfully request that a report on the demonstration project addressing actions taken and results be provided to VSOs, thereby allowing us to evaluate its effectiveness.

Apprenticeship and On-Job-Training (OJT)

This program, run by Veterans Affairs, provides veterans and their immediate family a great incentive to achieve a co-educational objective. Eligible persons may receive a training allowance from the VA to supplement their wages while learning a new skill or trade, thereby increasing their financial security and job stability during the training period.

At a time when we see signs of an imminent recession in our country, it is important that we not lose sight of the contribution that this program makes in battling unemployment in a weakened economy. This program is about helping veterans and

their families to work and learn while they prepare to fill jobs in both the private and public sectors of our economy.

We are concerned that the law that increased OJT payments to 85 percent of the GI Bill payment rate in 2005 expired on 31 December 2007. This means that without new legislation maintaining the 85 percent, the OJT payment rate will drop to 75 percent as of 1 January 2008. Thus, what has been a top OJT (Veteran) payment rate of $935.85 will now drop to $825.75.

Members of the Subcommittee, we urge you to make permanent the OJT payment rate of 85 percent. You should not allow this rate to revert back to the 75 percent training rate. Our veterans who depend on these payments are facing daily increases in housing and the cost-of-living expenses. They need every cent that can be provided under this program.

The other comment we would make here is that you should consider offering tax incentives to companies who agree to participate in the Apprenticeship program. We note that there are too few companies who participate. For starters, we should see to it that all defense contractors, many of whom have amassed fortunes by providing products and services to the U.S. military, become active supporters of and participants in this Apprenticeship program.

Veterans Educational Assistance Program (VEAP)

VEAP is made available to veterans if they elected to make contributions from their military pay to participate in this education benefit program. The individual contributions are matched on a $2 for $1 basis by the government. The benefits can be used to pursue a degree, certificate, correspondence, apprenticeship/OJT training programs and vocational flight training programs

Benefit entitlement to the participating veteran is one to 36 months, depending on the number of monthly contributions. The veteran has 10 years from his/her release from active duty to use VEAP benefits. If the entitlement is not used after the 10-year period, the portion remaining in the fund is automatically refunded to the veteran.

We strongly support the continuation of the VEAP program and at the highest rate possible.

Survivors and Dependents Educational Assistance

This is another valuable program that has shown a level of success for veterans' families and should therefore be continued. It provides education and training opportunities and benefits to eligible dependents of veterans for up to 45 months. The benefits may be used for degree course work and certificate programs, apprenticeship, and OJT.

We urge the Subcommittee to endorse continued funding of this program at the higher rates. Our veterans' families would greatly appreciate your understanding and support.

CONCLUSION

In sum, Madame Chairwoman, the American GI Forum considers the continuation of the VA and DOL programs before the Subcommittee to be a reflection of your strong support for our veterans and their families. Taken as a whole, they go a long way toward honoring the commitment our nation made to our men and women who have served honorably in the military.

Again, I thank you for allowing the AGIF an opportunity to address you today on the review of these important programs.

Prepared Statement of Hon. Charles S. Ciccolella, Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor

Chairwoman Herseth Sandlin, Ranking Member Boozman, Members of the Committee:

I am pleased to appear before you today to discuss certain programs that have expired that involve our agency. Your invitation letter lists several programs you would like to review. Of the eight programs listed, we will restrict our comments to the Incarcerated Veterans Transition Program (IVTP) and the "Department of Labor (DOL) Veterans' Employment and Training Program (VETS) Claim Referral Program to Office of Special Counsel" and defer to the Department of Veterans Affairs (VA) on the other programs listed.

Incarcerated Veterans Transition Program

IVTP was originally mandated as a demonstration project using funds appropriated for the Homeless Veterans Reintegration Program (HVRP). The Homeless Veterans Comprehensive Assistance Act (P.L. 107–95) amended Title 38 to revise, improve and consolidate provisions of law providing benefits and services to homeless veterans. Section 2023 of Title 38 mandated a demonstration program of referral and counseling for veterans who are transitioning from certain institutions and at risk of becoming homeless. Authority for IVTP expired September 30, 2007.

IVTP targeted veterans who were preparing to transition out of incarceration into employment in their communities. DOL competitively awarded seven (7) ITVP demonstration grants to provide employment and training services at the federal, state, and local levels. During the demonstration project, 4,094 incarcerated veterans were assessed by grantees, Disabled Veterans' Outreach Program (DVOP) specialists, and Local Veterans' Employment Representatives (LVERs). Of those assessed, 2,191 veterans were enrolled into IVTP and received customized employment and training services as well as VA benefits. Over half (54%) of IVTP participants successfully entered employment earning an average of $10.00 an hour, at an average cost per placement of $4,500. This compares very favorably to the annual cost of incarceration of approximately $22,000 per person.

The IVTP demonstration project has shown positive results in assisting veterans to successfully transition from incarceration back into their communities. The program has been successful in reconnecting veterans to available health care benefits, reuniting them with family members, and better preparing them to avoid recidivism. The VA's Incarcerated Veterans Outreach Specialists have coordinated with IVTP grantees to assist veterans in obtaining other financial benefits and in securing transitional and permanent housing after their release. Many of the lessons learned from the demonstration project will continue to benefit incarcerated veterans. For example, a number of our DVOPs and LVERs received specialized training in dealing with the incarcerated veteran population and they continue to develop working relationships with prison personnel that aid incarcerated veterans in transitioning to the civilian workforce.

VETS worked closely with VA, the Department of Justice (DOJ), and DOJ's Federal Bureau of Prisons on this effort. VETS is working with VA on VA's final report on the demonstration project, which is expected to be forwarded to Congress in April 2008.

Demonstration Project with the Office of Special Counsel (OSC)

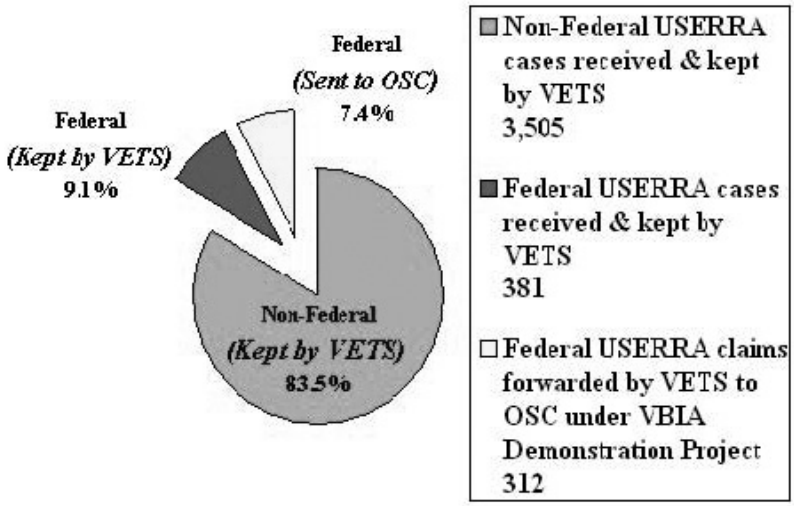
In 2004, Congress passed the Veterans Benefits Improvement Act (VBIA). Section 214 of that Act required the Secretary of Labor and the OSC to carry out a multi-year demonstration project under which about half of all Uniformed Services Employment and Reemployment Rights Act (USERRA) claims made by federal government employees are referred to OSC for investigation, resolution and enforcement. The demonstration project was to conclude at the end of September 2007, but was extended by Continuing Resolutions through December 31, 2007, when it expired.

Since the inception of the demonstration program on February 8, 2005, through its conclusion on December 31, 2007, VETS received 4,198 USERRA complaints. Of those, 693 (16.5%) were federal claims that were subject to the demonstration project. VETS transferred 312 of those federal claims to OSC under the demonstration project, including 14 which were transferred because VETS concluded that they might involve a prohibited personnel practice.

VETS worked closely with OSC throughout the project to improve our investigators' ability to identify potential "mixed cases," which are USERRA cases that may also include related prohibited personnel practices under the federal civil service laws. VETS also spurred closer ties by convening monthly meetings in which DOL and OSC officials discuss and resolve USERRA issues.

The Government Accountability Office's (GAO) Report (GAO–07–907, July 2007) evaluating the demonstration project recommended that VETS institute improved procedures to ensure claimants are notified of their right to have their case referred to OSC, if a federal case, or to DOJ, if a nonfederal case, and to implement an internal review mechanism for all unresolved claims. VETS has fully implemented those recommendations and made other programmatic improvements through the updated USERRA Operations Manual that went into effect on February 1, 2008. In addition, GAO identified areas in our data reporting procedures that have now been addressed.

All USERRA Claims Received by VETS 2/8/05 to 12/31/07



Currently, DOL has 115 trained USERRA investigators and six USERRA Senior Investigators who are directly involved in investigating USERRA complaints. Almost all are veterans themselves. They are located where veterans need them most—in all 50 states, the District of Columbia, and Puerto Rico. In addition to investigating complaints, these specialists conduct outreach and provide technical assistance to employers, service members, veterans, and veterans' organizations on employment and reemployment issues at the national, state and local levels, including to service members as they are mobilized and demobilized. In addition, VETS investigators can call upon a nationwide network of DOL attorneys who are experienced USERRA practitioners, to quickly resolve any legal issues that may arise during an investigation.

VETS is proud of its record with USERRA since its enactment. For example, over the past 11 fiscal years, 91% of federal USERRA cases were resolved by VETS without need for referral to the OSC. Furthermore, 84% of "meritorious" federal USERRA cases and 85% of "meritorious" non-federal USERRA cases were resolved by VETS (claims granted or settled) reached resolution within 90 days. We also have an aggressive outreach program to educate service members and employers on their rights and responsibilities under the law. Since September 11, 2001, VETS has provided USERRA assistance to over 512,000 service members, employers and others.

VETS remains committed to continuous improvement of our USERRA program. As a result of that commitment, we have made a number of investments to our USERRA program, and more are planned. An investment in VETS' USERRA program is an investment in protecting the employment rights of all service members and veterans covered under USERRA, regardless of whether their employer is the federal government, a state or local government, or a private entity.

In sum, the Department of Labor is better positioned than ever to promptly and effectively respond to service members' USERRA issues nationwide. We continue to work closely with the Department of Defense's Employer Support for the Guard and Reserve (ESGR), DOJ, and OSC to assist service members in resolving their USERRA issues. Although OSC no longer receives USERRA complaints for initial investigation, the Department of Labor and OSC will continue to collaborate on USERRA cases we refer to OSC that contain related prohibited personnel practices, as well as on unresolved cases we refer for possible representation before the MSPB.

We believe that the demonstration project was useful and both agencies benefited from it. However, the demonstration program has served its purpose, and we do not believe it should be reauthorized.

Prepared Statement of Hon. Scott J. Bloch, Special Counsel, U.S. Office of Special Counsel

Executive Summary

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

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

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

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

OSC obtained corrective action for service members in more than *one in four* of the claims filed with us and took less than 120 days on average to resolve cases. OSC achieved this high rate of corrective action through its thorough investigations, expert analysis of the law, ability to educate federal employers about the requirements of USERRA, and a credible threat of litigation before the MSPB. We have the ability to get quick and effective relief, while providing a single place of contact with no confusion for all service members who work for the federal government.

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

Granting OSC exclusive jurisdiction over the federal sector USERRA cases would ensure that federal employee claimants would benefit from having a single agency resolve their claim. For this reason, federal sector USERRA investigation and enforcement is a natural "fit" for OSC. We don't know when they will start returning home in greater numbers, boosting demand for USERRA enforcement. We believe that adequate information has been developed to support a decision by Congress to assign the task of investigating and enforcing USERRA claims by federal employees to OSC.

INTRODUCTION

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

My name is Scott J. Bloch and I am Special Counsel of the United States and head of the U.S. Office of Special Counsel (OSC), an independent investigative and prosecutorial agency.

I appreciate the opportunity to appear before you today to provide my perspectives on the enforcement of the Uniformed Services Employment and Reemployment Rights Act, or USERRA. While the protections provided under this statute have not expired, there has been a significant change recently in how it is enforced for federal employees who are also members of the National Guard and Reserve.

Members of the U.S. military serve our nation through their readiness for combat. Members of the U.S. military are graduates of one of the world's largest training organizations, with highly specialized knowledge in areas such as engineering, healthcare and information technology.

As veterans returning to civilian life or continuing to serve as members of the National Guard and Reserve, they can be superb employees because of the skills they have acquired as members of the military. Moreover, their military experience

builds judgment, dedication, resourcefulness, and leadership—personal qualities that should be valued by employers.

Unfortunately, not all employers understand their obligations to their employees who, through active duty military service, meet their own obligations to our nation. Some servicemembers, mostly members of the National Guard and Reserve who return from active duty in Iraq and Afghanistan combat zones and other assignments, are turned away by their civilian employers or not afforded their full rights and benefits upon their return.

It is difficult to imagine an employer welcoming back a returning service member with words to the effect, "Welcome back—you're fired!" But it happens.

Some members of the National Guard and Reserve, who also serve their country as federal civilian employees, return from active duty only to find that the government that sent them to war is unwilling to welcome them back to their jobs. Or, they may reinstate them, but with less pay, status, or benefits to which they are entitled.

Civilian employees of the federal government appear to represent about 25 percent of the National Guard and Reserve. The USERRA law specifies that the federal government is supposed to be a "model" employer, yet the very government that sends them forth into combat might deny them their livelihood when they come marching home.

PROTECTING VETERANS' JOBS

The jobs of returning veterans have been protected since 1940, when the Veterans' Reemployment Rights (VRR) law was enacted. The VRR law served our nation reasonably well for more than half a century. Over the years, however, numerous piecemeal amendments and sometimes conflicting judicial constructions made the law confusing and cumbersome. There were also some loopholes in the VRR enforcement mechanism, especially as it applied to the federal government as a civilian employer.

Better protections were needed, and in 1994, Congress enacted and President Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act. USERRA strengthened the enforcement mechanism for federal employees by giving the Merit Systems Protection Board (MSPB) explicit jurisdiction to adjudicate allegations of USERRA violations by federal executive agencies as employers.

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

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

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

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

IMPROVING PROTECTION FOR FEDERAL EMPLOYEES

Recognizing inefficiencies inherent in this process, as well as OSC's unique expertise in investigating and prosecuting federal employment claims, Congress included in the Veterans Benefits Improvement Act of 2004 (VBIA), a demonstration project whereby OSC would receive roughly half of federal USERRA claims from the beginning (i.e., when they are filed and prior to investigation).[1]

This demonstration project eliminated (for some claims) the often cumbersome, time-consuming, bifurcated process whereby federal USERRA claims bounce around different federal agencies before being resolved by allowing OSC to apply its extensive experience investigating other federal personnel laws to USERRA. By combining both the investigative and prosecutorial functions in one agency, Congress

[1] Under the demonstration project, OSC had exclusive investigative jurisdiction over federal-sector USERRA claims where: 1) the claimant had a Social Security Number ending in an odd digit, or 2) the claimant alleged a Prohibited Personnel Practice (PPP) as well as a USERRA violation (regardless of Social Security Number). DOL–VETS retained investigative jurisdiction over all other federal-sector USERRA claims.

hoped to determine whether OSC could provide better service to federal employees filing USERRA claims.

The results of the demonstration project speak for themselves: OSC obtained corrective action for service members in more than *25 percent* of the USERRA claims filed with us and took less than 120 days on average to resolve cases (which includes prosecution as well as investigative time). Twenty-five percent is a very high corrective action rate when you consider that the rate of positive findings and corrective action for governmental investigative agencies is usually well under ten percent. OSC achieved this high rate of corrective action through its thorough investigations, expert analysis of the law, ability to educate federal employers about the requirements of USERRA, and a credible threat of litigation before the MSPB.

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

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

Congress tied the outcome of the USERRA demonstration project to an evaluation by the Government Accountability Office (GAO). OSC participated in the evaluations conducted by the GAO, but we were disappointed that their draft report did not meet the April 1, 2007 deadline mandated by Congress. Instead, the final report was published only two weeks before the congressional August recess. This left Congress with almost no opportunity to act on USERRA before the demonstration project was to conclude on September 30, 2007.

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

The demonstration project was extended by Congress by language included in the FY2008 Continuing Resolution until December 31, when OSC lost the authority to accept directly USERRA claims made by federally-employed servicemembers. Our role in USERRA enforcement continues; if DOL–VETS is unable to resolve a claim, the claimant may request that the matter be referred to OSC, and we may then represent the claimant before the MSPB.

OSC: READY TO ENFORCE USERRA FOR FEDERAL EMPLOYEES

We of the U.S. Office of Special Counsel are privileged to be engaged in the enforcement of USERRA. Both as Special Counsel, and as a father of a Marine, I am proud of the work we are doing to protect the employment rights of those who give of themselves for our national security.

OSC is uniquely suited to assist members of the National Guard and Reserve who, upon their return from active duty, even from combat and with combat-related injuries, are turned away by their federal employers, or not afforded the full protections or benefits to which they are entitled. Because the mission of OSC is to protect the federal merit system, our specialized USERRA unit is staffed with attorneys and investigators who are experts in federal personnel law and have years of experience investigating, analyzing, and resolving allegations of violations of federal employment rights.

OSC is the only federal investigative agency that can provide a true single point of contact for federal employees making claims under USERRA. Even as exclusive investigative jurisdiction has returned to DOL–VETS, USERRA cases involving Prohibited Personnel Practices still have to be passed to OSC.

We are proud of our achievements enforcing USERRA. We filed the first-ever prosecutions by OSC in the law's history, obtaining corrective action in several cases that had been delayed for years or considered non-winnable. For example, in that first ever prosecution, we obtained more back pay than originally requested by the claimant, her attorneys fees, and interest on those amounts. The case of an Army Corps of Engineers employee, who was not reemployed after serving in the Air Force, remained unresolved until OSC received the case. We prosecuted before the MSPB and obtained full corrective action for the service member, including $85,000 in back pay, reemployment in his former position, and full restoration of benefits. And, when an injured Iraq war veteran returned from duty only to be sent home

by his federal employer because he could no long perform his former job, we convinced the agency to find him a suitable job consistent with his physical limitations, along with back pay.

That same year, I authorized two other USERRA prosecutions. Once again, we obtained full corrective action for both servicemembers. They testified before the House Veterans' Affairs Committee in June 2004 about the difficulties confronting a service member who files a USERRA claim. I also testified that day—coincidentally same day we filed the first ever OSC prosecution under USERRA. It was not that there were not meritorious claims before—there just had not been the commitment to send a message to the federal government that USERRA violations would not be tolerated.

I also set up the first unit at OSC dedicated to USERRA led by an experienced litigator and national USERRA expert. I made it a priority of my administration at OSC to make a difference in the enforcement of USERRA along with other laws that OSC enforces.

We worked closely with the House Veterans' Affairs Committee to improve conditions for service members who had encountered long delays, sometimes of three years or more, at the Department of Labor. And when (or if) the service member was informed of the right to have OSC consider the claim for prosecution, OSC would invariably have to reinvestigate the matter to unearth the real facts.

The VBIA demonstration project has been a significant boon to service members who were lucky enough to have a Social Security number that ended in an odd number. We have the ability to get quick and effective relief, while providing a single place of contact with no confusion for all service members who work for the federal government.

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

Granting OSC exclusive jurisdiction over the federal sector USERRA cases would ensure that federal employee claimants would benefit from having a single agency resolve their claim. For this reason, federal sector USERRA investigation and enforcement is a natural "fit" for OSC. Moreover, it would remove the burden from the Department of Labor's Veterans' Employment and Training Service to navigate federal personnel law, freeing them to focus on providing their best service to USERRA claimants from the private sector and those in state and local governments.

Thus, the benefit to service members would be doubly positive—for federal service members who would benefit from OSC's specialized experience, and for those private sector service members who would benefit from greater attention to their claims at DOL–VETS.

THE COMING USERRA "SURGE"

Today, America is in the middle of the largest sustained military deployment in 30 years. That deployment is not limited to the approximately 200,000 servicemembers in Iraq and Afghanistan at this moment. In recent years, the number of members of the National Guard and Reserve mobilized at one time peaked at more than 212,000. As of the end of January, the Department of Defense reported that 95,324 members of the National Guard and Reserve had been mobilized and were on active duty. It is when these servicemembers end their active duty that they may find they are no longer welcome to return to their civilian jobs and are eligible to file a claim under USERRA.

Right now, with returning war vets a comparative trickle, USERRA claims are in the hundreds. What will happen if and when that trickle turns into a flood? Will we see a "spike" in the number of claims filed by returning servicemembers who have been turned away from their employers? Will the government demonstrate its support for our troops by being fully ready to provide prompt and effective action on these claims?

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

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

Prepared Statement of Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration, U.S. Department of Veterans Affairs

Madam Chairwoman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss expiring VA programs.

Traditional and Hybrid ARMs

Under the provisions of 38 U.S.C. §3707, VA was authorized to conduct a demonstration project to guarantee traditional adjustable rate mortgages (ARMs) during fiscal years 1993 through 1995. Congress did not extend this authority when it expired.

The Veterans Benefits Improvement Act of 2004 (Public Law 108–454) reinstated VA's authority to guarantee traditional adjustable rate mortgages through fiscal year 2008 and also authorized VA to conduct a demonstration project to guarantee hybrid adjustable rate mortgages during fiscal years 2004 through 2008 under the provisions of 38 U.S.C. §3707 and 38 U.S.C. §3707A, respectively.

Traditional ARMs are mortgages in which interest rate adjustments may occur on an annual basis. VA-guaranteed ARMs limit the annual interest rate adjustments to a maximum increase or decrease of 1 percentage point. Additionally, interest rate increases for VA ARMs are limited to a maximum of 5 percentage points over the life of the loan.

Hybrid ARMs are mortgages having an interest rate that is fixed for an initial period of more than one year and adjusts, usually annually, thereafter. The most popular non-VA hybrid ARMs are those with the initial interest rate set for 3 years, 5 years, 7 years, or 10 years, and the potential for annual adjustments thereafter. These loan products are referred to in the mortgage industry as 3/1, 5/1, 7/1, and 10/1 ARMs, respectively. After a hybrid ARM's initial fixed rate period ends, the mortgage is subject to interest rate adjustments, typically on an annual basis. Adjustments are indexed to various indices and, generally speaking, there are no 'life-of-loan' limits on interest rate increases.

In contrast, for VA-guaranteed hybrid ARMs, for which the initial contract interest rate remains fixed for less than five years, adjustments are limited to a maximum increase or decrease of one percentage point annually, and the 'life-of-loan' interest rate increase is limited to five percentage points. For VA hybrid ARMs for which the initial contract interest rate remains fixed for five years or more, annual adjustments are limited to two percentage points and the 'life-of-loan' interest rate increase is limited to six percentage points. All VA adjustable rate mortgage products are underwritten with the same stringency as VA fixed-rate loans, and therefore, are not subprime products.

VA's authority to offer veterans the options of acquiring VA-guaranteed ARMs and hybrid ARMs expires on September 30, 2008. If extended, we estimate that this authority would cost $3 million in FY 2009 and $14 million over ten years. At this time, we do not object to making the provisions of 38 U.S.C. §§3707 and 3707A permanent provided the Congress identifies offsets for the increased direct spending.

On-the-Job Training and Apprenticeship

Individuals eligible for educational assistance programs administered by VA may use their benefits in approved on-the-job (OJT) or apprenticeship training programs. Under the Montgomery GI Bill—Active Duty (MGIB–AD), Montgomery GI Bill—Selected Reserve (MGIB–SR), Reserve Educational Assistance Program (REAP) and Post-Vietnam Era Veterans' Educational Assistance Program (VEAP), the monthly educational assistance allowance for such training is calculated as a percentage of the full-time monthly institutional benefit rate and paid monthly in arrears based on the training completed. Education assistance allowances under those programs are paid at the rate of 75 percent of the full-time rate for the first six months of training, 55 percent during the next six months, and 35 percent for the remaining months of the program. A training assistance allowance under the Survivors and Dependents' Educational Assistance (DEA) program is payable for full-time pursuit of OJT/Apprenticeship training as provided in 38 U.S.C. §3687. That section sets forth declining rates of such allowance for the first, second, and third 6 months, and for the fourth and any following 6 months of the training program, rather than as a percentage of the full-time institutional rate.

Public Law 108–454 provided for a temporary ten percent increase in the amount of benefits payable for pursuit of OJT and apprenticeship programs. This increase in benefits was payable for the period October 1, 2005, to December 31, 2007. As of January 1, 2008, payments for OJT and apprenticeship programs reverted to their previous levels. Between October 1, 2005, and December 31, 2007, an individual receiving OJT/Apprenticeship benefits through the MIGB–AD in his or her

first six months of training received $935.85 per month. After December 31, 2007, that individual receives $825.75 per month.

For fiscal year 2007, VA paid benefits for OJT/apprenticeship training to approximately 17,700 individuals through their respective education benefit program. A higher monthly training assistance allowance supplement can provide an incentive for individuals to accept trainee positions they might not otherwise consider. The Department of Labor (DOL) states that jobs generally requiring OJT training will account for half of all jobs by 2016 (DOL Report, *Employment Outlook 2006–2016,* November 2007). Prior to the sunset date of the provisions in PL 108–454, VA proposed legislation that would extend the temporary increase in the rates of payment to individuals pursuing apprenticeship and on-the-job training programs. We recommend reinstatement of the benefit rate increase and support making the increase permanent.

We defer to the Department of Defense regarding OJT and apprenticeship rates under the MGIB–SR, as it is a program administered by that Department under Title 10, United States Code. While REAP is also administered under Title 10, its rates are tied to the MGIB–AD rate. Therefore, a rate increase or decrease to the MGIB–AD rate will have the same corresponding effect on rates payable under REAP.

Incarcerated Veterans Transition Program (IVTP)

The "Homeless Veterans Comprehensive Assistance Act of 2001" (Public Law 107–95) required VA and DOL to provide a demonstration project of referral and counseling services to veterans who were institutionalized. This demonstration program was pilot in seven areas and was funded by DOL's Homeless Veterans' Reintegration Program. Both VA and DOL required grantees to demonstrate effective counseling and referral to employment, including follow-up for incarcerated veterans. The Incarcerated Veterans Transition Program (IVTP) is a demonstration program focused on pre-release and community-based employment services delivered by nonprofit community agencies to veterans being released from Federal or State prisons and jails. IVTP employment specialists also referred veterans to other needed services, including VA medical, psychiatric and social services, and veterans financial benefits. A pilot observational evaluation of IVTP used community agency, VA services use, and U.S. Department of Justice rap sheet data collected on a convenience sample of 783 incarcerated veterans.

As a result of the IVTP, veterans who had been incarcerated were more likely to be employed after release and were less likely to be re-arrested in the year following release. Regression analyses adjusting for criminal justice factors indicated that both employment and health services were negatively related to re-arrest, supporting an important objective of IVTP. These encouraging preliminary results should be tested in any expansion of the pilot initiative, incorporating lessons learned from the pilot evaluation process and other outcome research on employment and criminal recidivism.

Madam Chairwoman, this concludes my testimony. I greatly appreciate being here today and look forward to answering your questions.

Statement of Vivianne Cisneros Wersel, Member,
Government Relations Committee, Gold Star Wives of America, Inc.

> "With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the Nation's wounds, *to care for him who has borne the battle, his widow and his orphan*."
> . . . President Abraham Lincoln, Second Inaugural Address, March 4, 1865

Madam Chairwoman and members of the Subcommittee on Economic Opportunity of the House Committee on Veterans' Affairs, thank you for the opportunity to submit my written testimony on behalf of Gold Star Wives of America.

My name is Vivianne Wersel, and I am the surviving spouse of Lieutenant Colonel Rich Wersel, Jr., United States Marine Corps.

My husband died suddenly on February 4, 2005, one week after he returned from his second tour of duty in Iraq. The day he died began as a seemingly routine day, but it was the day that my life changed dramatically. At this point in time my life was divided into two separate pieces—"before" and "after". Before that day I was focused with great intent in a certain direction, but that day and for many days thereafter that I was numb and frozen.

Through the fog of grief I could see only one thing clearly—our children. Long term goals quickly melted away. In addition to processing my own feelings of pro-

found grief, I knew that somehow I had to fulfill my husband's role of keeping the family financially secure. College for our children loomed on the horizon, and college tuition for our two children rested solely on my shoulders. At that time Richard, our son, was 14 and Katie, our daughter, was 12. There were many days that I wanted to stay home, but quitting my job was not an option as I was now the breadwinner. It was important to maintain job security, and the requirements of my profession as an audiologist were changing. I realized that I needed to pursue further education in my field of endeavor.

This was the time to use my Dependents Educational Assistance (Chapter 35) benefits from the Department of Veterans Affairs. To pursue a Doctorate of Audiology I had to use a distance learning program because there were no universities in my area which offered the program I needed, and I had to be enrolled in this distance learning program by December 2006.

Today I am no closer to obtaining this benefit than I was a year ago. I am testifying today because of the difficulties I had using this benefit. Either some universities do not have the staff to manage the required paperwork or VA paperwork has been sent to the wrong location.

I received my Certificate of Eligibility dated January 24, 2007, and I submitted my paperwork as instructed by the VA to the university at that time. It has been a year since I started my doctoral program, and I have spent hours on the phone trying to find out why I am not receiving these educational benefits in addition to my duties as the sole parent of two active teenagers, my studying and my job as an audiologist.

Finally on June 12, 2007, I was told by the university that my program was not a VA approved program. Instead of taking no for an answer, I wrote more letters to the university, educating them on my VA benefits, ensuring that they were aware of my status, and why I was returning to school. This time I honed in on the application process. Was it too difficult? Could I help them? In January 2008 the university finally replied that while the application for educational benefits was rejected because it was not a VA approved program, they would complete the application for benefits and submit it to the VA. Through a series of many phone calls, I recently learned that my application is still not in the VA system; my file is in the Atlanta office, and it should be in the Buffalo office because of the location of the university. The university's residential program has three VA certifiers, and if my file had been transferred to Buffalo in the beginning that office would have been aware of the VA certifier on the university campus who could have assisted.

I have lost confidence in a program that should have worked synergistically among the VA, the educational institution and the survivor. As of today I have received no payment, and the only information in the VA educational system concerning me is my statement of eligibility.

Another educational issue which concerns surviving spouses is that as long as the surviving spouse is on active duty serving their country he or she is not allowed to use their survivors' educational benefits. Active duty service members who are also surviving spouses are barred from the survivor educational benefit until they leave active duty. If an active duty service member who is also a surviving spouse has the Montgomery GI Bill, this earned and paid for benefit will be offset by their Chapter 35 benefit. Their deceased spouse paid for the Chapter 35 benefits with their life, and the active duty survivor paid for the benefits of the Montgomery GI Bill. If an active duty service member who is also a surviving spouse exhausted his or her benefits under the Montgomery GI Bill prior to the death of his or her active duty spouse, would this offset apply and leave them with no Chapter 35 benefits?

The President's proposed budget would allow a service member to transfer his or her GI Bill benefits to a spouse. Under the current rules the active duty member who is also a surviving spouse would have to wait until discharged or retired to use this benefit. If the surviving spouse chooses to stay in the military service until retirement this could mean a wait of 19 or more years to use these benefits. Will an active duty service member who is also a surviving spouse be allowed to retain this benefit or will he or she lose this benefit which was paid for with their spouse's life and dedication to their country? Would allowing the small number of surviving spouses in this dual situation to use both benefits make a significant financial impact on this country's budget?

In addition, if the active duty service member who is also surviving spouse chooses to leave the service so he or she can use the Chapter 35 benefits, this contributes to the retention problems of the Armed Forces.

Statement of Richard F. Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America

Madame Chairwoman, Ranking Member Boozman and distinguished Members of the Subcommittee, thank you for giving Vietnam Veterans of America (VVA) the opportunity to offer our brief comments in this statement for the record on a number of expiring authorities, and whether those authorities should be renewed.

Incarcerated Veterans Training Programs

This is a small but effective program that deserves not only to be renewed but better funded and expanded. The problem of veterans incarcerated is a longtime problem that is rarely spoken of but has been a concern of VVA since our inception 30 years ago. VVA has a number of chapters inside prisons, and many of our chapters have programs of regular visitation of veterans who are incarcerated. We have worked for many years to get programs in place that assist with helping veterans who are incarcerated overcome problems while they are still in prison, primarily neuro-psychiatric wounds and the need to acquire marketable skills in the legitimate economy so they can get a job quickly when they are released.

While VVA chapters and state councils have such programs from Louisiana to Connecticut to Ohio to Washington state, perhaps the most extensive work has been done in New York. Most of this work is low key, and done without fanfare or publicity. More than ten years ago we effected a tripartite agreement between VA, VVA New York State Council, and the New York State Department of Correctional Services to establish the "Veterans Rehabilitation Training" (VRT) program at 17 facilities. This agreement called for training at the Correctional Officers Academy in the special problems of veterans, particularly combat veterans. It resulted in tele-medicine counseling and other medical services being available to honorably discharged veterans in state prisons, establishment of pre-release planning programs, and in general preparation to reconstruct the lives of these veterans on a positive track after their release. A study of recidivism done in the mid-nineties showed a recidivism rate for those who did not complete the VRT program to be more than 70% while those who did complete the VRT Program had a recidivism rate of less than 30% 24 months after release. The point is that such programs, when pursued quietly by dedicated staff and volunteer advocates work to help these veterans go on to lead constructive and productive lives.

There are two programs for diversion to avoid incarceration in the first place by means of the newly established "veterans court" in Buffalo, N.Y., and an intensive training program of all law enforcement personnel in Onondaga County (Syracuse), N.Y. that have been started in the last few months. While it is too early to tell how effective these programs will be in avoiding incarceration of these veterans in the first place, efforts like this have great promise for reducing this problem for the young combat veterans returning home today. Both of these programs were initiated by Vietnam combat veterans who are members of VVA and include judges, retired and still active law enforcement officers, and are done in cooperation with VISN 2 of the Veterans Health Administration of the VA.

Higher Rates of Compensation

VVA favors re-establishing higher rates of compensation for the Survivor & Dependents Educational Assistance program that is more in line with the high cost of even public higher education today. The primary reason for non-completion in this program (and the Montgomery GI Bill, we might add) is that the rates do not adequately cover the costs incurred in being able to finish and get a degree that will lead to higher earnings in the long run. When it is a tough choice of economic survival in the short run of the family or completing education then education loses. We owe it to those who have died or been permanently and totally disabled as a result of service to country in the military to take proper care of their families.

Similarly, re-establishing the higher rates of compensation for the Apprenticeship and On-The-Job Training will make it possible for veterans to survive economically while they complete these programs that will lead to much better and more stable long term employment, therefore affecting a pay off on the earlier investment that these veterans have earned. It is both the right thing to do, and it is the smart thing to do in regard to both the health growth of the American economy and in regard to higher future tax receipts by the Federal government.

Pilot Program for the Special Counsel & Veterans Preference Complaints

VVA generally favor extending this program, but cautions that there is no effective enforcement of veterans' preference laws in federal employment in our view. The Department of Labor, Veterans Employment & Training Service (VETS) has failed miserably in meeting their responsibilities pursuant to the Veterans Employ-

ment Opportunities Act 1998. Since the preliminary investigation the referral action is supposed to be performed by VETS, the system breaks down before the complaint ever reaches the Special counsel. Once the few complaints that have gotten that far is received by Special Counsel the results have not exactly been encouraging, but there appears to be more competence and expertise at that level than at the VETS. Frankly we need a much more effective redress mechanism that does not currently exist for veteran preference eligible persons who have had their rights abrogated. Further, the VEOA law needs to be changed so that any violation of veterans preference law "SHALL" be considered a prohibited personnel practice (the law currently reads "MAY"), and managers and supervisors and others who hold responsible positions in regard to hiring need to be held strictly accountable for not according these veterans' preference eligible persons with the rights they have earned by virtue of military service.

ARMS Demonstration Program

While VVA does not oppose the requested extension of this program, we urge great caution to both individual veterans and to the VA in regard to the need to avoid veterans getting into a position whereby they cannot re-pay loans that are "adjusted" upward quickly to the point where veterans cannot meet their payments and therefore lose their homes. It is our understanding that many at VA and some veterans are happy with the way this program has operated thus far, but in the credit market as it exists today everyone should proceed cautiously and conservatively.

Thank you for the opportunity to offer these views here today. I would be happy to answer any written questions you may have, and to work with staff to take any action you deem necessary on these topics.