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Employer Support of the Guard and Reserve

Before the

Economic Opportunity Subcommittee  
House Committee on Veterans' Affairs

Uniformed Services Employment and Reemployment Rights Act

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

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

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

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

industry associations such as the Chamber of Commerce and others, to create broad-based, nationwide support for our troops.

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

ESGR's mandate ends at this point in the USERRA resolution process. As I understand it, the Department of Labor (DOL) investigates and attempts to resolve claims filed by Service members, and, if not successful, DOL informs the federal claimants that they may request to

have their claims referred to the Office of Special Counsel, and informs non-federal claimants that they may have their claims referred to the Department of Justice for further review and possible representation in Federal District Court. Of course, all parties reserve the right to engage private counsel at any time.

As of June 30, 2008, 651,918 Reserve component members have been mobilized since the terrorist attacks on September 11, 2001. There are 108,010 Reserve component members mobilized as of July 30, 2008. As of June 2008, Arkansas had 16,726 Reserve component members. The use of the Reserve component has shifted from a strategic reserve to an operational reserve whereby members of the National Guard and Reserve no longer are forces held in reserve but are an integrated and integral part of our total force.

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

As I stated earlier, ESGR operates proactive outreach programs to inform, educate, and recognize the employers of our Service members. We do this to raise awareness of USERRA and to thank employers for their support. As you know, employers suffer twice the cost when their employees are mobilized for military duty, in that they lose their trained, productive employees and they have to often hire replacements for the time those employees are gone. We

talk all the time about the costs borne by our Service members, and by their families. Those are no doubt real costs. However, we do not often talk about the costs borne by the employers of Guard and Reserve members. These employers do not have a choice when we take away their employees for months. Despite these very real costs, employers across the country continue to provide incredible support, and it is the least we can do to publicly recognize that support.

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

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

The Department has also provided ESGR more resources over the past five years to better serve our customers and we now have 166 full-time staff around the country in addition to the approximately 4,400 volunteers. The ESGR Arkansas Field Committee has approximately 50 volunteers assisting Service members and their civilian employers. We also have a national

customer service center that is operational 12 hours per day during the workweek to provide service.

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

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

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