



February 2021

# SERVICEMEMBER RIGHTS

## Mandatory Arbitration Clauses Have Affected Some Employment and Consumer Claims but the Extent of Their Effects is Unknown

Accessible Version

GAO Highlights One Hundredth Anniversary Logo  
GAO Highlights One Hundredth Anniversary Logo



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-221](#), a report to congressional committees

## Why GAO Did This Study

Servicemembers are among millions of Americans who enter into contracts or agreements with mandatory arbitration clauses. For example, these provisions may be included in the contracts servicemembers sign when they enter the civilian workforce, obtain a car loan, or lease an apartment. These contracts generally require disputes to be resolved in private proceedings with arbitrators rather than in court.

Due to concerns these clauses may not afford servicemembers certain employment and consumer rights, Congress included a provision in the National Defense Authorization Act for Fiscal Year 2020 for GAO to study their effects on servicemembers' ability to file claims under USERRA and SCRA. This report examines (1) the effect mandatory arbitration has on servicemembers' ability to file claims and obtain relief for violations of USERRA and SCRA, and (2) the extent to which data are available to determine the prevalence of mandatory arbitration clauses and their effect on servicemember claims.

GAO reviewed federal laws, court cases, and regulations, as well as agency documents, academic and industry research, and articles on the claims process. GAO interviewed officials from DOD, DOL, DOJ, and other agencies, academic researchers, and a range of stakeholders representing servicemembers, businesses, attorneys, and arbitration firms. GAO also identified and evaluated potential sources of data on servicemembers' employment and consumer claims collected by federal agencies and the firms that administer arbitrations or maintained in court records.

View [GAO-21-221](#). For more information, contact Kris T. Nguyen at (202) 512-7215 or [NguyenTT@gao.gov](mailto:NguyenTT@gao.gov).

February 2021

## SERVICEMEMBER RIGHTS

### Mandatory Arbitration Clauses Have Affected Some Employment and Consumer Claims but the Extent of Their Effects is Unknown

## What GAO Found

Mandatory arbitration clauses in civilian employment contracts and consumer agreements have prevented servicemembers from resolving certain claims in court under two laws that offer protections: the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and the Servicemembers Civil Relief Act, as amended (SCRA) (see figure). Some courts have held that claims involving mandatory arbitration clauses must be resolved with arbitrators in private proceedings rather than in court. Although we reviewed federal court cases that upheld the enforceability of these clauses, Department of Justice (DOJ) officials said mandatory arbitration clauses have not prevented DOJ from initiating lawsuits against employers and other businesses under USERRA or SCRA. However, DOJ officials noted that these clauses could affect their ability to pursue USERRA claims against private employers on behalf of servicemembers. Servicemembers may also seek administrative assistance from federal agencies, and mandatory arbitration clauses have not prevented agencies from providing this assistance. For example, officials from DOJ, as well as the Departments of Defense (DOD) and Labor (DOL), told us they can often informally resolve claims for servicemembers by explaining servicemember rights to employers and businesses.

### Examples of Employment and Consumer Protections for Servicemembers



**Protection against employment discrimination** because of past, present, or future military service



**Prompt reemployment** for reservists returning to civilian employment



**Protection against foreclosures** without court orders



**Ability to terminate automobile leases** without penalty when entering military service

Source: GAO review of the Uniformed Servicemembers Employment and Reemployment Rights Act of 1994, as amended (USERRA); and the Servicemembers Civil Relief Act, as amended (SCRA). | [GAO-21-221](#)

Note: USERRA generally provides protections for individuals who voluntarily or involuntarily leave civilian employment to perform service in the uniformed services. SCRA generally provides protections for servicemembers on active duty, including reservists and members of the National Guard and Coast Guard called to active duty.

Data needed to determine the prevalence of mandatory arbitration clauses and their effect on the outcomes of servicemembers' employment and consumer claims under USERRA and SCRA are insufficient or do not exist. Officials from DOD, DOL, and DOJ told us their data systems are not set up to track these clauses. Further, no data exist for claims settled without litigation or abandoned by servicemembers. Finally, data on arbitrations are limited because they are often private proceedings that the parties involved agree to keep confidential.

---

# Contents

---

<b>Letter</b>		<b>1</b>
	Background	3
	Mandatory Arbitration Clauses Have Prevented Servicemembers from Resolving Certain Employment and Consumer Claims in Court	9
	Data Needed to Determine the Prevalence of Mandatory Arbitration Clauses and Their Effect on Outcomes of Claims under USERRA and SCRA are Insufficient or Do Not Exist	16
	Agency Comments and Our Evaluation	18
<hr/>		
	Appendix I: Objectives, Scope, and Methodology	19
	Appendix II: Federal Administrative Process for Certain Employment and Consumer Claims by Servicemembers	22
	Appendix III: GAO Contact and Staff Acknowledgements	27
	Appendix IV: Accessible Data	28
	Data Tables	28
<hr/>		
<b>Table</b>		
	Table 1. Examples of Rights Provided under USERRA and SCRA to Help Servicemembers Pursue Claims	8
<hr/>		
<b>Figures</b>		
	Figure 1. Examples of Process for Resolving Civilian Employment Claims under USERRA	24
	Figure 2. Example of Process for Resolving Consumer Claims under SCRA	25
	Accessible Data for Examples of Employment and Consumer Protections for Servicemembers	28
	Accessible Data for Figure 1. Examples of Process for Resolving Civilian Employment Claims under USERRA	29
	Accessible Data for Figure 2. Example of Process for Resolving Consumer Claims under SCRA	30

---

**Abbreviations**

CFPB	Consumer Financial Protection Bureau
DOD	Department of Defense

---

---

DOJ	Department of Justice
DOL	Department of Labor
ESGR	Employer Support of the Guard and Reserve
EEOC	Equal Employment Opportunity Commission
FINRA	Financial Industry Regulatory Authority
MSPB	Merit System Protection Board
OSC	Office of Special Counsel
SCRA	Servicemembers Civil Relief Act, as amended
USERRA	Uniformed Services Employment and Reemployment Rights Act of 1994, as amended
VETS	Veterans' Employment and Training Service

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

February 26, 2021

The Honorable Jack Reed  
Chairman  
The Honorable James M. Inhofe  
Ranking Member  
Committee on Armed Services  
United States Senate

The Honorable Adam Smith  
Chairman  
The Honorable Mike Rogers  
Ranking Member  
Committee on Armed Services  
House of Representatives

Servicemembers are among the millions of Americans who enter into contracts or agreements for consumer goods and services—such as car loans or apartment leases—that contain mandatory arbitration clauses.<sup>1</sup> These contracts generally require disputes to be resolved in private proceedings with arbitrators rather than in court. Due to concerns that arbitration may not afford servicemembers certain employment and consumer protections to which they are entitled, the National Defense Authorization Act for Fiscal Year 2020 includes a provision for GAO to study the effects of these clauses on servicemembers' ability to file claims seeking relief for violations of their employment and consumer protections under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and the Servicemembers Civil Relief Act, as amended (SCRA).<sup>2</sup>

---

<sup>1</sup>Throughout the report, unless otherwise specified, we use the term servicemembers to refer to active-duty personnel as well as members of the Reserve Components of the Armed Forces, which include the Army National Guard of the United States, Army Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve.

<sup>2</sup>USERRA prohibits employment discrimination against a person on the basis of past military service, current military obligations, or an intent to serve. See Pub. L. No. 103-353, 108 Stat. 3149 (codified as amended at 38 U.S.C. §§ 4301-4335). SCRA provides certain legal and financial protections such as allowing servicemembers to terminate apartment leases when they enter military service or get deployed. See Pub. L. No. 108-189, 117 Stat. 2835 (2003) (codified as amended at 50 U.S.C. §§ 3901-4043).

This report examines: (1) the effect mandatory arbitration has on servicemembers' ability to file claims and obtain relief for violations of USERRA and SCRA, and (2) the extent to which data are available to determine the prevalence of mandatory arbitration clauses and their effect on servicemember claims.

To examine the effect mandatory arbitration has on servicemembers' ability to file claims and obtain relief for violations of USERRA and SCRA, we reviewed relevant federal court cases, laws, and regulations, as well as settlement information from the Department of Justice (DOJ) and other agency documents. We also interviewed a range of stakeholders involved in the claims processes for these laws, including agency officials, military legal assistance attorneys, private attorneys involved in servicemembers' cases, academic researchers, officers of firms that administer arbitrations, and representatives of associations that advocate for the interests of servicemembers, businesses, and attorneys. To examine the extent to which data are available to determine the prevalence of mandatory arbitration clauses and their effect on servicemember claims, we evaluated potential sources of data on employment and consumer claims under USERRA and SCRA that are collected by federal agencies and firms that administer arbitrations, or maintained in court records. We discussed these potential sources of data with agency officials and officers of two arbitration administrators responsible for maintaining them, and with representatives of associations that advocate for servicemembers, businesses, and attorneys. For additional information on the methodology used in this report, see appendix I.

We conducted this performance audit from May 2020 to February 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

## Background

---

### Mandatory Arbitration Clauses

Mandatory arbitration clauses may be included in contracts or agreements that individuals sign when, for example, they accept a job, take out a loan, or buy a car. These clauses generally require any disputes between individuals—including servicemembers—and employers or companies to be settled by a neutral third-party arbitrator, rather than in court. These clauses may also specify the firm, or a choice of firms, that will administer the arbitration.

Mandatory arbitration proceedings are often similar to court proceedings but may entail some key differences. In mandatory arbitration, both parties to a dispute present evidence to a third party to resolve the dispute. However, arbitrators rather than judges oversee the proceedings and make awards that are generally binding on the parties. Unlike most court decisions, mandatory arbitration awards generally cannot be appealed, although parties can seek orders from federal courts to vacate, meaning to overturn, these awards under certain conditions.<sup>3</sup> Arbitration proceedings are generally held in private. Arbitrators and firms that administer arbitrations are often obligated to keep the information from these proceedings confidential.<sup>4</sup> In addition, both parties to an arbitration may agree to keep the proceedings and outcome confidential. However, some arbitration administrators may be required to report general data and information about the arbitrations they administer.<sup>5</sup> In addition, the

---

<sup>3</sup> See 9 U.S.C. § 10. For example, arbitration awards can be vacated where the arbitrators were guilty of misconduct in refusing to postpone a hearing or hear evidence pertinent and material to the dispute.

<sup>4</sup> For example, the American Bar Association and American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes states that arbitrators should keep confidential all matters relating to the arbitration proceedings and decision.

<sup>5</sup> For example, California state law requires certain private arbitration companies to regularly publish and make available to the public certain information on consumer arbitrations, including the amount of the claim, the prevailing party, and the amount of any monetary award, among other things. See CAL. CIV. PROC. CODE § 1281.96 (West 2020). Officers of two arbitration administrators that each administered at least one thousand employment and consumer arbitrations each year from 2015 through 2019 told us they report data for all states and the District of Columbia.

Financial Industry Regulatory Authority (FINRA), a self-regulatory organization responsible for regulating securities firms doing business in the United States that also administers arbitrations related to securities, publishes information about arbitrations that result in awards.<sup>6</sup> This may include an explanation of the rationale for the awards and the general reasons for the arbitrators' decision.

Studies by GAO and others indicate that mandatory arbitration clauses are common in employment and consumer contracts and that, in some cases, the use of these clauses has increased over time. For example, we surveyed private-sector employers in 1995 and found that less than 5 percent mandated arbitration for their employees,<sup>7</sup> while a 2018 study found more than half of employers surveyed had adopted mandatory arbitration.<sup>8</sup> With respect to consumer contracts, the Consumer Financial Protection Bureau (CFPB) reported in 2015 that tens of millions of

---

<sup>6</sup> FINRA's Code of Arbitration Procedure for Customer Disputes states that FINRA will make awards publicly available. See FINRA Rule 12904(h).

<sup>7</sup>Specifically, 9.9 percent of the employers surveyed used arbitration and 39 percent of those employers made arbitration mandatory for all covered employees. We calculated estimates from the survey at the 95-percent confidence level with sampling errors of +/- 3 and +/-16 percentage points, respectively. See GAO, *Employment Discrimination: Most Private-Sector Employers Use Alternative Dispute Resolution*, [GAO/HEHS-95-150](#) (Washington, D.C.: July 5, 1995). We surveyed a nationally representative, random sample of companies that reported having more than 100 employees in 1992.

<sup>8</sup>Colvin, Alexander, J.S., *The Growing Use of Mandatory Arbitration: Access to the Courts is Now Barred for More than 60 Million American Workers*, Economic Policy Institute (Washington, D.C.: April 6, 2018). The author surveyed a sample of private-sector employers drawn from a national marketing database of business establishments that reported having 50 or more employees. With respect to non-union employees, 50.4 percent of respondents reported having employees sign a mandatory arbitration contract, while an additional 3.5 percent of respondents reported mandating arbitration by incorporating it in their employment policies. Due to the differences between GAO's survey and this survey, we cannot precisely measure how much the use of mandatory arbitration clauses has expanded in employment contracts. However, the results generally indicate that employers have expanded their use of mandatory arbitration.

---

consumers use certain consumer financial products or services that are subject to mandatory arbitration clauses.<sup>9</sup>

---

## Servicemember Characteristics

Department of Defense (DOD) data indicate the active and Reserve Components of the Armed Forces are composed primarily of enlisted servicemembers whose base salary is \$50,000 per year or less. Specifically, more than half of active-duty enlisted servicemembers and more than one third of enlisted reservists are age 25 or younger.<sup>10</sup> As of October 2020, at least 88 percent of active-duty enlisted servicemembers, 87 percent of enlisted National Guard members, and 82 percent of enlisted reservists earned annual base salaries of about \$50,000 or less.<sup>11</sup>

---

## Servicemembers' Employment and Consumer Rights under USERRA and SCRA

USERRA and SCRA provide certain protections to servicemembers in many employment and consumer arrangements. USERRA, enacted in 1994, protects the employment and reemployment rights of individuals who leave their employment to perform uniformed service. Servicemembers may work for public or private employers when they are not performing uniformed service for a number of reasons. For example, members of the Reserve Components of the Armed Forces may leave civilian employment if called to duty, and then reenter the civilian

---

<sup>9</sup>CFPB, *Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (March, 2015). For example, CFPB found that: seven of the eight largest facilities-based mobile wireless providers, covering 99.9 percent of subscribers, used mandatory arbitration clauses in their 2014 customer agreements; 15.8 percent of credit card issuers the Bureau studied, covering 53 percent of credit card loans outstanding used mandatory arbitration clauses as of December 31, 2013; and just over 92 percent of prepaid cards the Bureau studied, representing at least 82.9 percent of the dollar value loaded onto such cards, included mandatory arbitration clauses as of summer 2014.

<sup>10</sup>U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy, *2018 Demographics: Profile of the Military Community*.

<sup>11</sup>This range does not include basic allowances for housing, subsistence, and other forms of compensation available to servicemembers.

workforce once their service has ended.<sup>12</sup> Similarly, active-duty personnel may leave military service and enter the civilian workforce as veterans.<sup>13</sup> USERRA provides that servicemembers returning to civilian jobs must be promptly reemployed in the same position that they would have attained had they not been absent for military service, with the same seniority, status, and pay.<sup>14</sup> Employers are also prohibited from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a person on the basis of a past, present, or future military service.<sup>15</sup> USERRA protections extend to other benefits included in employment contracts, such as retirement plans, health care and other insurance coverage, vacation days, and the ability to select work hours or the location of employment.<sup>16</sup>

SCRA, enacted in 2003, generally provides legal and financial protections to servicemembers and eases financial burdens on them by providing, among other things, protections related to rental agreements, security deposits, evictions and foreclosures, credit card and mortgage interest

---

<sup>12</sup>The Reserve Components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve. Based on concerns about the difficulties demobilized reservists face in dealing with reemployment issues, we raised a matter for Congressional consideration and made six recommendations to DOD and the Department of Labor (DOL) to address challenges with their oversight of reservists' civilian employment issues, all of which were implemented. See GAO, *Military Personnel: Additional Actions Needed to Improve Oversight of Reserve Employment Issues*, [GAO-07-259](#) (Washington, D.C.: February 8, 2007).

<sup>13</sup>Although USERRA also provides protections for veterans, this report focuses on servicemembers.

<sup>14</sup>See 38 U.S.C. §§ 4312-4316.

<sup>15</sup>See 38 U.S.C. § 4311(a). USERRA prohibits employers from retaliating against a person because of an action taken to enforce or exercise any USERRA right or for assisting in a USERRA investigation. See 38 U.S.C. § 4311(b). Under USERRA, "service in the uniformed services" is defined to mean the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and full-time National Guard duty, among other things. See 38 U.S.C. § 4303(13) & (16).

<sup>16</sup> See 38 U.S.C. §§ 4303(2) and 4316-4318. USERRA applies to public and private employers in the United States, regardless of size, and includes federal, state, and local governments, as well as for-profit and not-for-profit private sector firms.

rates, automobile leases, and health and life insurance.<sup>17</sup> For example, SCRA generally requires companies to obtain court orders before repossessing cars from servicemembers while they are in military service, or foreclosing on their homes during, or within one year after, their period of military service.<sup>18</sup> SCRA also provides certain benefits and protections to servicemembers' dependents, including spouses and children. For example, servicemembers who terminate apartment or car leases upon entering military service also remove any obligation their dependents may have under the lease.<sup>19</sup>

USERRA and SCRA grant servicemembers a number of rights to help them pursue their claims in court or through a federal administrative process (see appendix II). For example, both laws provide servicemembers a private right of action, meaning the ability to bring a lawsuit in court (see table 1). Under both laws, servicemembers may not be subject to certain statutes of limitations that would apply to other individuals in similar situations. For example, there is generally no limit on the period for filing a claim against an employer under USERRA. In addition, if servicemembers claim rights under USERRA, the law prevents them from being charged fees or court costs. And those who claim rights under SCRA are granted protections against default judgments—which are rulings made by a court against a party who fails to defend against a claim or comply with a court order—as well as the ability to temporarily delay, or stay, proceedings under certain circumstances.

---

<sup>17</sup> SCRA provides protections to those in “military service,” defined as including full-time active-duty members of the Army, Navy, Air Force, Marine Corps, and Coast Guard; reservists on federal active duty; members of the National Guard on federal orders for a period of more than 30 days; commissioned officers in active service of the Public Health Service or the National Oceanic and Atmospheric Administration; and servicemembers absent from active duty on account of sickness, wounds, leave, or other lawful cause. See 50 U.S.C. § 3911(2).

<sup>18</sup> For servicemembers who enter active duty, SCRA protections generally begin on the date they enter active duty military service. See 50 U.S.C. § 3911(3). For military reservists, protections begin upon the receipt of certain military orders. See 50 U.S.C. § 3917(a).

<sup>19</sup> See 50 U.S.C. § 3955(a)(2).

**Table 1. Examples of Rights Provided under USERRA and SCRA to Help Servicemembers Pursue Claims**

Right	USERRA	SCRA
Private right of action to pursue claims in federal court <sup>a</sup>	yes	yes
Flexibility with respect to certain statutes of limitations <sup>b</sup>	yes	yes
Prohibition on fees and court costs <sup>c</sup>	yes	
Protections against default judgments for inaction due to military service <sup>d</sup>		yes
Delay proceedings for servicemembers in military service or up to 90 days after <sup>e</sup>		yes

Source: GAO review of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and the Servicemembers Civil Relief Act, as amended (SCRA). | GAO-21-221

Note: USERRA protections apply to those with an obligation or intention to perform “service in the uniformed services.” This means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and full-time National Guard duty, among other things. See 38 U.S.C. § 4303(13) & (16). SCRA protections apply to members of the uniformed services during a period of military service; under SCRA, the term “military service” is defined as including full-time active-duty members of the Army, Navy, Air Force, Marine Corps, and Coast Guard; reservists on federal active duty; members of the National Guard on federal orders for a period of more than 30 days; commissioned officers in active service of the Public Health Service or the National Oceanic and Atmospheric Administration; and servicemembers absent from active duty on account of sickness, wounds, leave, or other lawful cause. See 50 U.S.C. § 3911(1) & (2).

<sup>a</sup>See 38 U.S.C. § 4323(a)(3) and 50 U.S.C. § 4042.

<sup>b</sup>See 38 U.S.C. § 4327(b) and 50 U.S.C. § 3936(a).

<sup>c</sup>See 38 U.S.C. § 4323(h)(1).

<sup>d</sup>See 50 U.S.C. § 3931.

<sup>e</sup>See 50 U.S.C. § 3932.

---

## Mandatory Arbitration Clauses Have Prevented Servicemembers from Resolving Certain Employment and Consumer Claims in Court

Mandatory arbitration clauses have affected servicemembers' ability to assert their employment and consumer rights under USERRA and SCRA by preventing some from having their claims resolved in court.<sup>20</sup> Federal court cases brought by private attorneys that we reviewed generally upheld the enforceability of mandatory arbitration clauses.<sup>21</sup> In these cases, servicemembers who entered into contracts or agreements that contained mandatory arbitration clauses were not able to resolve their claims in court. For example, in a 2006 opinion involving an officer in the United States Marine Corps Reserve who alleged being fired because of his military status in violation of USERRA, the U.S. Court of Appeals for the Fifth Circuit held that an agreement containing a mandatory arbitration clause was enforceable and that the servicemember's claim was to be compelled into arbitration.<sup>22</sup> In reaching its decision, the court stated that it was not evident based on the text of USERRA that Congress intended to preclude arbitration by granting servicemembers the possibility of pursuing claims in federal court. In addition, the court differentiated between the substantive rights (i.e., those relating to compensation and working conditions) and procedural rights (i.e., those related to forums of

---

<sup>20</sup>The United States Supreme Court has stated that agreements to arbitrate statutory claims are enforceable pursuant to the Federal Arbitration Act. See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991). The Federal Arbitration Act, which is codified in Title 9 of the U.S. Code, was enacted to place arbitration agreements on the same footing as other contracts. See *id.* at 24. Individuals who enter into contracts or agreements with mandatory arbitration clauses do not forgo the substantive rights provided by a statute. Instead, they only submit to the resolution of disputes in an arbitral, rather than a judicial, forum. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

<sup>21</sup>The federal court cases discussed in this report are not intended to be an exhaustive list. In addition, because the nature of legal proceedings depends on the facts and circumstances of individual cases, these cases are not generalizable.

<sup>22</sup> See *Garrett v. Circuit City Stores, Inc.*, 449 F.3d 672, 674-75, 681 (5th Cir. 2006).

dispute resolution) provided under USERRA, reasoning that the latter could be waived by an agreement to arbitrate.<sup>23</sup>

The U.S. Courts of Appeals for the Sixth, Seventh, Ninth, and Eleventh Circuits have also found that servicemembers who pursue employment claims under USERRA in court can instead be compelled into arbitration.<sup>24</sup> For example, in a 2008 opinion, the Sixth Circuit held that a mandatory arbitration clause was enforceable against a member of the National Guard who alleged his employer demoted him in violation of USERRA upon returning from service in Afghanistan. In a concurring opinion, one of the judges deciding the case noted that USERRA, as written, does not clearly express the intent of Congress to prevent arbitration of employment claims under USERRA.<sup>25</sup> Additionally, in a 2016 opinion, the Ninth Circuit held that a mandatory arbitration clause could be enforced against a Navy Reserve Lieutenant who alleged he was fired in violation of USERRA after providing notice of his deployment to Afghanistan. The Ninth Circuit similarly concluded that, as written, USERRA does not prohibit the compelled arbitration of claims. In concurring with the opinion, one of the judges deciding the case noted that Congress could amend USERRA to make clear that it prohibits the use of mandatory arbitration clauses to prevent servicemembers from pursuing claims in court.<sup>26</sup>

Similarly, federal courts have held that mandatory arbitration clauses are enforceable in cases involving servicemembers' consumer claims under SCRA.<sup>27</sup> As with the cases we reviewed involving USERRA claims, these servicemembers were prevented from resolving SCRA claims in court. In

---

<sup>23</sup>See *id.* 677-78 (“An agreement to arbitrate under the FAA is effectively a forum selection clause . . . not a waiver of substantive statutory protections.”)

<sup>24</sup>See *Landis v. Pinnacle Eye Care, LLC*, 537 F.3d 559, 563 (6th Cir. 2008), *Bodine v. Cook’s Pest Control Inc.*, 830 F.3d 1320, 1327-28 (11th Cir. 2016), *Ziober v. BLB Resources, Inc.*, 839 F.3d 814, 821 (9th Cir. 2016), and *Gupta v. Morgan Stanley Smith Barney, LLC, et al.*, 934 F.3d 705, 715-16 (7th Cir. 2019).

<sup>25</sup>See *Landis v. Pinnacle Eye Care, LLC*, 537 F.3d at 563 (Cole, J. concurring).

<sup>26</sup>See *Ziober v. BLB Resources, Inc.*, 839 F.3d at 822 (Watford, J. concurring).

<sup>27</sup>See *Wolf v. Nissan Motor Acceptance Corp.*, No. 10-cv-03338-NLH-KMW, 2011 WL 2490939, at \*7-\*8 (D.N.J. June 22, 2011) and *Beard v. Santander Consumer USA, Inc.*, No. 11-cv-01815-LJO-BAM, 2012 WL 1576103, at \*1 (E.D. Cal. May 3, 2012) (adopting the findings and recommendations of the Magistrate Judge in *Beard v. Santander Consumer USA, Inc.*, No. 11-cv-01815-LJO-BAM, 2012 WL 1292576, at \*13 (April 16, 2012)).

cases we reviewed, servicemembers were also prevented from engaging in class actions.<sup>28</sup> For example, a federal district court held in 2011 that a mandatory arbitration clause containing a class-action waiver provision was enforceable against a captain in the Judge Advocate General's Corps of the United States Army Reserve who asserted his rights under SCRA in terminating a car lease.<sup>29</sup> The court stated that despite the servicemember's "legitimate concern" about the burden that class-action waivers could impose on servicemembers, SCRA, as written, does not invalidate a class action or arbitration waiver provision. As a result, the court concluded that the mandatory arbitration clause and its class-action waiver did not deprive the servicemember of any rights or privileges under SCRA.<sup>30</sup>

In contrast to federal court cases brought by private attorneys under USERRA or SCRA that we reviewed, servicemembers who seek assistance from DOJ have not been compelled into arbitration. According to agency officials, DOJ, the Department of Labor (DOL), and DOD can often help informally resolve claims for servicemembers by educating employers and companies about servicemember rights. In these instances, servicemembers may avoid legal proceedings that trigger motions to compel arbitration.<sup>31</sup> Additionally, certain types of claims brought by DOJ under SCRA and USERRA cannot be compelled into arbitration. DOJ has the authority to investigate consumer claims under SCRA and initiate a lawsuit in federal court on behalf of the United States.<sup>32</sup> DOJ officials told us that, as a result of this authority, mandatory

---

<sup>28</sup>Some cases involve class-action waivers, which are promises to forgo the right to pursue class claims, meaning to participate in class action lawsuits. An academic researcher told us these waivers create a particular challenge for individual servicemembers who think their rights under SCRA have been violated, because individuals in general rarely pursue the types of cases that are brought in class-action lawsuits against companies. According to an official from the State Attorney General's Office of a state with one of the highest concentrations of active duty servicemembers and reservists, in his experience, almost all mandatory arbitration clauses contain class-action waivers.

<sup>29</sup>See *Wolf v. Nissan Motor Acceptance Corp.*, 2011 WL 2490939, at \*7-\*8.

<sup>30</sup>See *id.* \*5

<sup>31</sup>Officials from the Office of Special Counsel (OSC) told us federal agencies cannot require employees to enter into arbitration.

<sup>32</sup>DOJ may commence a civil action in federal court against any person who engages in a pattern or practice of violating SCRA or engages in a violation of SCRA that raises an issue of significant public importance. See 50 U.S.C. § 4041.

arbitration clauses have no effect on DOJ's ability to pursue these claims. Stakeholders said at least two of the 46 SCRA claims DOJ handled from December 2008 to November 2020 involved mandatory arbitration clauses.

- In 2011, DOJ filed a lawsuit against and reached a settlement with a mortgage company, requiring it to pay at least \$2.35 million for allegedly foreclosing on the houses of approximately 17 servicemembers without court orders in violation of SCRA.<sup>33</sup>
- In 2015, DOJ reached a settlement with an automobile lender in which the company agreed to pay at least \$9.35 million for illegally repossessing over 1,100 vehicles in violation of SCRA. In the release announcing the settlement, DOJ stated it opened its investigation after learning the company used an arbitration clause included in a loan document to prevent a servicemember from pursuing a class action lawsuit alleging repossession of servicemembers' vehicles in violation of SCRA. Through DOJ's intervention, servicemembers received \$10,000 for each car towed, plus any lost equity with interest; however, the original servicemember who brought the issue to DOJ's attention was compelled to arbitrate his claim and received \$6,500, along with an award to cover his attorneys' fees and costs.

In contrast to SCRA, under which mandatory arbitration clauses do not limit DOJ's ability to investigate potential violations or initiate lawsuits in federal court, mandatory arbitration clauses can be enforced in claims against private employers under USERRA, in which DOJ serves as attorney for, and appears on behalf of, servicemembers.<sup>34</sup> Additionally in contrast to SCRA, DOJ does not have authority to initiate investigations or pursue enforcement actions under USERRA on behalf of a servicemember unless DOL's Veterans' Employment and Training

---

<sup>33</sup>In an earlier case against the mortgage company, defendants unsuccessfully attempted to compel a sergeant in the National Guard to arbitrate a consumer claim under SCRA that he pursued in court with a private attorney. See *Hurley v. Deutsche Bank Tr. Co. Americas*, 610 F.3d 334, 338-40 (6th Cir. 2010). However, the issue in the case was whether the defendants had given up their right to arbitrate, not whether the mandatory arbitration clause was otherwise valid and enforceable.

<sup>34</sup>In claims against a state as an employer, DOJ appears in court as attorney for the United States and brings any legal action in federal court, based on the claims of a servicemember, in the name of the United States. As a result, similar to consumer claims under SCRA, DOJ's ability to initiate a lawsuit against state employers under USERRA is not affected by mandatory arbitration clauses.

Service (VETS) refers the claim to DOJ. As such, DOJ has authority to initiate lawsuits against employers only if a claim gets referred to it from VETS. DOJ officials further told us they were unsure if, as written, USERRA enables DOJ to represent servicemembers in arbitration. However, since 2004—when DOJ’s Civil Rights Division assumed enforcement authority for USERRA—DOJ has filed 109 USERRA lawsuits and favorably resolved 200 USERRA complaints either through consent decrees obtained in those suits or through private settlements, and DOJ officials said employers in USERRA claims referred to DOJ have not compelled a servicemember into arbitration.<sup>35</sup>

To strengthen its ability to enforce USERRA, among other things, DOJ and DOL made joint recommendations regarding USERRA in annual reports to Congress from 2014 through 2016.<sup>36</sup> Among these recommendations, the agencies requested that USERRA be amended to allow the Attorney General, acting on behalf of the United States, to serve as a plaintiff in all employment claims under USERRA, rather than only in claims against state employers. This potential change in the law would prevent USERRA claims brought by DOJ against private employers on behalf of servicemembers from being compelled into arbitration. Also, DOL officials told us that in response to court rulings enforcing mandatory arbitration clauses against servicemembers, their joint recommendations included a request for Congress to clarify that USERRA protects servicemembers’ procedural rights—which some courts have interpreted as including the right to pursue claims in court—as well as their substantive rights, such as the right to prompt reemployment after completing their service. DOL and DOJ further recommended that Congress explicitly note that mandatory arbitration clauses are unenforceable on servicemembers unless all parties consent to arbitration after a complaint on the specific claim has been filed. Legislation has not been enacted to implement these recommendations.

Some stakeholders we spoke with told us that, in their view, USERRA and SCRA were intended to preserve servicemembers’ right to pursue claims in court. DOL officials told us their prior recommendations to

---

<sup>35</sup>In fiscal year 2019, the most recent year for which data are available in DOL’s annual USERRA reports, DOJ deemed as meritorious 16 of the employment claims under USERRA referred from DOL VETS. Overall in fiscal year 2019, DOJ filed three employment claims under USERRA.

<sup>36</sup>See, for example, DOL, *Uniformed Services Employment and Reemployment Rights Act of 1994 Fiscal Year 2015 Annual Report to Congress* (July, 2016).

Congress were based on their interpretation of USERRA at the time. Specifically, DOL officials told us their interpretation was based on a provision in USERRA that protects both procedural and substantive rights from being constrained or eliminated by contracts or agreements, such as those containing mandatory arbitration clauses.<sup>37</sup> Similarly, an academic researcher and a lawyer who represents servicemembers in SCRA cases told us that in their view, the intent of SCRA is to grant servicemembers the right to pursue claims in court. Additionally, DOD officials responsible for managing the U.S. Navy's legal assistance program, as well as representatives of organizations that represent servicemembers and attorneys, said that, in their view, requiring servicemembers to submit to arbitration could prevent them from availing themselves of potentially important processes that are typically available in a judicial forum, such as robust discovery or the ability to appeal interpretations of the law.

Representatives of employers and firms that administer arbitrations told us arbitration has attributes that can benefit servicemembers. For example:

- Representatives of a business organization told us arbitration is generally designed to be easier for individuals, including servicemembers, to use without an attorney than going to court. They said if required to go to court to pursue employment and consumer claims, servicemembers would be uniquely dependent on hiring attorneys, because the demands of military service limit the time they have to pursue claims on their own.
- Officers from two firms that in total administer thousands of arbitrations each year told us they developed protocols to

---

<sup>37</sup>See 38 U.S.C. § 4302(b). ("This chapter supersedes any [s]tate law . . . contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.") Additionally, DOL officials noted that the preamble to DOL's 2005 final regulations implementing USERRA stated that this provision had been interpreted expansively to include 'a prohibition against the waiver in an arbitration agreement of an employee's right to bring a USERRA suit in [f]ederal court." See Uniformed Services Employment and Reemployment Rights Act of 1994, As Amended, 70 Fed. Reg. 75,246, 75,257 (Dec. 19, 2005). While SCRA does not contain a similar provision, it does prescribe requirements that must be met for servicemembers to waive certain rights under SCRA pursuant to a written agreement. See 50 U.S.C. § 3918. Waivers must be prominently displayed in at least 12-point type and are only effective if made pursuant to a written agreement that is executed during or after a servicemember's period of military service. See 50 U.S.C. § 3918(a) & (c).

---

encourage adherence with statutory rights, such as protection against fees and costs under USERRA, or the ability to delay a proceeding under SCRA.<sup>38</sup>

---

<sup>38</sup>The officers of one firm said they could not speak to the operation of other firms that administer arbitrations, and that policies may vary among them.

---

## Data Needed to Determine the Prevalence of Mandatory Arbitration Clauses and Their Effect on Outcomes of Claims under USERRA and SCRA are Insufficient or Do Not Exist

Data collected by federal agencies are insufficient to determine the prevalence of mandatory arbitration clauses and their effect on the outcomes of claims servicemembers pursue using federal administrative processes under USERRA and SCRA. Officials from DOD, DOL, DOJ, and the Office of Special Counsel (OSC) told us their agencies do not systematically collect data on claims under USERRA and SCRA involving mandatory arbitration because these clauses generally do not affect the agencies' missions with respect to assisting servicemembers.

Because the agencies that assist servicemembers with employment and consumer claims under USERRA and SCRA do not systematically track the presence of mandatory arbitration clauses, it is not possible to determine the prevalence of these clauses in the claims they administer. Specifically, DOD, DOL, and DOJ officials told us their data systems are not set up to document whether each servicemember pursuing a claim is subject to a mandatory arbitration clause. Officials from each agency told us their electronic records may include case notes for claims involving these clauses. However, the officials were unsure of the extent to which their case notes would actually identify the presence of mandatory arbitration clauses in these claims or provide enough context to determine if they affected the claims.

Even if agencies were to keep complete records on the presence of mandatory arbitration clauses, data would still be missing for the servicemembers who may be most affected by these clauses. This is because no data exist for claims settled without litigation or claims abandoned by servicemembers. Military legal assistance attorneys told us some of these servicemembers may have been unaware of their employment and consumer rights. They said an unknown number of servicemembers subject to mandatory arbitration clauses may be deterred from pursuing claims and may instead look for other jobs, fix broken cars themselves, or pay down consumer debt they may otherwise

have been able to reduce or eliminate.<sup>39</sup> As a result, the extent to which servicemembers encounter mandatory arbitration clauses is unknown.

Data on claims pursued through arbitration are also limited. The parties involved may agree to keep the substance and outcomes of arbitrations confidential. This could include information on whether arbitration involved an unemployment or consumer claim under USERRA or SCRA. Officers at one arbitration administrator told us the parties to arbitrations generally sign agreements to keep the proceedings confidential. Additionally, the data certain arbitration administrators collect to meet state requirements do not include key information needed to identify arbitrations involving claims under USERRA or SCRA. Although the data generally identify arbitrations as pertaining to consumer or employment disputes, they do not specify whether arbitrations involved claims under USERRA or SCRA.

Although data on specific arbitration cases are limited, we found through our search of arbitrations administered by the Financial Industry Regulatory Authority (FINRA), which publishes information on the underlying statutes pertinent to the outcome of arbitrations, two instances in which arbitrators specifically enforced servicemembers' rights under USERRA with respect to fees and costs. In a 2015 award, arbitrators awarded \$172,000 to a servicemember who pursued a claim under USERRA against his employer. The arbitrators also found the employer liable for the servicemember's attorneys' fees and costs, totaling over \$262,000, as well as the costs of administering the arbitration, totaling more than \$36,000. In awarding attorneys' fees and costs, the arbitrators specifically cited USERRA's protections against fees and costs.<sup>40</sup> In a 2011 award, arbitrators ruled against a servicemember's claim under

---

<sup>39</sup>Specifically, one DOD civilian expert and director of legal assistance at a large naval base provided two examples in which mandatory arbitration clauses impeded his attempts to seek resolution between servicemembers and businesses. He told us his ability to provide additional examples was limited because his office does not maintain certain documentation on these claims for longer than 2 years. Additionally, three legal assistance attorneys told us that in instances when mandatory arbitration is, or could become, an impediment to servicemembers' pursuits of claims, they advise servicemembers about the arbitration process and explain to them that they have waived their right to litigation.

<sup>40</sup>See *Rogers v. Citigroup Global Markets, Inc., Morgan Stanley Smith Barney, LLC, and Citi Smith Barney*, No. 11-01203 (2015).

---

USERRA but assigned the costs of the arbitration to the employer, similarly citing USERRA's protections against fees and costs.<sup>41</sup>

---

## Agency Comments and Our Evaluation

We provided a draft of the report to the Departments of Defense, Labor, and Justice, OSC, CFPB, and the Equal Employment Opportunity Commission (EEOC) for their review and comment. The Departments of Defense, Labor, and Justice, OSC, and CFPB provided technical comments that we incorporated as appropriate. EEOC did not provide any comments.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Acting Secretary of Labor, the Acting Attorney General, the Special Counsel, the Acting Director of CFPB, the Chair of EEOC, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [nguyentt@gao.gov](mailto:nguyentt@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,



Tranchau (Kris) T. Nguyen  
Director  
Education, Workforce, and Income Security

---

<sup>41</sup>See *Ohlfs v. Charles Schwab & Co., Inc.*, No. 09-05551 (2011). Arbitrators ruled against a servicemember's employment claim under USERRA but assigned the costs of the arbitration to the employer, citing 38 U.S.C. § 4323(h)(1) as protecting the servicemember against these costs. Due to limitations in data on arbitrations, these examples cannot be generalized.

---

## Appendix I: Objectives, Scope, and Methodology

Our objectives were to examine: (1) the effect mandatory arbitration has on servicemembers' ability to file claims and obtain relief for violations of USERRA and SCRA, and (2) the extent to which data are available to determine the prevalence of mandatory arbitration clauses and their effect on servicemember claims.

To examine the effect mandatory arbitration has on servicemembers'<sup>1</sup> ability to file claims and obtain relief for violations of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and the Servicemembers Civil Relief Act, as amended (SCRA), we interviewed a range of stakeholders involved in the claims processes for these laws, including:

- Department of Defense (DOD) about the support they provide servicemembers early in the claims process to address potential conflicts with employers and companies by educating them on servicemembers' rights. Specifically, we spoke with DOD officials responsible for developing policies and overseeing the offices that provide legal assistance to members of the Armed Forces. Our interviews included officials from the Employer Support of the Guard and Reserve (ESGR)—DOD's lead proponent for USERRA issues—as well as officials from the Judge Advocate General's Corps of the Army, Air Force, and Navy, and the Judge Advocate Division of the Marine Corps. We also interviewed military legal assistance attorneys who manage legal assistance offices for the Army, Navy, and Coast Guard in two states: Virginia and Washington. We selected legal assistance offices in these two states because they reported varying levels of consumer complaints to the Consumer Financial Protection Bureau (CFPB) in 2018, and have bases with large numbers of military personnel

---

<sup>1</sup>Unless otherwise specified, we use the term servicemembers to refer to active-duty personnel as well as members of the Reserve Components of the Armed Forces, which include the Army National Guard of the United States, Army Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve. Although USERRA and SCRA provide some benefits to veterans, this report focuses on servicemembers.

or joint bases where multiple branches of the Armed Forces are stationed.

- Department of Labor's (DOL) Veterans' Employment and Training Service (VETS), which investigates claims under USERRA, and the Department of Justice (DOJ) Civil Rights Division, which determines whether claims under USERRA and SCRA have merit and either attempts to facilitate an informal resolution of the claim or initiates legal action against employers and other companies. We also spoke with officials from the Office of Special Counsel, which reviews claims against federal executive agencies under USERRA and may attempt to facilitate informal resolution of claims or initiate actions before the Merit Systems Protection Board, an independent quasi-judicial agency in the federal executive branch.
- CFPB and the Equal Employment Opportunity Commission (EEOC) because, while neither agency has enforcement responsibilities for USERRA or SCRA, they provide useful insights on mandatory arbitration. For example, CFPB collects data on consumer complaints, including those of servicemembers, maintains an Office of Servicemember Affairs, and promulgated regulations prescribing certain restrictions on mandatory arbitration clauses based, in part, on a 2015 report on the effects of these clauses.<sup>2</sup> In addition, EEOC has been a party to litigation involving mandatory arbitration clauses.<sup>3</sup>
- Former agency officials responsible for issues related to USERRA and SCRA; a member of an association of State Attorneys General who represents servicemembers in cases involving state laws that provide consumer and employment rights to servicemembers; officers from two firms that each administered at least one thousand employment and consumer arbitrations each year from 2015 through 2019—the most recent 5 years for which complete data are available; private attorneys who represent

---

<sup>2</sup>See Bureau of Consumer Financial Protection, Arbitration Agreements, 82 Fed. Reg. 33,210 (July 19, 2017). The President signed a joint resolution by Congress disapproving the rule, meaning the rule has no force or effect. See Pub. L. No. 115-74, 131 Stat. 1243 (2017).

<sup>3</sup>The United States Supreme Court held that an agreement between an employer and an employee to arbitrate employment-related disputes did not bar EEOC from pursuing victim-specific judicial relief in an enforcement action alleging the employer violated Title I of the Americans with Disabilities Act of 1990. See *E.E.O.C. v. Waffle House, Inc.*, 634 Stat. 279, 297-98 (2002).

servicemembers in USERRA and SCRA cases; academic researchers; and representatives of associations that advocate the interests of servicemembers, businesses, and attorneys.

We also reviewed federal court cases, federal laws and regulations, and state laws that stakeholders identified as relevant, as well as settlement information from DOJ and decisions from selected arbitrations.<sup>4</sup> In addition, we reviewed agency documents, academic and industry research, and articles on the claims process. Last, we reviewed studies of mandatory arbitration clauses and their prevalence more broadly in the United States, including studies conducted or funded by CFPB, the Economic Policy Institute, and the U.S. Chamber of Commerce Institute for Legal Reform.

To examine the extent to which data are available to determine the prevalence of mandatory arbitrations clauses and their effect on servicemember claims, we identified and evaluated potential sources of data on employment and consumer claims under USERRA and SCRA that are collected by DOD, DOL, DOJ, OSC, and firms that administer arbitrations, or maintained in court records. We discussed potential sources of data with agency officials and officers of two arbitration administrators responsible for maintaining them, and with other stakeholders representing servicemembers, businesses, and attorneys.

We conducted this performance audit from May 2020 to February 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

<sup>4</sup>The federal court cases and arbitrations discussed in this report are not intended to be an exhaustive list. In addition, because the nature of legal proceedings and arbitrations depends on the facts and circumstances of individual cases, these cases are not generalizable.

# Appendix II: Federal Administrative Process for Certain Employment and Consumer Claims by Servicemembers

---

## Federal Administrative Process for Certain Employment Claims by Servicemembers

Servicemembers—including members of the active and Reserve Components of the U.S. Armed Forces—who believe their civilian employers have violated their employment or reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and wish to file claims against their employers can seek to resolve their claims through a federal administrative process or through a separate, private right of action, under which they can pursue claims with or without the assistance of federal agencies. Under USERRA's federal administrative process, employees or applicants for employment who believe that their USERRA rights have been violated may file a claim with the Department of Labor's (DOL) Veterans' Employment and Training Service (VETS), which is the entity that formally investigates and attempts to resolve claims.<sup>1</sup> DOL VETS serves veterans, active-duty servicemembers and their spouses, reservists, and members of the National Guard on issues related to employment.<sup>2</sup> If DOL VETS cannot resolve claims to servicemembers' satisfaction, DOL informs the servicemembers of their right to ask that the claim be referred to the Department of Justice (DOJ) or the Office of

---

<sup>1</sup>Servicemembers can also seek help from a Department of Defense (DOD) legal assistance office, which may provide administrative assistance such as contacting employers to educate them about servicemembers' employment rights. Additionally, servicemembers can file informal complaints with DOD's Employer Support of the Guard and Reserve (ESGR), which can serve as ombudsmen to informally mediate USERRA issues that arise between servicemembers and their civilian employers.

<sup>2</sup>Veterans pursuing claims under USERRA can also seek to resolve their claims through the same federal administrative process or through a separate, private right action.

---

**Appendix II: Federal Administrative Process  
for Certain Employment and Consumer Claims  
by Servicemembers**

---

Special Counsel (OSC).<sup>3</sup> A claim is referred to DOJ if it involves state or private employers, or to OSC if it involves federal executive branch agencies.

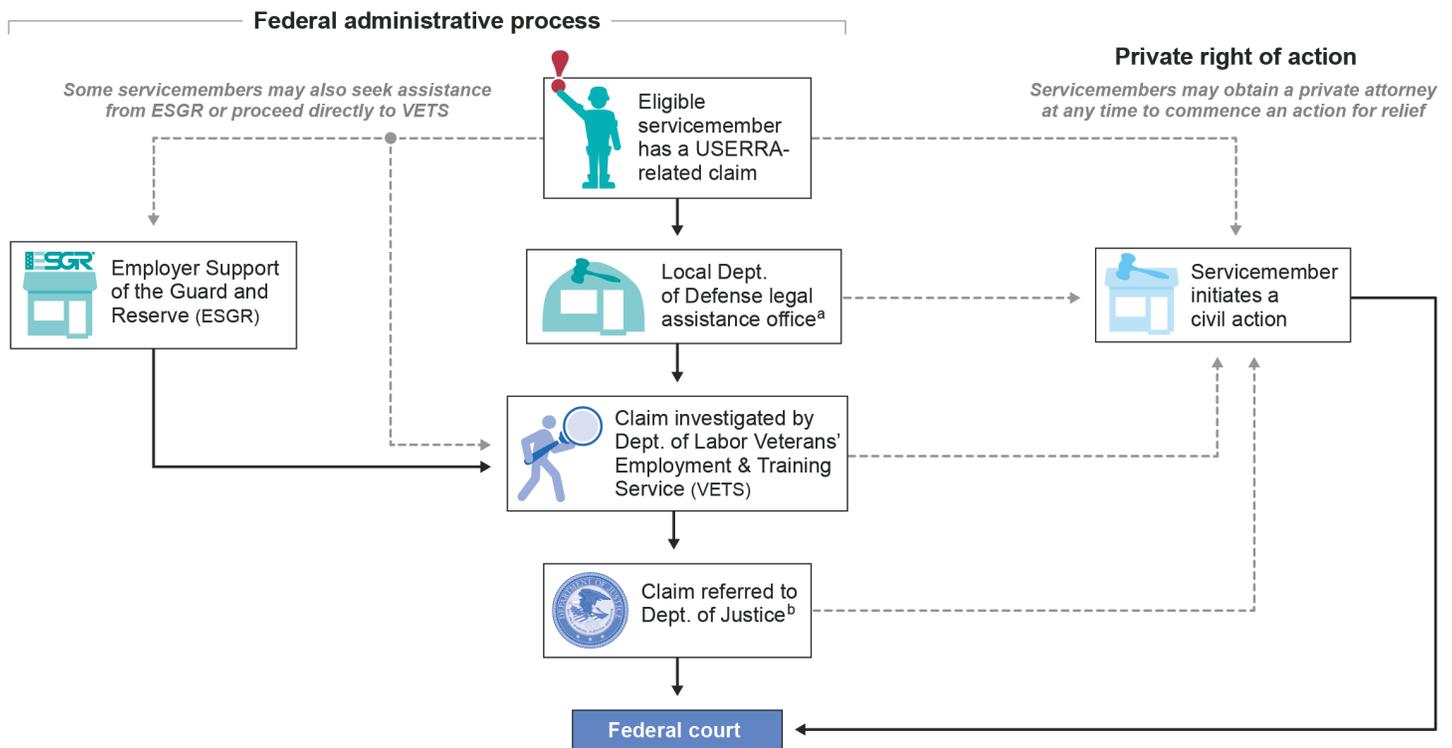
If servicemembers elect to have claims referred to DOJ, it will conduct an independent review of the administrative record compiled by DOL VETS. If DOJ determines the claim has merit, it may attempt to facilitate private settlements between employers and servicemembers, or initiate actions for relief in federal court. In claims against private employers under USERRA, DOJ forms an attorney-client relationship with the servicemember, and may appear in federal court on behalf of an individual servicemember. However, in claims against a state employer, DOJ brings any legal action in federal court in the name of the United States. In claims against federal executive branch agencies, OSC may similarly try to facilitate an informal resolution or appear on behalf of, and act as attorney for, servicemembers and initiate actions before the Merit Systems Protection Board (MSPB), an independent quasi-judicial agency in the federal executive branch. Servicemembers can also choose at any point in the administrative process to initiate actions in court without federal assistance, under their private right of action (see fig. 1).

---

<sup>3</sup>DOJ has no jurisdiction over employment claims under USERRA unless DOL VETS refers them to DOJ. Servicemembers have the right to request referrals to DOJ regardless of whether DOL VETS finds their claims to have merit.

**Appendix II: Federal Administrative Process  
for Certain Employment and Consumer Claims  
by Servicemembers**

**Figure 1. Examples of Process for Resolving Civilian Employment Claims under USERRA**



Source: GAO analysis of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA); and documents from relevant agencies. | GAO-21-221

Note: USERRA protections apply to those with an obligation or intention to perform "service in the uniformed services." This means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and full-time National Guard duty, among other things. See 38 U.S.C. § 4303(13) & (16).

<sup>a</sup>Servicemembers may seek assistance from local military legal assistance offices, which may be located at military bases.

<sup>b</sup>The Department of Justice (DOJ) may appear on behalf of, and act as attorney for, servicemembers in claims against private employers by commencing an action in federal court. For servicemembers with claims against state employers, DOJ can commence an action in court in the name of the United States. Servicemembers with claims against federal executive branch agencies can request the Department of Labor's VETS to refer their claims to the Office of Special Counsel (OSC). OSC may appear on behalf of, and act as attorney for, servicemembers before the Merit Systems Protection Board.

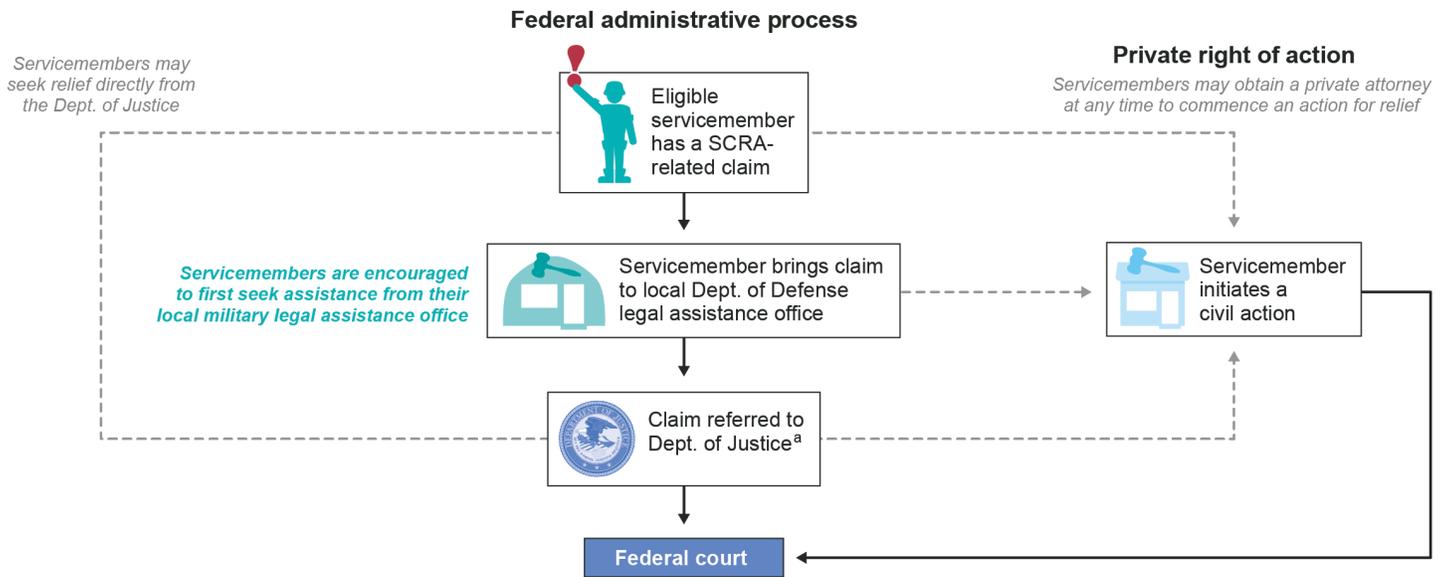
**Federal Administrative Process for Certain Consumer Claims by Servicemembers**

Similar to the process for resolving employment claims under USERRA, servicemembers can seek help from federal agencies to resolve their consumer claims under the Servicemembers Civil Relief Act, as amended

**Appendix II: Federal Administrative Process  
for Certain Employment and Consumer Claims  
by Servicemembers**

(SCRA) administratively, or they can initiate a civil action in court (see fig. 2). Servicemembers may seek help from a DOD legal assistance office, which may provide administrative assistance such as contacting companies to educate them about servicemembers' consumer rights. Legal assistance attorneys may refer claims to DOJ, the agency with enforcement authority for SCRA.<sup>4</sup> Servicemembers can also file consumer claims under SCRA directly with DOJ. In addition, DOJ may initiate its own civil action in federal district court following an investigation under its own enforcement authority.<sup>5</sup>

**Figure 2. Example of Process for Resolving Consumer Claims under SCRA**



Source: GAO analysis of the Servicemembers Civil Relief Act, as amended (SCRA); and Department of Justice documents. | GAO-21-221

Note: SCRA protections apply to members of the uniformed services during a period of military service; under SCRA, the term “military service” is defined as including full-time active-duty members of the Army, Navy, Air Force, Marine Corps, and Coast Guard; reservists on federal active duty; members of the National Guard on federal orders for a period of more than 30 days; commissioned officers in active service of the Public Health Service or the National Oceanic and Atmospheric Administration; and servicemembers absent from active duty on account of sickness, wounds, leave, or other lawful cause. See 50 U.S.C. § 3911 (1) & (2).

<sup>4</sup>Additionally, some servicemembers seek assistance from the Consumer Financial Protection Bureau (CFPB), which may refer their claims to DOJ.

<sup>5</sup>DOJ may commence a civil action in federal court against any person who engages in a pattern or practice of violating SCRA or engages in a violation of SCRA that raises an issue of significant public importance.

---

**Appendix II: Federal Administrative Process  
for Certain Employment and Consumer Claims  
by Servicemembers**

---

<sup>a</sup>The Department of Justice may initiate a civil action in federal court against any person who engages in a pattern or practice of violating SCRA or engages in a violation of SCRA that raises an issue of significant public importance.

---

## Appendix III: GAO Contact and Staff Acknowledgements

---

### GAO Contact:

Tranchau (Kris) T. Nguyen, at (202) 512-7215 or [nguyentt@gao.gov](mailto:nguyentt@gao.gov)

---

### Staff Acknowledgments:

Key contributors to this report were Kimberley Granger (Assistant Director), Tom Moscovitch, Joel Marus, Marshal Pennock, and John Villecco. Other contributors included Vince Balloon, James Bennett, Christina Bixby, Alicia Puente Cackley, Linda Collins, Holly Dye, Brenda Farrell, Laura Hoffrey, Yvonne Jones, Shelia R. McCoy, Jean McSween, Stacy Ouellette, Cady Panetta, Joy Solmonson, Almata Spencer, Kate van Gelder, Jason Vassilicos, and Adam Wendel.

---

# Appendix IV: Accessible Data

---

## Data Tables

---

### Accessible Data for Examples of Employment and Consumer Protections for Servicemembers

- Protection against employment discrimination because of past, present, or future military service
- Prompt reemployment for reservists returning to civilian employment
- Protection against foreclosures without court orders
- Ability to terminate automobile leases without penalty when entering military service

Source: GAO review of the Uniformed Servicemembers Employment and Reemployment Rights Act of 1994, as amended (USERRA); and the Servicemembers Civil Relief Act, as amended (SCRA). | GAO-21-221

**Accessible Data for Figure 1. Examples of Process for Resolving Civilian Employment Claims under USERRA**

Private right of action

Servicemembers may obtain a private attorney at any time to commence an action for relief

1. Servicemember initiates a civil action
2. Federal court

Federal administrative process

1. Eligible servicemember has a USERRA-related claim
  - a. Some servicemembers may also seek assistance from ESGR or proceed directly to VETS
2. Local Dept. of Defense legal assistance office<sup>a</sup>
3. Claim investigated by Dept. of Labor Veterans' Employment & Training Service (VETS)
4. Claim referred to Dept. of Justice<sup>b</sup>
5. Federal court

Source: GAO analysis of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and documents from relevant agencies. | GAO-21-221R

**Accessible Data for Figure 2. Example of Process for Resolving Consumer Claims under SCRA**

Private right of action

Servicemembers may obtain a private attorney at any time to commence an action for relief

1. Servicemember initiates a civil action
2. Federal court

Federal administrative process

1. Eligible servicemember has a SCRA-related claim
  - a. Servicemembers may seek relief directly from the Dept. of Justice
2. Servicemember brings claim to local Dept. of Defense legal assistance office
  - a. Servicemembers are encouraged to first seek assistance from their local military legal assistance office
3. Claim referred to Dept. of Justice<sup>a</sup>
4. Federal Court

Source: • Source: GAO analysis of the Servicemembers Civil Relief Act, as amended (SCRA) and Department of Justice documents. | GAO-21-221

---

---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its [website](#) newly released reports, testimony, and correspondence. You can also [subscribe](#) to GAO's email updates to receive notification of newly posted products.

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <https://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).  
Subscribe to our [RSS Feeds](#) or [Email Updates](#). Listen to our [Podcasts](#).  
Visit GAO on the web at <https://www.gao.gov>.

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: <https://www.gao.gov/fraudnet/fraudnet.htm>

Automated answering system: (800) 424-5454 or (202) 512-7700

---

---

## Congressional Relations

Orice Williams Brown, Managing Director, [WilliamsO@gao.gov](mailto:WilliamsO@gao.gov), (202) 512-4400,  
U.S. Government Accountability Office, 441 G Street NW, Room 7125,  
Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

---

## Strategic Planning and External Liaison

Stephen J. Sanford, Acting Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548

