

Statement by
Reserve Officers Association of the United States
for the HVAC Roundtable on Veteran Employment
for the
House Veterans Affairs Committee
United States House

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“Serving Citizen Warriors through Advocacy and Education since 1922.”™

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The Reserve Officers Association of the United States (ROA) is a professional association of commissioned and warrant officers of our nation's seven uniformed services, and their spouses. ROA was founded in 1922 during the drawdown years following the end of World War I. It was formed as a permanent institution dedicated to National Defense, with a goal to teach America about the dangers of unpreparedness. When chartered by Congress in 1950, the act established the objective of ROA to: "...support and promote the development and execution of a military policy for the United States that will provide adequate National Security." The mission of ROA is to advocate strong Reserve Components and national security, and to support Reserve officers in their military and civilian lives.

The Association's 63,000 members include Reserve and Guard Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen who frequently serve on Active Duty to meet critical needs of the uniformed services and their families. ROA's membership also includes officers from the U.S. Public Health Service and the National Oceanic and Atmospheric Administration who often are first responders during national disasters and help prepare for homeland security. ROA is represented in each state with 55 departments plus departments in Latin America, the District of Columbia, Europe, the Far East, and Puerto Rico. Each department has several chapters throughout the state. ROA has more than 450 chapters worldwide.

ROA is a member of The Military Coalition where it co-chairs the Tax and Social Security Committee. ROA is also a member of the National Military/Veterans Alliance. Overall, ROA works with 75 military, veterans and family support organizations.

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The Reserve Officers Association is a member-supported organization. ROA has not received grants, sub-grants, contracts, or subcontracts from the federal government in the past three years. All other activities and services of the associations are accomplished free of any direct federal funding.

Preface

Mr. Chairman and distinguished members of the House Veterans Affairs Committee on behalf of 1.1 million Reserve Component members, the Reserve Officers Association (ROA) of the United States expresses its appreciation for the opportunity to participate in the roundtable to develop strategies on veterans' employment.

As contingency operations bring about increased mobilizations and deployments, many outstanding citizen Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen have put their civilian careers on hold while they serve their country in harm's way. Since September 11, 2001, more than 725,000 Reserve and Guard service members have been mobilized, with nearly one-third of those having been deployed more than twice. They share the same risks and their counterparts in the Active Components, but unlike full time military professionals aren't guaranteed career longevity as civilians when they return home.

Executive Summary

Issues supported by the Reserve Officers and Reserve Enlisted Associations are to:

Support for Hiring Veterans:

- Implement DoD documentation that would inform employers of skills potential veteran gained through their military service.
- Support employer incentives specific to the hiring of returning veterans and reserve component members.
- Expand responsibilities of the Employer Support for the Guard and Reserve.
- Oversee OPM Veterans' Recruitment and Employment Strategic Plan.

Veteran Status:

- Improve communications to field on new veteran preference program.
- Extend veteran status to Guard and Reserve members who don't serve on active duty to 180 days (H.R.3787).

Education:

- GI Bill - pass legislation that adds technical, On Job Training, and apprenticeship programs to the Post 9/11 GI Bill eligibility.

Reserve and Guard Small Business Owners:

- Support incentives permitting deployed small business owners to keep their businesses.

Employment Protections - Improve USERRA & SCRA:

- Suggested improvements follow in written testimony.

Employment Protections

Veterans and service members are provided protections through the National Committee for Employer Support of the Guard and Reserve (ESGR), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and the Servicemembers' Civil Relief Act (SCRA).

In an IAVA report published January 2009 employers surveyed demonstrates their lack of knowledge of USERRA with 36 percent unaware of the protections they are supposed to provide service members and 61 percent do not have an understanding of military service qualifications.

Notwithstanding the protections afforded veterans and service members, and antidiscrimination laws it is not unusual for members to lose their jobs due to time spent away while deployed. Sometimes this is by employers who go out of business, but more because it costs employers money, time, and effort to reintroduce the employee to the company.

Employer Incentives

Partnerships: The Army Reserve under Lieutenant General Jack Stultz initiated the Employer Partnership program with civilian employers which is an initiative designed to formalize the relationship between the Reserve and the private sector, sharing common goals of strengthening the community, supporting RC service members and families, and maintaining a strong economy. The partnership program was launched on April 14, 2008, with Inova Health System and American Trucking Associations, Inc. as the pioneers. Over 300 more companies are currently in various preliminary stages of implementing partnership programs. This sets a model for businesses to hire veterans.

Periodic and Predictable: Employers need increased notification time in order to better support their personnel. The military services and components should provide greater notice of deployments to employees, so that they, as well as RC members and their families, can better prepare. Collaboration between industry and the military needs to occur as the military considers deployment cycle models so that the nation's defense needs are met but its industrial base is not compromised.

Employer care plans should be developed that will assist with mitigation strategies for dealing with the civilian workload during the absence of the service member employee and lay out how the employer and employee would remain in contact throughout the deployment.

CNGR: The Commission on the National Guard and Reserve suggested key recommendations included expansion of the Employer Support of the Guard and Reserve committee to be able to work new employment as well as reemployment opportunities, the creation of an employer advisory council, and regular surveys to determine employer interests and concerns over reemployment of Guard and Reserve members.

TRICARE as an employee/employer benefit: An employer incentive is when an employee brings importable health care such as TRICARE, reducing the costs for the employer. Guard and Reserve members as well as military retirees should be permitted to tout the availability of TRICARE as an employee asset, and permit employers to provide alternative benefits in lieu of health care.

Another option is to fully or partially offsetting employer costs for health care payments for Guard and Reserve members who are employed, especially when companies continue

civilian health insurance for service members and or their families during a deployment. Provide employers – especially small businesses – with incentives such as cash stipends to help pay for health care for Reservists up to the amount DoD is contributing. When a member is deployed, the payments could increase to the value of active military health care to allow the RC employee and family to remain on the employers insurance, with the understanding of reemployment guarantees upon the serving members return.

Other incentives: Incentives of various types would serve to mitigate burdens and encourage business to both hire and retain Reservists and veterans. A variety of tax credits could be enacted providing such credit at the beginning of a period of mobilization or perhaps even a direct subsidy for costs related to a mobilization such as the hiring and training of new employees. Employers felt strongly that, especially for small businesses, incentives that arrive at the end of the tax year do not mitigate the costs incurred during the deployment period.

While not under this committees jurisdiction we hope that the Veterans Committee can support specific tax incentives to hire returning veterans and Guard and Reserve members.

Post 9/11 GI Bill

A better educated veteran makes for a better contributor to a work force.

With rising unemployment, OIF and OEF Guard and Reserve members, and transitioning veterans need the opportunity to gain new skills, education, and experience to compete for jobs especially in our current difficult economic situation. Yet the Post 9/11 GI Bill does not include on the job (OJT), apprenticeship, and flight training programs.

ROA urges Congress to pass legislation that adds OJT, apprenticeship, and flight training programs to the Post 9/11 GI Bill eligibility.

Many military members who started their service under the MGIB, paid into the benefit and as students received a set amount per month as determined by the VA. While they still may qualify for additional education under the Post 9/11 GI Bill, they end up losing benefits because eligibility is based on months of use rather than the cash received for those benefits.

It is suggested that the time served since 9/11/2001 be fully credited, and earlier payments under Montgomery or other GI Bills be deducted from the value of the earned Post 9/11 benefits.

Barriers to Employment of Veterans

According to a Military.com 2007 survey 61 percent of employers don't believe they have "a complete understanding of the qualifications ex-servicemembers offer," and more than three-quarters of veterans entering the civilian workforce reported "an inability to effectively translate their military skills to civilian terms." Veterans also feel they lack critical career advancement skills like networking and salary negotiation.

ROA encourages the implementation of certifications or a form that would inform employers of skills potential veteran and service member employees gained through their military service.

The US Chamber of Commerce, professional associations, unions, Army Training and Doctrine

Command, and federal agencies are addressing industry personnel shortfalls (e.g., medical professionals, trades personnel, truck drivers, law enforcement, and rail transporters), by improving the alignment of military credentialing and licensing processes with the private sector, and recognition of civilian acquired skills.

Veterans' Status and Preference

Contrary to the legacy veteran's preference program where veterans were given 5 or 10 points on their application for federal service, a new program began this past September taking service members through the needed steps to acquire a federal job upon leaving the military. Their skills are assessed to determine what kind of work they can do in federal service then directed to those corresponding positions. More information on this program needs to be disseminated to veterans.

Current law strips this preference from military retirees in pay of a rank of Major or higher. In this economy, this statute should be reexamined.

ROA supports expansion of veteran preferences and communications about the new program.

Small Business Owners

Reserve Component small business owners are particularly challenged by deployments. About 22 percent of self-employed Reservists find their activations impact their personal businesses, creating very serious problems. Many have to sell out partnerships, or close down businesses. And as many of these Reserve Component members are employers of others, many non-military are laid off when the business owner is deployed.

ROA supports initiatives to provide small business owners with protections for their businesses to be sustained while on deployment, for example a potential program in which a trained substitute is made available to run the business while the member is out country. Further SCRA protection on equipment leases should be included in the law.

Improvements to USERRA

While the Department of Labor's December 2005 regulations positively affect USERRA enforcement, many other things still need to be done to improve USERRA. *ROA encourages Congress to support further USERRA provisions that will protect employment of the Reserve Components and encourages compliance by employers.*

- Do not permit employers to discriminate by asking prospective employees if they are in the Guard or Reserve.
- Exempt employees from penalties when their insurance lapses if their motor carrier license expires while mobilized (i.e., the Federal Motor Carrier Safety Administration).
- Work with Federal agencies to abide by USERRA/SCRA standards.
- Provide protection of mobilized Guard and Reserve students by granting academic leaves of absences, guarding academic standing and refund guarantees.
- Expand USERRA's definition of "service in the uniformed services" to include an employee's need to be absent from work for purposes of medical treatment (from DOD or Department of Veterans Affairs facilities) for a wound, injury, or illness incurred or aggravated during a period of service in the uniformed services.

- Amend 38 U.S.C. 4323(d)(1)(C)—the "liquidated damages" provision to require employers who have violated USERRA to remunerate to the servicemember an amount of \$20,000 or the amount equal to the actual damages, whichever is greater. Provide a provision in section 4324 allowing for liquidated damages when the employer is a federal executive agency and the violation was willful, such as found in section 4323 as it applies to states, political subdivisions of states, and private employers.
- Amend Title 38 U.S.C. 4323(e) to mandate (rather than simply permit) injunctive relief to prevent or correct a USERRA violation.
- Amend Title 49 U.S.C. 44935 to apply USERRA to servicemembers employed by the Transportation Security Administration (TSA) as screeners.
- Amend 38 U.S.C. 4302(b) to make clear that USERRA overrides an agreement to submit future USERRA disputes to binding arbitration.
- Amend 38 U.S.C. 4303 (definition of "employer") to clarify that a successor in interest (a new employer often resulting from a merger, transfer of assets or takeover of a function between companies) inherits the predecessor's USERRA obligations and that a merger or transfer of assets is not necessary to support a finding of successor liability.
- Amend 38 U.S.C. 4323 and 4324 to authorize punitive damages for willful and egregious USERRA violations.

Note: CAPT Sam Wright, USNR (ret.) on ROA staff is willing to work with HVAC staff to codify these recommendations.

<p>Needed Improvements to the Servicemen's Civil Relief Act</p>
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In the age of internet back ground checks, employers can check credit scores and financial backgrounds before hiring a new employee. Veterans who have been deployed have certain protections, but improvements can be made. While SCRA made major improvements in the SSCRA, but new problem areas continue to surface. This section proposes seven SCRA amendments to address these problem areas. *The Reserve Officers Association would be pleased to work with the Veterans Affairs Committees on furthering these and other corrections.*

Amend the SCRA to forbid discrimination based on membership in a Reserve Component or the possibility of future utilization of SCRA rights: Under section 518 of the SCRA (50 U.S.C. App. 518), it is unlawful for a creditor or other party to discriminate against or take an adverse action against a servicemember based on the servicemember having *applied for or received* a stay, postponement, or suspension under the SCRA. Under the current law, it is not unlawful for a creditor or potential creditor to deny credit based on the prospective borrower's membership in a Reserve Component and the possibility that the prospective borrower could be mobilized in the future and could apply for or receive a stay, postponement, or suspension. ROA proposes that Congress amend the SCRA to close this loophole.

Amend the SCRA to broaden the types of leases and contracts which the person entering active duty can terminate without penalty: Under the SSCRA, since 1917, a person entering active duty has been permitted to terminate a lease on premises (apartment, house, office, farm, etc.). In 2003, Congress broadened this provision to enable the person entering active duty to terminate a vehicle lease. In 2008, Congress enacted a new provision to permit a servicemember to terminate a cell phone contract under certain circumstances. Congress needs to amend the SCRA to include leases and contracts for small businesses, in addition to leases of premises, vehicles, and cell phones.

Amend the SCRA to make the right to a continuance and the protection against default judgment apply to arbitration proceedings: The individual who is on active duty may be unable to respond promptly to a civil lawsuit or administrative proceeding, especially if the individual is deployed to a place like Iraq or Afghanistan. Since 1917, the SSCRA has given the individual in this situation some protection, including the right to a continuance and default judgment protection if military service interferes with a timely response. In 2003, Congress expanded these provisions to make them apply to administrative as well as judicial proceedings, but the provision has been held not to apply to *arbitration* proceedings.

Amend the SCRA to forbid exorbitant overdraft fees and late fees for deployed servicemembers: There have been instances where deployed servicemembers have been charged hundreds or thousands of dollars in overdraft fees or late fees for a low-dollar overdraft on a checking account or a late payment on a credit card. Such exorbitant fees should be forbidden.

Conclusion

ROA would like to thank the committee and its staff for its attention to this crucial issue which has increasingly become a pressing concern for veterans and their families. Even more so for RC members that are being utilized at a high operation tempo, requiring longer and more frequent periods of absence from their civilian jobs.

America's service men and women from the Reserve Components come from the heart of communities across this great country and its territories. Many were among the first to respond to their nation's call after September 11, 2001. They have proven themselves to be worthy heroes and capable warriors and have earned the respect they so richly deserve from their fellow citizens. What they also deserve is the equality in benefits and education that are given to their Active Component brothers and sisters.

ROA appreciate efforts by this committee to address employment issues that veterans face. We look forward to continuing to work with the committee and staff.