MEMORANDUM OF UNDERSTANDING BETWEEN VETERANS' EMPLOYMENT AND TRAINING SERVICE (VETS), DEPARTMENT OF LABOR AND EMPLOYER SUPPORT OF THE GUARD AND RESERVE (ESGR), DEPARTMENT OF DEFENSE

SECTION I
INTRODUCTION

A. Purpose

1. To describe clearly the roles and responsibilities of VETS and ESGR in support of National Guard and Reserve members, as well as military veterans, particularly relating to employment and reemployment rights provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. §§ 4301-4335).

2. To articulate current procedures for sharing communications, operational trends, public information, and other materials designed to inform the public, employers and persons protected by USERRA.

3. To clarify procedures for each entity's management of mobilization and demobilization briefings in conjunction with activations of National Guard and Reserve personnel.

4. To establish guidelines for handling technical assistance, information requests, and USERRA complaints.

B. Goals

Both VETS and ESGR are fully committed to active coordination and cooperation to ensure that protected persons are accorded their statutory employment and reemployment rights, and that employer concerns are addressed. Such coordination and cooperation are particularly critical in light of the nation's increased reliance on the Guard and Reserve members.

C. Effect of Agreement

1. This agreement is an internal Government agreement between VETS and ESGR and is not intended to confer any right upon any private person.

2. Nothing in this agreement will be interpreted as limiting, superseding or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict VETS or ESGR from participating in similar activities or arrangements with other entities.

3. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates VETS or ESGR to expend appropriations or enter into any contract or other obligations.

4. This agreement will be implemented in full compliance with the Privacy Act of 1974.

SECTION II
STATUTORY LANGUAGE AND ENTITY DESCRIPTIONS

A. Statutory Language

The Secretary (through the Veterans' Employment and Training Service) shall provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers. [38 U.S.C. § 4321]

The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and such employers under this chapter. [38 U.S.C. § 4333]

B. VETS

1. The Assistant Secretary of Labor for Veterans' Employment and Training (ASVET), on behalf of the Secretary of Labor, is statutorily responsible for the administration of USERRA, as well as other laws and programs that deal with employment and training of veterans. The ASVET's responsibilities are carried out through VETS, which is responsible for providing assistance and conducting formal investigations involving both private and public employers, including Federal executive agencies. VETS develops interpretive information, provides technical assistance, processes and investigates complaints, provides mediation services and, when requested, refers cases for possible litigation to the appropriate federal enforcement agency when a resolution satisfactory to the parties cannot be obtained. VETS staff, both in the State and national offices, carry out these activities.

2. Complaints filed under USERRA are filed by claimants, either on-line or in hard copy, and the VETS field staff processes and investigates those complaints. VETS regional offices facilitate access for potential claimants and employers to VETS staff and the ESGR Volunteer Ombudsman Network. The compliance staff in VETS national office in Washington, D.C., provides technical assistance and policy guidance to regional VETS offices and investigators about USERRA issues and cases, and provides technical assistance to ESGR's National Ombudsman staff as requested. VETS staff is fully trained regarding USERRA's provisions, and supplies statutory interpretations to the ESGR, with support from the regional and national offices of the Solicitor of Labor (SOL). SOL provides direct assistance to VETS in many areas, including the review and

analysis of cases referred for possible litigation to the Department of Justice or the Office of Special Counsel, depending on the employer involved in the case.

3. DOL is responsible for submitting a USERRA Annual Report to Congress by July 1st of each year. In that report, DOL is required *inter alia* to include data on:

    a. the number of cases reviewed by ESGR during the fiscal year for which the report is made; the number of such cases that involve a disability-related issue; the number that involve a person who has a service connected disability; the number that involve persons with different occupations or seeking different occupations (as designated by the Standard Occupational Classification system; and the nature and status of each such case.

    b. the number of cases reviewed by DOL and ESGR during the fiscal year for which the report is made that involve the same person; the number of such cases that involve a disability-related issue; the number that involve a person who has a service connected disability; the number that involve persons with different occupations or seeking different occupations (as designated by the Standard Occupational Classification System) and the nature and status of each such case.

C. ESGR

1. Operating under the auspices of the Assistant Secretary of Defense for Reserve Affairs (ASD/RA), the ESGR mission is to gain and maintain employer support for Guard and Reserve service by recognizing outstanding support, increasing awareness of the law, and resolving conflicts through informal mediation.

2. ESGR relies on a network of volunteers to accomplish many components of its mission. More than 4,500 men and women serve on 54 ESGR Field Committees in the United States, its Territories and the District of Columbia. These volunteers, many of whom are employers themselves, benefit from their standing in the local community to reach out to employers, as well as local Guard and Reserve units.

3. The ESGR Headquarters staff is responsible for training Field Committee volunteers on how to perform as USERRA information resources and mediators between employers and members of the National Guard and Reserve. Selected volunteers from each Field Committee receive training on USERRA and serve as Ombudsmen, providing technical assistance and informal mediation services when questions arise or problems are encountered.

4. ESGR collects and maintains general information and data concerning the types of requests received for USERRA assistance. This data is then used to increase the knowledge, awareness and outreach applications initiating responses to trends derived from the data. Some of this collected data identifies the parties and specific issues in controversy but can only be shared in accordance with the Administrative Dispute Resolution Act (ADRA - *See* 5 U.S.C. § 574(h)) procedures.

5. ESGR Provides VETS with the USERRA case data necessary to assess trends and to complete DOL's mandated Annual Reports to Congress.

SECTION III
RELATIONSHIPS AND RESPONSIBILITIES

A. The ASVET and the ASD/RA will monitor relationships between their respective organizations. They will ensure a high level of cooperative effort is achieved in joint activities and in the sharing of information so that the two organizations can best facilitate the protection of employment and reemployment rights of National Guard and Reserve members and military veterans. The parties will also share USERRA case information to the extent permitted by law so that VETS can meet its mandatory reporting obligations.

B. The Assistant Secretaries will ensure their respective organizations understand each other's role with respect to this agreement. VETS and ESGR represent, respectively, the Secretaries of Labor and Defense in fulfilling the statutory mandate to inform protected persons and employers about the provisions of USERRA. The Act also provides that the Secretary of Labor will administer the law and take the lead role in providing assistance to any person or employer, by conducting formal investigations of USERRA complaints and, upon request, referring unresolved cases for consideration of litigation. VETS, acting for the Secretary of Labor, may utilize the assistance of other Federal agencies (*e.g.*, DoD) and volunteers (*e.g.*, ESGR Field Office members) in helping individuals obtain reemployment or other employment rights and benefits. The law does not provide for VETS utilization of such assistance from other agencies and volunteers in carrying out its many other USERRA responsibilities, including the investigation of formal complaints filed with the agency by individuals who allege their USERRA rights have been violated. Once VETS opens a USERRA investigation, ESGR will cease contact with the claimant and the employer involved.

C. The VETS and ESGR national offices are responsible for providing one another with appropriate information that may affect the interpretation or application of USERRA. Such information includes applicable legislative initiatives, court decisions, and regulations.

D. Both VETS and ESGR will work together to achieve consistency in informational materials provided to customers and the general public. Because VETS has primary responsibility for administration of the Act, ESGR will defer to VETS when there is a disagreement about the content of information to be supplied to the public. Where practical, the two organizations will co-publish fact sheets intended for public distribution. Internet websites of the two organizations will be cross-linked, so that users seeking USERRA information have ready access to both agencies' websites.

E. Both VETS and ESGR encourage open communication and professional relationship building between their local representatives. Monthly meetings between the parties to facilitate the exchange of information, subject to the confidentiality provisions of the Administrative Dispute Resolution Act ("ADRA," 5 U.S.C. §§ 571-584), are encouraged.

F. Points of Contact:

1. The point of contact for DOL/VETS is the Chief of Investigation and Compliance, 202-693-4700.

2. The point of contact for ESGR is the Director of Ombudsman Services, 703-696-1386.

SECTION IV
ACTIVITIES AND RESPONSIBILITIES

VETS and ESGR will work cooperatively to ensure maximum effectiveness and efficiency in activities related to DOL's and DoD's shared obligation under 38 U.S.C. § 4333 to perform USERRA outreach to protected persons and their employers. The national headquarters leadership of each entity will provide overall guidance to their respective field staff and volunteers in an effort to foster cooperation and open communication and promote optimal service for National Guard and Reserve members, veterans and their employers. Activities in which ESGR (as DoD's representative) may join VETS include the following:

A. Training

1. VETS will offer ESGR Ombudsman staff the opportunity to take online USERRA training courses as may be available, such as USERRA 101 and 102. Such training will help them to better assist VETS in fulfilling its role of assisting protected persons and employers with questions or concerns related to USERRA. Transfers of funds for this purpose, if required and available, will be accomplished *via* separate documents.

2. The ESGR Ombudsman staff will provide training to ESGR volunteers. When scheduling training sessions for ESGR volunteers, the ESGR National Ombudsman staff may advise the VETS regional administrator of the date, time and location of the training, as well as the number of attendees, so that the regional administrator may designate a VETS staff person to attend the training as a presenter and technical advisor.

B. Briefings/Presentations

1. Employer Outreach -- For the purpose of public outreach regarding rights and responsibilities under USERRA, VETS and ESGR will actively seek opportunities to mutually address targeted audiences, which may include employers, civic groups, and other members of the public. Joint presentations will be made whenever possible, in particular when large numbers of the target audience can be reached. Local VETS representatives are invited to participate in local events. In cases when conflicting commitments would prevent participation in a proposed briefing by either a VETS or ESGR representative, the VETS or ESGR representative with the conflict will coordinate with the other representative to reach a mutually satisfactory method (reschedule date/time) to ensure at least one of the organizations can support the event.

2. Military Outreach – Through regular briefings to National Guard and Reserve units, DOL/VETS and ESGR representatives will continue efforts to inform and educate Service Members on their rights and responsibilities under USERRA and the conflict resolution processes. In the event a contingency arises for which significant numbers of

Guard and Reserve units and individuals are called to active duty, close cooperation between VETS and ESGR will be essential. DOL/VETS, after consultation with ESGR, will develop scripts for USERRA briefings to be delivered to Guard and Reserve members.

C. Technical Assistance/Information Requests -- Inquiries will normally be handled by the entity receiving the request. If one entity receives a very large volume of inquiries, coordination should be initiated to secure assistance from the other entity on a temporary basis. Inquiries received by ESGR volunteers that involve policy issues, have national implications, or are complex, will be referred to the VETS office in the State where the inquiry is received. VETS will immediately advise ESGR on any national or policy issues which impact actions of VETS representatives, and ESGR will defer to VETS on such issues.

D. Complaints

1. VETS staff will process all complaints received directly from protected persons. Upon examining the complaint, VETS State offices may recommend to the complainant that based on the facts presented, ESGR assistance might be able to resolve the complaint informally without the need for an investigation. VETS State offices will refer inquiries that involve policy or have national implications to the VETS National office. Upon receipt of a request for assistance, ESGR staff and volunteers will immediately attempt to resolve the problem in accordance with paragraph 3 below. In all cases, every effort must be made to ensure the protected person receives all entitlements accorded by USERRA. In a situation in which there is any question as to the USERRA issue involved or the entitlements of the person seeking assistance, the ESGR representative is encouraged to confer with a VETS representative to determine the USERRA issues/entitlements. However, the ESGR representative may not disclose names of the parties involved or dispute resolution communications to the VETS representative, except as expressly authorized by ESGR policy and the ADRA at section 574 of title 5, United States Code (5 U.S.C. § 574).

2. In those instances in which a complaint is received by VETS, record keeping will be in accordance with VETS established agency procedures. Where an inquiry regarding an unresolved dispute is received by ESGR staff or volunteers, a record of the inquiry will be kept in accordance with ESGR established procedures. Dispute resolution communications between the parties during the informal mediation shall be protected in accordance with the ADRA at section 574 of title 5, United States Code (5 U.S.C. § 574).

3. ESGR staff and volunteers who receive an inquiry or complaint from a Guard or Reserve service member regarding an unresolved USERRA dispute will notify the complainant that he or she may file the complaint immediately with VETS. If the complainant requests ESGR to intervene notwithstanding, ESGR will attempt expeditious resolution through informal mediation between the employer and military member. Dispute resolution communications made by parties during an informal mediation conducted by an ESGR representative shall be protected as required by the ADRA. ESGR and VETS will maintain a high level of cooperative effort in the complaint process to the extent allowed by applicable law. Recognizing the respective roles, duties and restrictions imposed by law on the two organizations differ in certain respects, the two organizations

will share appropriate information to the extent allowed by law so they can best facilitate the protection of employment and reemployment rights of National Guard and Reserve members and military veterans.

a. If a case involves loss of wages (e.g., termination, demotion, layoff) and is not resolved within seven (7) calendar days of assignment, the Ombudsman will remind the military member of the right to file a formal complaint with VETS or seek private counsel. If the military member wishes to continue to work with the Ombudsman who is making progress toward resolution of the dispute, the Ombudsman will continue to work the case to a maximum of 14 calendar days. If unable to resolve within 14 calendar days, the case will be closed and all parties will be notified of available options, including the right to file a formal USERRA claim. Throughout the time period, the Ombudsman will keep the ESGR National Ombudsman staff apprised on the status of the case.

b. If a case does <u>not</u> involve loss of wages and is not resolved within 14 calendar days of assignment, the Ombudsman will remind the military member of the right to file a formal complaint with VETS or seeks private counsel. If the military member wishes to continue to work with the Ombudsman who is making progress toward resolution of the dispute, the Ombudsman will continue to work the case to a maximum of 30 calendar days. If unable to resolve within 30 calendar days, the case will be closed and all parties will be notified of available options, including the right to file a formal USERRA claim. Throughout the time period, the Ombudsman will keep the ESGR Ombudsman staff apprised on the status of the case.

c. Notwithstanding this guidance, if it appears that resolution is likely, the ESGR representative should contact the local VETS State office at the seven or fourteen day point to discuss the case status and next steps (i.e., whether ESGR efforts should be continued), while protecting the names of the parties involved, in accordance with the ADRA at section 574 of title 5, United States Code (5 U.S.C. § 574). On the other hand, where it becomes clear prior to the seven or fourteen day point that ESGR will be unable to resolve the dispute, to the claimant will be advised of available options, including the right to file a formal USERRA claim with VETS.

4. ESGR representatives will not advise National Guard and Reserve members that they are not entitled to USERRA protection. Only VETS representatives may inform a military member that he/she is not entitled to USERRA protections.

SECTION V
DURATION OF AGREEMENT, AMENDMENTS AND MODIFICATIONS, DISPUTE RESOLUTION

This agreement will become effective when signed by both parties and supersedes any and all proceeding MOUs on this subject between these parties. **The agreement will expire after three years and may be renewed for subsequent three-year periods. Annual** review of this MOU will be conducted by ESGR and VETS. Changes to this MOU shall be in writing and approved by the signatories below or their successors as an attachment to this agreement.

Either party may terminate this agreement by providing sixty (60) days written notice to the other party.

In the event of any dispute between the parties that cannot be resolved by the points of contact for VETS and ESGR, the dispute shall be referred to Deputy Assistant Secretary for Veterans' Employment and Training Service and Executive Director, National Committee for Employer Support of the Guard and Reserve.

Raymond M. Jefferson

Raymond M. Jefferson
Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor

11/2/2010
Date

Dennis M. McCarthy
Assistant Secretary of Defense for Reserve Affairs

11/2/2010
Date