



Testimony

Before the Committee on Health,  
Education, Labor and Pensions,  
U.S. Senate

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**MILITARY PERSONNEL**

**Federal Agencies Have  
Taken Actions to Address  
Servicemembers'  
Employment Rights, but a  
Single Entity Needs to  
Maintain Visibility to  
Improve Focus on Overall  
Program Results**

Statement of Brenda S. Farrell, Director  
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and

Statement of George H. Stalcup, Director  
Strategic Issues





# Highlights

Highlights of [GAO-08-254T](#), a testimony to Committee on Health, Education, Labor and Pensions, U.S. Senate

## Why GAO Did This Study

Since September 11, 2001, the Department of Defense (DOD) has mobilized more than 500,000 National Guard and Reserve members. As reservists return to civilian life, concerns exist about difficulties with their civilian employment. The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 protects the employment rights of individuals, largely National Guard and Reserve members, as they transition back to their civilian employment. GAO has issued a number of reports on agency efforts to carry out their USERRA responsibilities. DOD, the Department of Labor (DOL), the Department of Justice (DOJ), and the Office of Special Counsel (OSC) have key responsibilities under the act. GAO was asked to discuss the overall process that the agencies use to implement USERRA. Specifically, this testimony addresses (1) organizational accountability in the implementation of USERRA and (2) actions that the agencies have taken to improve their processes to implement USERRA. For this testimony, GAO drew from its most recent reports on USERRA.

## What GAO Recommends

In October 2005 GAO suggested that 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.

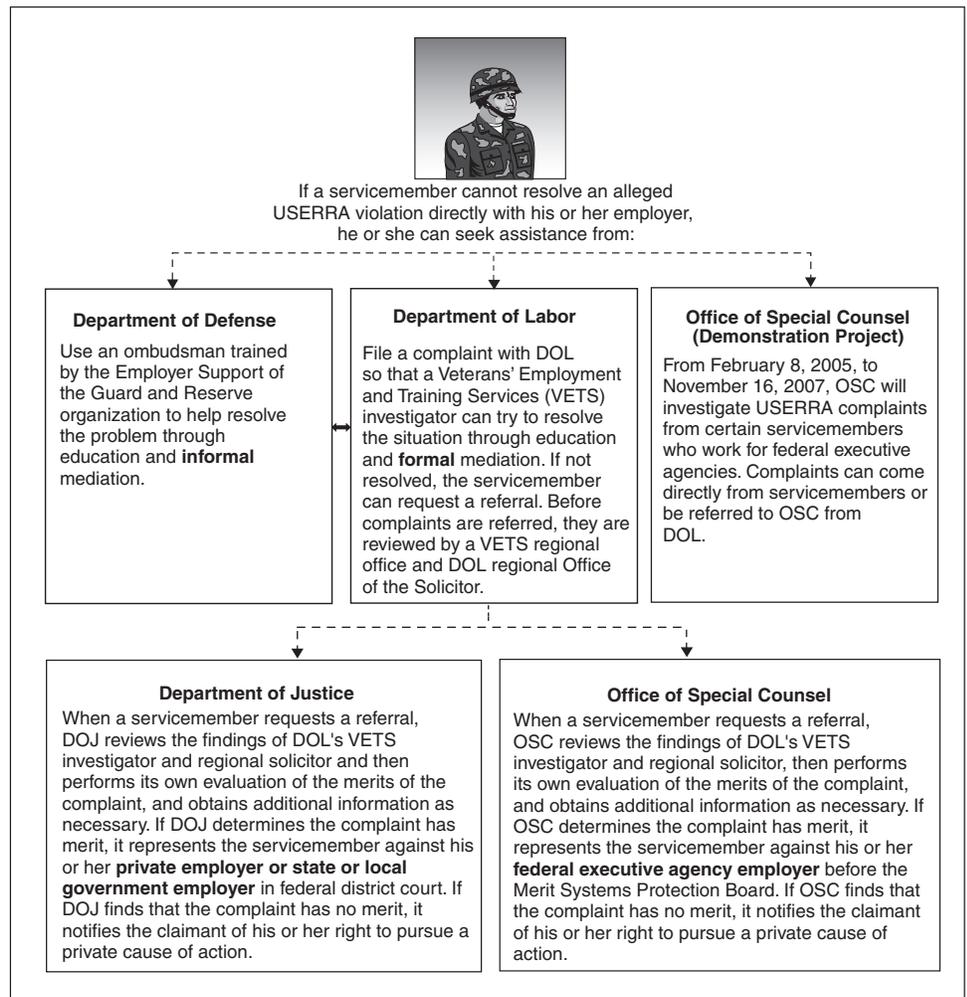
To view the full product, including the scope and methodology, click on [GAO-08-254T](#). For more information, contact Brenda Farrell at (202) 512-3604 or [farrellb@gao.gov](mailto:farrellb@gao.gov) or George Stalcup at (202) 512-9490 or [stalcupg@gao.gov](mailto:stalcupg@gao.gov).

## MILITARY PERSONNEL

### Federal Agencies Have Taken Actions to Address Servicemembers' Employment Rights, but a Single Entity Needs to Maintain Visibility to Improve Focus on Overall Program Results

## What GAO Found

Depicted below are servicemembers' options for obtaining federal assistance with their USERRA complaints.



Source: GAO, Art Explosion.

USERRA defines individual agency roles and responsibilities; however, it does not designate any single individual or office as accountable for maintaining visibility over the entire complaint resolution process. From the time informal complaints are filed with DOD's Employer Support of the Guard and Reserve through final resolution of formal complaints at DOL, DOJ, or OSC, no one entity has visibility over the entire process.

The four agencies have generally been responsive to GAO's recommendations to improve the implementation of USERRA—on outreach to employers, data sharing and trend information, reporting to Congress, and the internal review of DOL's investigators' determinations of USERRA claims.

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Mr. Chairman, Senator Enzi, and Members of the Committee:

We are pleased to be here today to discuss four federal agencies' activities regarding the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.<sup>1</sup> USERRA protects the employment and reemployment rights of millions of federal and nonfederal employees who leave their civilian employment to perform military or other uniformed service. USERRA also prohibits discrimination in employment against individuals because of their uniformed service, obligation to perform service, or membership or application for membership in the uniformed services. USERRA further prohibits employer retaliation against any individual who engages in protected activity under USERRA, regardless of whether the individual has performed service in the uniformed services.

Mr. Chairman, in 2004 you recognized the issues associated with USERRA, particularly in light of the significant number of National Guard and Reserve members serving in Iraq and Afghanistan who would be demobilized, returned to their civilian jobs, and possibly called back to duty.<sup>2</sup> Our testimony today is particularly relevant because more than 500,000 reservists have been called to duty since September 11, 2001.

Our testimony is based on work that we have conducted for you and in response to congressional mandates. Since 2002, we have issued several reports on federal agency efforts to carry out USERRA responsibilities. The four agencies primarily responsible for assisting servicemembers under USERRA are the Department of Defense (DOD), the Department of Labor (DOL), the Department of Justice (DOJ), and the Office of Special Counsel (OSC).<sup>3</sup> In our reports, we have made numerous

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<sup>1</sup>Pub. L. No. 103-353 (1994), as amended, codified at 38 U.S.C. §§ 4301-4334.

<sup>2</sup>The term reservists refers to the collective forces of the Army National Guard, Air National Guard, Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and the Coast Guard Reserve.

<sup>3</sup>The law also gives outreach responsibilities to the Secretary of Veterans Affairs, but we did not review actions of the Department of Veterans Affairs in supporting USERRA because its role is more limited.

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recommendations to these agencies concerning the implementation of USERRA.<sup>4</sup>

Our testimony is based on our three most recent reports on USERRA and examining whether DOD, DOL, DOJ, and OSC have effectively carried out their USERRA responsibilities.<sup>5</sup> Our testimony addresses (1) organizational accountability in the implementation of USERRA and (2) actions that the agencies have taken to improve their internal processes to implement USERRA.

As noted, this testimony is based on our prior work. For that work, we reviewed applicable laws, guidance, regulations, and operations manuals. To assess how efficiently and effectively DOD, DOL, DOJ, and OSC address USERRA complaints, we collected, reviewed, and analyzed data from a wide variety of sources (including the four federal agencies) and interviewed responsible officials.<sup>6</sup> We also reviewed DOD survey data and conducted original analysis on these data. To identify progress made by DOD in capturing employer information, we obtained and analyzed reporting compliance data from DOD and its reserve components. Further, we analyzed the number of disability complaints filed with DOD and DOL between fiscal years 2004 and 2006. We found DOD's civilian employment information and Employer Support of the Guard and Reserve (ESGR) databases to be of undeterminable reliability.

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<sup>4</sup>GAO, *Military Personnel: Improved Quality Controls Needed over Servicemembers' Employment Rights Claims at DOL*, [GAO-07-907](#) (Washington, D.C.: July 20, 2007); GAO, *Military Personnel: Additional Actions Needed to Improve Oversight of Reserve Employment Issues*, [GAO-07-259](#) (Washington, D.C.: Feb. 8, 2007); GAO, *Military Personnel: Federal Management of Servicemember Employment Rights Can Be Further Improved*, [GAO-06-60](#) (Washington, D.C.: Oct. 19, 2005); GAO, *U.S. Office of Special Counsel's Role in Enforcing Law to Protect Reemployment Rights of Veterans and Reservists in Federal Employment*, [GAO-05-74R](#) (Washington, D.C.: Oct. 6, 2004); GAO, *Reserve Force: DOD Actions Needed to Better Manage Relations between Reservists and Their Employers*, [GAO-02-608](#) (Washington, D.C.: June 13, 2002).

<sup>5</sup>We recently testified on issues related to our July 2007 report. GAO, *Military Personnel: Considerations Related to Extending Demonstration Project on Servicemembers' Employment Rights Claims*, [GAO-08-229T](#) (Washington, D.C.: Oct. 31, 2007).

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

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In our October 2005 report, we compared data obtained from DOJ and OSC with those captured by DOL and, where available, we compared the information in DOL's USERRA Information Management System to information from hard copy complaint files for accuracy.<sup>7</sup> For our July 2007 report, we assessed the reliability of selected data elements on federal employee complaints from DOL's USERRA database by tracing a statistically random sample of data to case files from February 8, 2005, through July 21, 2006.<sup>8</sup> We determined that these data were sufficiently reliable, with the exception of certain data elements from DOL's USERRA database, which we note in this testimony. With respect to actions agencies have taken in response to our recommendations, we discussed the agencies' progress with knowledgeable officials from DOL, ESGR, and OSC. Our work on the above reports, as well as the work we conducted for this statement, was performed in accordance with generally accepted government auditing standards.

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## Summary

Mr. Chairman, our main message today is that the four federal agencies have taken steps to better support and protect servicemembers' rights under USERRA in response to problems identified and recommendations made in our prior reports. However, no single agency is accountable for maintaining visibility over the entire complaint resolution process and therefore, it is difficult for the responsible agencies to effectively carry out their USERRA responsibilities. Designating one single entity would, in GAO's view, enhance efforts to improve overall program results.

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## Background

The overall process used to implement USERRA is as follows.

- **Outreach and resolution of informal complaints.** DOD and DOL share responsibility for outreach—the education of servicemembers and employers about their respective responsibilities under USERRA. Much of

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<sup>7</sup>DOL's USERRA Information Management System is a Web-based case management and reporting tool implemented by DOL in October 1996 that allows for automated collection and investigator input of information regarding USERRA complaints and generation of reports for analysis of USERRA operations and outcomes. For purposes of this testimony, we refer to DOL's USERRA Information Management System as DOL's USERRA database.

<sup>8</sup>For our July 2007 report, we also assessed the reliability of selected data elements on federal employee complaints from OSC's case tracking system for the same period. The data element that OSC uses to describe the outcomes of complaints was not sufficiently reliable for reporting specific outcomes.

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DOD's outreach is accomplished through ESGR, which performs most of its work through over 4,000 volunteers. DOL conducts outreach through its Veterans' Employment and Training Service (VETS) investigators, who are located nationwide. These investigators conduct briefings to educate employers and servicemembers about USERRA requirements and responsibilities and handle service-related employment and reemployment questions that are directed to their offices.

Servicemembers who have USERRA-related issues with their employers can file informal complaints with DOD's ESGR. In our February 2007 report, we noted that nearly 10,000 informal complaints had been filed with ESGR in fiscal years 2004 and 2005. A subgroup of ESGR's specially trained volunteers serve as impartial ombudsmen who informally mediate USERRA issues that arise between servicemembers and their employers.

- **Formal complaints and prosecution.** When ESGR ombudsmen cannot resolve complaints informally, they notify servicemembers about their options. Servicemembers can file a formal complaint with DOL or file complaints directly in court (if it involves nonfederal employers) or the Merit Systems Protection Board (if it involves federal executive branch employers). Under a federal sector demonstration project established by the Veterans Benefits Improvement Act of 2004,<sup>9</sup> DOL investigates complaints against federal executive branch agencies for individuals whose social security numbers end in even numbers, and OSC is authorized to directly receive and investigate complaints and seek corrective action for individuals whose social security numbers end in odd numbers.

When a servicemember files a formal complaint with DOL, one of VETS's 115 investigators examines and attempts to resolve it.<sup>10</sup> If VETS's investigators are unable to resolve servicemember complaints, DOL is to inform servicemembers that they may request to have their complaints referred to DOJ (for complaints against private sector employers or state and local governments) or to OSC (for complaints against federal

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<sup>9</sup>The demonstration project began on February 8, 2005 and was originally scheduled to end on September 30, 2007. Pub. L. No. 108-454, §204 (2004), 38 U.S.C. § 4301 note. It was extended through November 16, 2007. Pub. L. No. 110-92, §130 (2007).

<sup>10</sup>Another 74 investigators include regional administrators and management authorized to investigate USERRA complaints but not assigned to any.

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executive branch agencies).<sup>11</sup> Before complaints are sent to DOJ or OSC, they are reviewed by a VETS regional office for accuracy and sufficiency and by a DOL regional Office of the Solicitor, which assesses the legal basis for complaints and makes an independent recommendation.

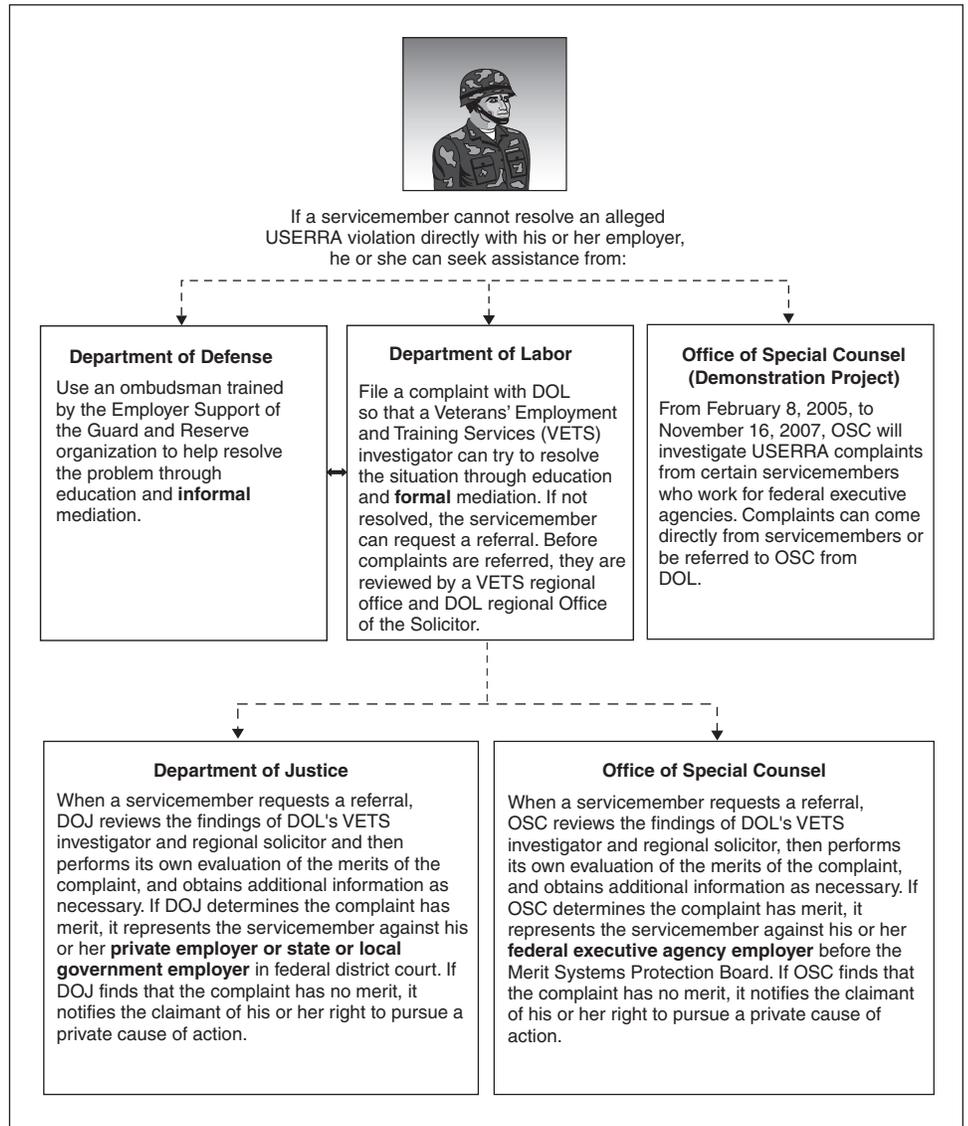
If DOJ or OSC determines that the complaint has merit, it will attempt to resolve the complaint without litigation and, if unsuccessful, represent the complainant in court (for those referred to DOJ) or before the Merit Systems Protection Board (for those referred to OSC).

Figure 1 shows servicemembers' options for obtaining federal assistance with their USERRA complaints.

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<sup>11</sup>DOL is also to inform servicemembers that they may file their complaint directly in court (if it involves nonfederal employers) or with the Merit Systems Protection Board (if it involves federal executive branch employers).

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



Source: GAO, Art Explosion.

Note: The demonstration project originally scheduled to end on September 30, 2007, was extended through November 16, 2007. Pub. L. No. 110-92, §130 (2007).

- **Agency databases and reporting requirement.** Each of the four federal agencies responsible for assisting servicemembers under USERRA maintains an automated database with complaint information. Both DOD

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and DOL have electronic complaint files that are stored in automated systems with query capabilities.

The Secretary of Labor in consultation with the U.S. Attorney General and the Special Counsel prepares and transmits a USERRA annual report to Congress on, among other matters, the number of USERRA claims reviewed by DOL, and during the current demonstration project by OSC, along with the number of claims referred to DOJ or OSC. The annual report is also to address the nature and status of each claim, state whether there are any apparent patterns of violation of the USERRA provisions, and include any recommendations for administrative or legislative action that the Secretary of Labor, the U.S. Attorney General, or the Special Counsel consider necessary to effectively implement USERRA.

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## No Single Agency Is Accountable for Maintaining Visibility over the Entire Complaint Resolution Process

Although USERRA defines individual agency roles and responsibilities, it does not make any single individual or office accountable for maintaining visibility over the entire complaint resolution process. In our October 2005 report, we noted that the ability of federal agencies to monitor the efficiency and effectiveness of the complaint process was hampered by a lack of visibility resulting, in part, from the segmentation of responsibility for addressing complaints among multiple agencies. Moreover, from the time informal complaints are filed with DOD's ESGR through final resolution of formal complaints at DOL, DOJ, or OSC, no one entity has visibility over the entire process. We found that the agency officials who are responsible for the complaints at various stages of the process generally have limited or no visibility over the other parts of the process. As a result, federal agencies have developed agency-specific output rather than cross-cutting goals directed toward resolving servicemembers' complaints. For example, agency goals address the complaint processing times of each stage of the process, rather than the entire time that elapses while servicemembers wait to have their complaints addressed. Meanwhile, the servicemember knows how much time is passing since the initial complaint was filed. In October 2005, we reported that more than 430 of the 10,061 formal complaints filed with DOL between October 1, 1996, and June 30, 2005, were closed and reopened and 52 complaints had been closed and reopened two or more times. Our analysis of those 52 complaints showed that the processing times averaged about 3 to 4 months but the total elapsed times that servicemembers waited to have their complaints fully addressed averaged about 20 to 21 months from the

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time they first filed their initial formal complaints with DOL until the time the complaints were fully addressed by DOL, DOJ, or OSC.<sup>12</sup>

We have previously suggested and continue to believe that Congress should consider designating a single individual or office to maintain visibility over the entire complaint resolution process from DOD through DOL, DOJ, and OSC. We believe this would encourage agencies to focus on overall results rather than agency-specific outputs and thereby improve federal responsiveness to servicemember complaints that are referred from one agency to another. In response to this matter, in our 2005 report, both DOL and OSC were supportive, and both agencies noted that they had the expertise to oversee the USERRA complaint resolution process. However, DOL stated that with the mandated demonstration project ongoing, it would be premature to make any suggestions or recommendations for congressional or legislative action until the project has been completed. DOD and DOJ did not provide comments on this matter.

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## Agencies Have Taken Action to Improve Information on Employers and Assistance to Servicemembers Under USERRA

DOD, DOL, DOJ, and OSC have generally been responsive to the recommendations we have made in our prior reports. Following is the status of some of the improvements made thus far:

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<sup>12</sup>Because dates in DOL's USERRA database did not always match the dates in the other agencies' systems and of the concerns raised in our July 2007 report about the investigation closed dates entered for federal sector complaints, discussed later in this statement, the processing and total elapsed times may not be accurate and the figures presented here are not precise reflections of processing or total elapsed times. For our 2005 report, we reviewed hard copy complaint files at the regional offices, tracked cases if they were referred to DOJ or OSC, and spoke with relevant investigators about these cases. We determined these data were sufficiently reliable for illustrating the differences between the agencies' focuses on outputs and the servicemembers' concern with the results.

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## Outreach

Integral to getting servicemembers the help they need is educating them and their employers on their respective responsibilities under USERRA. Since 2002, we have reported on DOD's need to obtain complete and accurate information on the civilian employers to better target its outreach efforts. Accurate, complete, and current civilian employer information is important to DOD to improve its ability to target outreach to employers, to make informed decisions concerning which reservists should be called for active duty to minimize the impact that mobilizations might have on occupations such as law enforcement, and to determine how businesses may be affected by reserve activation. As we recommended in our 2002 report, DOD implemented regulations that required the reporting and collection of employer information for reserve personnel. Additionally, DOD established compliance goals for these servicemembers. We noted in our February 2007 report that the percentage of servicemembers reporting employer information to DOD had increased, but most reserve components had still not reached their compliance goals. In addition, we found that employment data were not necessarily current because some reservists were not aware of requirements to update their employer information and the services had not established a formal mechanism to remind reservists to update this personnel information as necessary to reflect changes in their current employment.

To improve the reporting of National Guard and Reserve employment information, we recommended that the Secretary of Defense direct the Office of the Assistant Secretary of Defense for Reserve Affairs to establish specific time frames for reservists to report their employment data, set specific time frames for reserve components to achieve the established compliance reporting goals, and direct the service components to take action to ensure reporting compliance. In response to this recommendation, DOD indicated at the time of our report that its current policy on employer reporting established compliance goals. We noted in our report that DOD needed to establish a new deadline by which reservists must report their employer information to DOD and set specific time frames for reserve components to achieve the established compliance reporting goal. In addition, to encourage reservists to keep their employer data current, we recommended that DOD instruct all military departments to establish a formal review mechanism that would require all reservists to review and update at least annually their reported employment-related information. At the time of our February 2007 report, DOD was in the process of revising its policy on civilian employer reporting to require an annual review of reported employer information.

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DOD provides USERRA outreach and education to servicemembers using several mechanisms, including a toll-free information line and individual and group briefings. DOD monitors the extent to which it reaches this population and the occurrence of USERRA-related problems by including questions on these areas in its Status of the Forces survey, which is periodically conducted to identify issues that need to be addressed or monitored. We noted in our 2005 report that survey questions offer the potential to provide insight into compliance and employer support issues. However, questions on the surveys vary from year to year and have not always included those pertaining to USERRA compliance and employer support. To gauge the effectiveness of federal actions to support USERRA by identifying trends in compliance and employer support, we recommended that the Secretary of Defense direct the Under Secretary of Defense for Personnel and Readiness to include questions in DOD's periodic Status of Forces Surveys to determine

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

In response to this recommendation, DOD incorporated these additional USERRA-related questions in its June 2006 Status of the Forces survey.

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## Data Sharing and Trend Identification

Because the resolution of servicemember complaints could involve multiple federal agencies, it is important that the agencies be able to effectively share and transfer information to efficiently process servicemember complaints. In October 2005, we found that the automated systems that DOD, DOL, DOJ, and OSC used to capture data about USERRA complaints were not compatible with each other.<sup>13</sup> As a result, information collection efforts were sometimes duplicated, which slowed complaint processing times. To increase federal agency responsiveness to USERRA complaints, we recommended that DOD, DOL, DOJ, and OSC

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<sup>13</sup> [GAO-06-60](#).

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develop a system to allow the electronic transfer of complaint information. At the time of our report, DOL and OSC concurred with this recommendation, DOJ did not provide comments, and DOD deferred to the other agencies. We noted in our February 2007 report that DOL had implemented an enhancement to its USERRA database in October 2006 to enable the four USERRA coordinating agencies to electronically transfer case information between agencies. The database enhancement allowed DOD, DOL, DOJ, and OSC to access and update the status of cases using the Internet and produce a report containing aggregate USERRA complaint data on the cases over which they have jurisdiction. We further noted in this report that, despite these enhancements to the USERRA database to allow the electronic transfer of complaint information between agencies, DOD only had visibility over those cases that originated with informal complaints to DOD. Even though DOD shares responsibility with DOL for USERRA complaints, DOD did not have access to all USERRA complaint data, and we recommended that DOL provide these data to DOD's ESGR.<sup>14</sup> In response to this recommendation, in October 2007, DOL provided DOD with the ability to view and download aggregate information on all USERRA cases in its database.

In addition, in October 2005, we reported that when a complaint is referred from DOL to OSC or DOJ, the agencies are unable to efficiently process complaints because they are forced to create, maintain, copy, and mail paper files to other DOL offices and to OSC and DOJ. To reduce administrative burden and improve oversight of USERRA complaints processing, we recommended that DOL develop a plan to reduce reliance on paper files and fully adopt the agency's automated complaint file system. DOL concurred with this recommendation and, as a result, is developing an electronic case record system, scheduled for completion in October 2008, that will allow all agencies assigned to the case an opportunity to review documents and add investigative notes or records.

To effectively identify trends in issues facing servicemembers, it is important in a segmented complaint resolution process that the complaint data generated by each of the federal agencies be sufficiently comparable. In our February 2007 report, we noted that the complaint categories used by each of the four agencies could not be uniformly categorized to reveal trends in USERRA complaints. In particular, we noted that the complaint data collected by DOD and DOL, the two agencies that see the highest

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<sup>14</sup>[GAO-07-259](#).

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volume of cases, were not categorized in a way that is conducive to meaningful comparison. Specifically, we found that the two agencies use different categories to identify reservists' USERRA complaints for issues such as being refused job reinstatement, denied an appropriate pay rate, or being denied vacation time. To allow for the analysis of trends in reporting USERRA complaints, we recommended that DOD and DOL adopt uniform complaint categories in the future that would allow aggregate trend analysis to be performed across the databases. At the time of our report, both DOD and DOL agreed with this recommendation. Since that time, DOD and DOL have collaborated to identify common complaint categories that will allow both agencies to match similar USERRA complaints. According to officials from both DOD and DOL, these complaint categories are expected to be pilot tested in fiscal year 2008.

As reservists continue to be exposed to serious injury in operations in Iraq and Afghanistan, the ability to identify disability reemployment complaints becomes more critical. However, we noted in our February 2007 report that the four federal agencies responsible for assisting servicemembers with USERRA complaints could not systematically record and track disability-related complaints. Additionally, we found that these agencies do not distinguish disability-related complaints from other types of complaints for tracking and reporting purposes. For example, the servicemember must indicate that the case involves a disability for it to be classified as such, and these complaints may not be distinguishable from any other types of complaints because a single USERRA complaint may involve a number of issues that complicates the classification of the case by the agency. Further, disability-related complaints are not identified using consistent and compatible complaint categories. DOD classifies USERRA disability-related complaints within three categories including medical benefits, job placement, and time limits for reemployment, while DOL uses one category, reasonable accommodation and retraining for disabled, to classify USERRA disability-related complaints. To provide agencies with better information about disability-related employment complaints, we recommended that DOL develop a system for recording and tracking these complaints and share it with the other agencies that implement USERRA. DOL concurred with this recommendation at the time of this report. According to DOL officials, DOL's USERRA database identifies disability claims, and the agency has recently provided DOD, OSC, and DOJ with access to this system.

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## Information Reported to Congress

As previously mentioned, the Secretary of Labor is required to provide an annual report to Congress that includes information on the number of USERRA complaints reviewed by DOL, along with the number of complaints referred to DOJ or OSC. We noted in our February 2007 report that DOL's report to Congress does not include information on informal complaints filed with ESGR. Therefore the complaint data that DOL reported to Congress for fiscal years 2004 and 2005 did not include 80 percent, or 9,975 of the 12,421 total informal and formal USERRA complaints filed by reservists during that period. Without data from ESGR, Congress has limited visibility over the full range of USERRA issues that reservists face following deployment. Further, without these data, Congress may lack the information for its oversight of reserve employment matters. To gain a full perspective of the number and nature of USERRA complaints filed by reservists in gaining reemployment upon returning from active duty, we suggested that Congress consider amending the reporting requirement<sup>15</sup> to require DOL to include data from DOD's ESGR in its annual report to Congress. In response to this matter for congressional consideration, Members of Congress are considering changes to the legislation.<sup>16</sup>

In addition to DOL's report to Congress not reflecting informal USERRA complaints, we identified data limitations in our July 2007 report that affected the quality of information reported to Congress that could adversely affect Congress's ability to assess how well federal sector USERRA complaints are processed and whether changes are needed.<sup>17</sup> DOL provides information in its annual report to Congress on the number and percentage of complaints opened by type of employer, issues raised—such as discrimination or refusal to reinstate—outcome, and total time to resolve. We found that the number of federal sector complaints shown in DOL's USERRA database from February 8, 2005, through September 30, 2006, exceeded the number of unique claims it processed during the period of our review. Duplicate, reopened, and transferred complaints accounted for most of this difference. Also, in our review of a random sample of case files, we found

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<sup>15</sup>38 U.S.C. §4332.

<sup>16</sup>H.R. 1632 was proposed on March 21, 2007, and was referred to the Committee on Veterans' Affairs.

<sup>17</sup>[GAO-07-907](#).

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- the dates recorded for case closure in DOL's USERRA database did not reflect the dates on the closure letters in 22 of 52 sampled complaints and
  - the closed code, which DOL uses to describe the outcomes of USERRA complaints (e.g., granted, settled, no merit, or withdrawn), was not sufficiently reliable for reporting specific outcomes of complaints.

To ensure that accurate information on USERRA complaints' processing is available to DOL and to Congress, we recommended in our July 2007 report that the Secretary of Labor direct the Assistant Secretary of Veterans' Employment and Training to establish a plan of intended actions with target dates for implementing internal controls to ensure that DOL's USERRA database accurately reflects the number of unique USERRA complaints filed annually against federal executive branch agencies, the dates those complaints were closed, and the outcomes of those complaints. In response to our recommendation, DOL issued a memo from the Assistant Secretary of Veterans' Employment and Training in July 2007 instructing investigators to ensure that the closed date entered into DOL's USERRA database match the date on the closure letter to the servicemember, and DOL conducted mandatory training on this memo beginning in August 2007. Further, DOL officials told us that DOL's fiscal year 2007 annual report will count reopened complaints as a single complaint if brought by the same individual, against the same employer, and on the same issue.

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## Notification of Rights to Referral and Internal Reviews

We reported in July 2007 that in cases where servicemembers sought assistance from DOL and the agency could not resolve the complaints, DOL did not consistently notify servicemembers in writing of their right to have their unresolved complaints against federal executive branch agencies referred to OSC or to bring their claims directly to the Merit Systems Protection Board.<sup>18</sup> Specifically, our review of a random sample of complaint files showed that DOL failed to notify servicemembers in writing in half of the unresolved complaints and notified others of only some of their options. In addition, we found that DOL's *USERRA Operations Manual* failed to provide clear guidance to its investigators on when to notify servicemembers of their rights and the content of the notifications. In July 2007, we also reported that DOL has no internal process to routinely review investigators' determinations before claimants

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<sup>18</sup> [GAO-07-907](#).

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are notified of them and noted that this lack of review could have caused DOL's inconsistent practice of notifying servicemembers for their rights to referral. We recommended that the Secretary of Labor direct the Assistant Secretary for Veterans' Employment and Training to (1) require VETS's investigators to undergo mandatory training on the procedures to be followed concerning notification of rights to referral, (2) incorporate into the formal update to DOL's *USERRA Operations Manual* guidance concerning the notification rights to referral, and (3) develop and implement an internal review mechanism for all unresolved complaints before servicemembers are notified of determinations and complaints are closed.

Since that time, DOL has taken the following actions:

- issued a memo in July 2007 from the Assistant Secretary for Veterans' Employment and Training to regional administrators, senior investigators, and directors concerning case closing procedure changes, including standard language to use to ensure that servicemembers (federal and nonfederal) are apprised of their rights;
- began conducting mandatory training on the memo in August 2007;
- incorporated the policy changes into the revised *Manual*, which according to DOL officials is expected to be released in January 2008; and
- according to DOL officials, beginning in January 2008, all claims are to be reviewed before the closure letter is sent to the claimant.

These are positive steps. It is important for DOL to follow through with its plans to ensure that clear and uniform guidance is available to all involved in processing USERRA complaints.

Mr. Chairman, Senator Enzi, and Members of the Committee, this concludes our remarks. We will be pleased to take questions at this time.

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For further information regarding this statement, please contact Brenda Farrell at 202-512-3604 or farrellb@gao.gov or George Stalcup at 202-512-9490 or stalcupg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Individuals making contributions to this testimony include Laura Durland, Assistant Director; Belva Martin, Assistant Director; James Ashley; Karin Fangman; K. Nicole Harms; Kenya Jones; Mae Jones; Ronald

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La Due Lake; Joseph Rutecki; Tamara F. Stenzel; and Kiki Theodoropoulos.

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