



**DEFENSE PERSONNEL AND FAMILY SUPPORT CENTER
DEFENSE HUMAN RESOURCES ACTIVITY
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ALEXANDRIA, VA 22350-4000**

September 23, 2020

OPERATING INSTRUCTION

SUBJECT: Employer Support of the Guard and Reserve (ESGR) Operating Instruction 1250.32, Ombudsman Services Program

- References:
- (a) DoD, "OSD Records and Information Management Program," May 3, 2013
 - (b) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
 - (c) DoD Instruction 1100.21, "Voluntary Services in the Department of Defense" March 11, 2002; as amended
 - (d) DoD Instruction 1205.12, "Civilian Employment and Reemployment Rights for Service Members, Former Service Members, and Applicants of the Uniformed Services," February 24, 2016, as amended
 - (e) DoD Instruction 1205.22, "Employer Support of the Guard and Reserve (ESGR)," February 6, 2017
 - (f) DoD Instruction 5145.05, "Alternative Dispute Resolution (ADR) and Conflict Management," May 27, 2016
 - (g) DoD Instruction 8500.01, "Cybersecurity," March 14, 2014
 - (h) DoD Administrative Instruction (AI) 15, "OSD Records and Information Management Program" April 19, 2017
 - (i) DoD Directive 5405.2, "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses," July 23, 1985
 - (j) HQ ESGR Operating Instruction 1250.05, "Employer Support of the Guard and Reserve (ESGR) Subcommittee Management," April 24, 2020
 - (k) HQ ESGR Operating Instruction 1250.10, "Volunteer Management Program," May 18, 2020
 - (l) Memorandum of Understanding between Acting Assistant Secretary of Labor, Veterans' Employment and Training Service, U.S. Department of Labor and Deputy Assistant Secretary of Defense for Reserve Integration, U.S. Department of Defense, September 30, 2019
 - (m) United States Code, Title 5, Section 552a
 - (n) United States Code, Title 5, Sections 571-584
 - (o) United States Code, Title 10, Section 1588
 - (p) United States Code, Title 38, Chapter 43
 - (q) United States Code of Federal Regulations, Title 5, Part 353
 - (r) United States Code of Federal Regulations, Title 20, Part 1002
 - (s) United States Code of Federal Regulations, Title 32, Part 97

1. PURPOSE

This issuance, in accordance with DoD Instruction 1205.12, DoD Instruction 1250.22, and the Memorandum of Understanding between Acting Assistant Secretary of Labor, Veterans' Employment and Training Service, U.S. Department of Labor and Deputy Assistant

Secretary of Defense with the Employer Support of the Guard and Reserve (ESGR) Ombudsman Services (OS) Program and its national volunteers.

1.1. ESGR ombudsmen inquiry and case management procedures.

1.2. Qualification requirements for ESGR ombudsmen volunteers.

1.3. ESGR customer service center (CSC) operations.

2. APPLICABILITY

This issuance applies to HQ ESGR OS, the CSC, and ESGR state committees (SCs).

3. INFORMATION COLLECTION

3.1. In accordance with DoD, OSD Records and Information Management Program and Inquiry and case management records, referred to in file number 202-54 of Office of the Secretary of Defense Deposition Schedule Series 200 has been assigned report control symbol DAA-GRS-2017-0003 in accordance with the procedures in Volume 1 of DoD Manual 8910.01.

3.2. In accordance with DoD Administrative Instruction (AI) 15, "OSD Records and Information Management Program," section 202-54, Alternative Dispute Resolution (ADR) Files - Case, files regarding ESGR Uniformed Services Employment and Reemployment Rights Act (USERRA) cases are temporary, and must be destroyed or deleted 7 years after the case is closed

4. DEFINITIONS

4.1. 2-Calendar Day Rule: Ombudsmen must make initial contact with the Service member within 2 calendar days of a case being opened by a Service member and annotate that contact in the Inquiry and Case Management System (ICMS).

4.2. 7-Calendar Day Rule: If a case involves loss of wages (e.g., termination, failure to reemploy, demotion, and layoff), mediate and close the case within 7 calendar days, with case-by-case extensions of up to 14 calendar days when authorized by the national case manager (NCM).

4.3. 14-Calendar Day Rule: If a case does not involve loss of wages, mediate and close the case within 14 calendar days, with a case-by-case extension of up to 30 calendar days when authorized by the NCM.

- 4.4. Alternate Dispute Resolution (ADR): Any procedure that is used as an alternative to litigation or formal administrative adjudicatory proceedings to resolve issues in controversy, including, but not limited to, facilitation, conciliation, partnering, mediation, fact-finding, early neutral evaluation, mini-trials, arbitration, and the use of ombudsman or any combination thereof.
- 4.5. Case Administratively Closed: Includes various other reasons for case closure such as the Service member obtaining legal counsel, filing a case with DOL, or withdrawing the case, the ombudsman indicating the case appears not to be USERRA based, or the ombudsman is unable to contact either relevant party after 4 business days despite multiple attempts, etc.
- 4.6. Case Resolved: An agreement has been reached between the parties.
- 4.7. Case Resolution, Not Resolved: Includes cases where mediation efforts are initiated with both parties, but an agreement has not or cannot be reached between the two parties.
- 4.8. Case Status; Assigned: When an ESGR member is assigned to either route or work the case as an ombudsman.
- 4.9. Case Status, Closed: When mediation is stopped due to the case being resolved, administratively closed, or when there is no resolution.
- 4.10. Dispute Resolution Communication: Any oral, written, or electronic communication prepared for the purposes of dispute resolution, including any memoranda, notes or work product of the neutral, party or nonparty participants.
- 4.11. Mediation: Process of discussing USERRA-related issues and concerns between employers and Service members to reach a resolution that does not involve DOL's formal investigative process or court proceedings.
- 4.12. Neutral: An ESGR ombudsman who provides factual information related to USERRA to assist parties in reaching an agreement. A neutral cannot have official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed to all parties and all parties agree that the neutral may serve.
- 4.13. ESGR ombudsman: The ESGR ombudsman is an independent, impartial resource that provides Service members and their civilian employer USERRA related informal and confidential dispute resolution. This is also referred to as informal mediation.

- 4.14. Privacy Act Information: Information contained in a system of records and is retrievable by an identifier unique to an individual. This includes, but is not limited to, personally identifiable information, which is information about an individual that identifies, relates to, is unique to, or describes him or her, such as social security number, age, military rank, civilian grade, marital status, race, salary, address, phone numbers, etc.
- 4.15. Reserve Component (RC): As defined in Section 10101 of Title 10, U.S.C.
- 4.16. Service in the Uniformed Services: As defined in Chapter 43 of Title 38, U.S.C.
- 4.17. Service Member: Any uniformed Service member of the Active and Reserve Components of the Army, Marine Corps, Navy, Air Force, Space Force, Army National Guard, Air National Guard, and Coast Guard.
- 4.18. Uniformed Services: As defined in 10 U.S. Code § 1072.
- 4.19. Uniformed Services Employment and Reemployment Rights Act (USERRA) Case: Also referred to as a “case.” A case is created when an ESGR ombudsman/mediator is requested by a Service member to assist in resolving a civilian employer workplace dispute related to the Service member’s military obligations and when a Service member requests an ESGR ombudsman to make employer contact.

5. ACRONYMS

ADA	Americans with Disabilities Act
ADR	Alternate Dispute Resolution
ADRA	Administrative Dispute Resolution Act
AOD	Assistant Ombudsman Director
CFR	Code of Federal Regulations
CSC	Customer Service Center
DHRA	Defense Human Resource Activity
DoDI	DoD Instruction
DOL	Department of Labor
DOL/VETS	Department of Labor/Veterans’ Employment and Training Service
ESGR	Employer Support of the Guard and Reserve
FOIA	Freedom of Information Act

HQ	Headquarters
ICMS	Inquiry and Case Management System
MMS	Member Management System
NCM	National Case Manager
OD	Ombudsman Director
OS	Ombudsman Services
OGC	Office of General Counsel
OSC	Office of Special Counsel
POC	point of contact
PTSD	Post-Traumatic Stress Disorder
RC	Reserve Component
SC	State Committee
U.S.C.	United States Code
USERRA	Uniformed Services Employment and Reemployment Rights Act

6. POLICY

- 6.1. ESGR will promote, through ESGR’s military and employer outreach, public and private employer understanding of the RCs and USERRA to gain employer support for members of the National Guard and Reserve.
- 6.2. The ESGR OS Program provides pertinent, factual information to employers and Service members to help resolve employment disputes through informal neutral mediation. Mediation enables all parties to discuss the problems, consider potential solutions, and reach a mutually agreeable resolution consistent with the requirements of USERRA.
 - 6.2.1. Ombudsman activities will comply with this instruction, Sections 571-584 of Title 5, United States Code (U.S.C.), and DoD Instruction 5145.05.

7. RESPONSIBILITIES

7.1. Executive Director, ESGR will:

- 7.1.1. Exercise authority, direction, and control over the ESGR OS Program.
- 7.1.2. Promote the maintenance of good employer relations by employees serving in the National Guard and Reserve.
- 7.1.3. Encourage voluntary employer support for National Guard and Reserve employees above and beyond USERRA requirements.
- 7.1.4. Answer inquiries from Congress, the Government Accountability Office (GAO), DOL, OSD, Office of Special Counsel (OSC), and other internal and external agencies on matters related to USERRA and ESGR programs.
- 7.1.5. Ensure that an ombudsman is available when employment disputes related to military service arise between Service members and their civilian employers.
- 7.1.6. Ensure ESGR ombudsman perform their work in accordance with DoD policy and Section 1588 of Title 10, U.S.C.

7.2. Chief, OS and Assistant Chief, OS will:

- 7.2.1. Manage the HQ ESGR OS Program.
- 7.2.2. Coordinate with ESGR's Volunteer Support Directorate to operate a training program to orient new ombudsmen and maintain qualified ombudsmen to effectively provide assistance to Service members and employers.
- 7.2.3. Monitor ombudsman qualification process as defined in Section 8 of this instruction.
- 7.2.4. Notify Ombudsman Directors (ODs), Assistant Ombudsman Directors (AODs), and ESGR State Chairs, when appropriate, about case management and ombudsman performance.
- 7.2.5. Not participate in any case in which they have an official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interests are fully disclosed in writing to all parties and all parties agree to continued participation.

- 7.2.6. Maintain the confidentiality of any dispute resolution communications in accordance with this instruction and Title 5, U.S.C.
 - 7.2.7. Instruct ESGR ombudsmen not to provide legal opinions.
 - 7.2.8. Assist the ED in answering high-level inquiries including correspondence and inquiries from Congress, GAO, DOL, OSD, OSC, and other external agencies on matters related to USERRA and ESGR OS Programs.
 - 7.2.9. Facilitate the Ombudsman Subcommittee activities in accordance with ESGR Operating Instruction 1250.05.
 - 7.2.10. Manage all operational functions of the OS Program.
 - 7.2.11. Monitor feedback received through the DoD's Interactive Customer Evaluation survey and provide recommendations to improve the OS Program.
 - 7.2.12. Monitor the operation and maintenance of the Inquiry and Case Management System (ICMS). Review and approve change requests to support system operation. Report system issues to ESGR information technology to ensure system operates as required.
 - 7.2.13. Consolidate and submit inputs for periodic OS Program updates.
 - 7.2.14. Maintain updated contact information for DoD points of contact for Service members and employer assistance on the ESGR website under the "ESGR Military Support Requirement" page.
- 7.3. Chief, CSC will:
- 7.3.1. Ensure CSC personnel and NCMs are trained to answer USERRA related calls and record required information in the ICMS.
 - 7.3.2. Provide support for NCMs to resolve disputes between employers and Service members, when appropriate.
 - 7.3.3. Ensure the CSC is appropriately staffed to support designated hours of operation.
 - 7.3.4. Ensure NCMs perform the duties assigned in this instruction.

- 7.3.5. Maintain the confidentiality of any dispute resolution communications in accordance with this instruction and Title 5, U.S.C.
- 7.4. NCMs will:
 - 7.4.1. Be a member of the ESGR CSC. HQ ESGR staff may be assigned as NCMs, as required.
 - 7.4.2. Support state ODs, AODs, and ombudsmen in their assigned region. Assist ombudsmen in resolving cases, when appropriate.
 - 7.4.3. Check the ICMS daily to:
 - 7.4.3.1. Track cases
 - 7.4.3.2. Ensure an ESGR ombudsman contacted the Service members within 2 calendar days of case opening. If the ICMS does not reflect that contact has been made within 2 calendar days, the NCM will contact the assigned ombudsman, the OD, or AOD to verify whether contact has been established. The Service member should only be contacted as a last resort to verify whether contact has been established.
 - 7.4.3.3. Ensure that case status deadlines are met,
 - 7.4.3.4. Coordinate case assignment or reassignment, as appropriate.
- 7.5. Conduct quality assurance checks of ICMS data and ombudsman processes to support ongoing training and process improvement. Report all ICMS note input discrepancies to the Chief, CSC.
- 7.6. Generate weekly USERRA case reports and send to state chairs, ODs, AODs, Chief OS, Assistant Chief OS, and Chief CSC.
- 7.7. Mediate cases and provide assistance to resolve conflicts between employers and Service members.
 - 7.7.1. Not participate in any case in which the NCM has an official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interests are fully disclosed in writing to all parties and all parties agree to such participation.

- 7.7.2. Maintain the confidentiality of any dispute resolution communications in accordance with this instruction and Title 5, U.S.C.
 - 7.7.3. Communicate with Federal, state, territory, district, and local officials as appropriate.
 - 7.7.4. Provide liaison services to ODs, AODs, ombudsmen, and other full-time ESGR support staff on all USERRA issues.
 - 7.7.5. Educate employers and employees on USERRA and refer them to additional resources, as necessary.
 - 7.7.6. Monitor ombudsman compliance with ESGR policies and procedures.
 - 7.7.7. Recognize OS top performers and identify those requiring improvement to the SC OD and Chief, CSC.
 - 7.7.8. Prepare quarterly state status reports for SC OD and Chief, CSC.
 - 7.7.9. Receive and process telephone calls, e-mails, and web-submitted requests for USERRA information in the CSC.
 - 7.7.10. Refer non-USERRA queries to the appropriate staff member or agency.
 - 7.7.11. Enter data initiated by a Service member request for mediation into the ICMS and assign to the designated OD, AOD or NCM.
 - 7.7.12. Assist in the coordination and preparation for, and participate in, the OS HQ-level hosted training.
- 7.8. SC chair will:
- 7.8.1. Monitor the overall performance of the SC OS Program.
 - 7.8.2. Appoint and maintain an OD and AOD.
 - 7.8.3. Review and approve OD ombudsman nominations.
 - 7.8.4. Submit nominations for the annual ombudsman awards in accordance with ESGR Instruction 1250.10.

- 7.8.5. Submit request to Chief, OS for SC to mediate termination or refer to Federal cases.
- 7.8.6. Submit request for program changes to HQ ESGR ED, SC Chair, ombudsman subcommittee, Chief, OS and/or the Assistant Chief, OS.
- 7.9. SC OD will:
 - 7.9.1. Be a qualified ombudsman as defined in Section 8.
 - 7.9.2. Manage and oversee the SC OS Program.
 - 7.9.3. Nominate new ombudsmen to the SC chair.
 - 7.9.4. Assign mentors to new SC ombudsmen.
 - 7.9.5. Conduct a semiannual review of ombudsmen assigned to the SC and submit a report no later than May 15 and October 15 of each year to the Chief, OS. The report will provide:
 - 7.9.5.1. A list of active ombudsman as reflected in ICMS.
 - 7.9.5.2. A list of individuals who should have ICMS access removed.
 - 7.9.5.3. A prioritized list of individuals to attend the Ombudsman Refresher Course.
 - 7.9.6. Ensure SC ombudsmen contact information is correct in the MMS and ICMS.
 - 7.9.7. Ensure SC ombudsmen update ICMS and assist ombudsmen in updating ICMS, if necessary.
 - 7.9.8. When appropriate, collaborate with the SC chair to remove an ombudsman who is no longer available to serve as an ombudsman.
 - 7.9.9. Will designate and maintain at least one AOD
 - 7.9.10. Assist ombudsmen to resolve conflicts between employers and Service members, when appropriate.

- 7.9.11. Not participate in any case in which the OD has an official, financial, or personal conflict of interest with respect to the issues in controversy unless such interests are fully disclosed in writing to all parties and all parties agree to such participation.
 - 7.9.12. Maintain the confidentiality of any dispute resolution communications in accordance with this instruction and Title 5, U.S.C.
 - 7.9.13. Provide assistance to ESGR employer and military outreach directors, as appropriate.
 - 7.9.14. Ensure all cases are created and worked through the ICMS.
 - 7.9.15. Immediately upon receipt, forward any subpoenas, Freedom of Information Act (FOIA) requests, Congressional inquiries, or requests for case information or press statements to HQ ESGR for processing. No response or further action to these types of requests must not be made without instruction from HQ ESGR and/or the HQ ESGR's office of general counsel. Procedures for handling Request for Sensitive Case Information can be found in Appendix 1.
 - 7.9.16. Provide annual SC ombudsman training to maintain proficiency in accordance with Section 6 of this instruction.
 - 7.9.17. Instruct SC ombudsmen that they will not provide legal opinions and are to remain and act as a neutral party.
- 7.10. AOD will:
- 7.10.1. Perform, manage, and support the duties of the OD when absent, or jointly as necessary.
 - 7.10.2. Assist the SC and OD with the OS Program.
 - 7.10.3. Be a qualified ombudsman.
 - 7.10.4. Recommend new ombudsmen to the OD and SC chair when appropriate.
- 7.11. Ombudsmen will:
- 7.11.1. Promote awareness of USERRA and approaches to avoid employment conflict between Service members and their employers.

- 7.11.2. Mediate conflicts between employers and Service member employees to gain compliance with USERRA.
- 7.11.3. Clearly identify themselves as working on behalf of ESGR and the DoD and not use their personal position for private gain.
- 7.11.4. Refrain from using company letterhead or signing any communications to the parties that may give the appearance that they are working on behalf of any organization other than DoD and ESGR.
- 7.11.5. If the ombudsman is an attorney, ensure all parties understand he or she is not acting as an attorney while serving as an ombudsman for DoD.
- 7.11.6. Not endorse or refer any Service member to a specific law firm, or lawyer for litigation. Any ombudsman having found to have violated this policy is subject to immediate removal by HQ ESGR in consultation with the state chair and OD.
- 7.11.7. Notify the OD when there is a reason to reassign the case to another ombudsman.
- 7.11.8. Not participate in any case in which the ombudsman has an official, financial, or personal conflict of interest with respect to the issues in controversy unless such interests are fully disclosed in writing to all parties and all parties agree to such participation.
- 7.11.9. Will not send copies of court opinions or decisions involving USERRA to employers or Service members.
- 7.11.10. Update ICMS after making contact with parties, and subsequent interactions, until resolution or a non-resolution determination is achieved. ICMS must be updated every 3 calendar days until the case is complete.
- 7.11.11. Ensure all case notes are entered in the ICMS following the examples in Appendix 2 of this instruction.
- 7.11.12. Upon closure of a USERRA case, ensure ICMS is updated and all locally produced electronic records and hard copy case notes are destroyed or deleted.
- 7.11.13. Maintain the confidentiality of dispute resolution communications, or affected parties, in accordance with this instruction and Title 5, U.S.C.

7.11.14. Ombudsman will encourage Service members to open a case online, via the ESGR website at <https://esgr.mil/USERRA/USERRA-Contact/USERRA-Support-Request/t/1> or refer the Service member to call HQ ESGR at 800-336-4590, option 1.

8. OMBUDSMAN CRITERIA AND QUALIFICATION STANDARDS

- 8.1. ESGR ombudsman play a crucial role in resolving Service member and civilian employer workplace disputes related to military obligations. It is highly recommended that selected ombudsmen serve, at a minimum, 6 months as an ESGR volunteer.
- 8.2. To serve as an ombudsman, an ESGR volunteer must meet the following requirements:
 - 8.2.1. Be a registered ESGR volunteer with all administrative requirements completed in accordance with Section 1588 of Title 10, U.S.C., DoD Instruction 1100.21 and ESGR Instruction 1250.10, with a completed DD Form 2793, and post completed requirements to the individual's record in MMS.
 - 8.2.2. Completed New Volunteer Training in accordance with HQ ESGR Instruction 1250.10, and record completion in MMS.
 - 8.2.3. Complete the DOL/VETS sponsored USERRA 101 and 102 web-based courses and ensure completion of training is updated in MMS.
 - 8.2.4. In accordance with DoD Instruction 8500.01, Cybersecurity, complete Privacy Act and Cybersecurity (previously known as Information Assurance) training and record in MMS as required by DoD 5400.11-R.
 - 8.2.5. Complete ESGR Basic Ombudsman Course.
 - 8.2.6. Be willing and able to perform as a neutral party in mediation.
 - 8.2.7. Be willing and able to stay current in all aspects of USERRA.
 - 8.2.8. Maintain an ongoing relationship with the local DOL/VETS representative.
 - 8.2.9. Have sufficient knowledge and skill to be able to use computers and be familiar with common computer programs (i.e. Microsoft Office).
 - 8.2.10. Have access to a telephone, the internet, and electronic mail. An ESGR email account is required. Use of company or business email is not authorized.

- 8.2.11. Accept case assignments on short notice by electronic mail or telephone. If unable to handle the case, the case must be immediately declined.
- 8.2.12. Comply with all ESGR directives, applicable DoD policies, and Federal laws associated with privacy, neutrality, and dispute resolution.
- 8.2.13. Use ICMS to document case progress.
- 8.3. In order to maintain qualifications, an ombudsman must complete at least one of the following criteria annually:
 - 8.3.1. Attend annual refresher training at the State or ESGR HQ level and record training in MMS.
 - 8.3.2. Work and complete at least one case in accordance with HQ ESGR OS Program procedures and timelines; (Exceptions to the one case per fiscal year standard may be granted by the HQ ESGR Chief, OS for ombudsmen in SCs that have very few cases).
 - 8.3.3. Complete both USERRA 101 and USERRA 102 training, and record completion in MMS.
 - 8.3.4. Complete Annual Volunteer Privacy Act and Cybersecurity training, and record completion in MMS.
 - 8.3.5. If the above qualifications are not met, the volunteer will be removed from ICMS access and placed on “inactive status.” The NCM will work with the OD to ensure the roster of active ombudsmen in MMS and ICMS for each State are current and the same. The NCM will notify ODs on a quarterly basis of those that became “inactive.”
- 8.4. After a break in tenure, a volunteer must meet the following requirements to be reinstated as a qualified active ombudsman:
 - 8.4.1. If inactive for less than a year, the volunteer may become active at the state OD’s discretion. The OD must notify the NCM of reinstatement and have the SC support staff submit a system authorization access request to the ESGR information technology helpdesk to authorize access to ICMS.

- 8.4.2. If inactive for 1 to 3 years, the volunteer must:
- 8.4.3. Re-take DOL's USERRA 101 and 102, or equivalents.
- 8.4.4. Attend ombudsman training either at the SC or ESGR HQ level.
- 8.4.5. Have an experienced ombudsman assigned as a mentor.
- 8.4.6. Ensure these requirements are recorded in MMS. The OD must submit a recommendation to re-qualify the volunteer (with evidence that these requirements have been met) to the HQ ESGR Chief, OS with the state chair endorsement.
- 8.4.7. If inactive for more than 3 years, the volunteer is treated as a new ombudsman and must retake the Basic Ombudsman Course.
- 8.4.8. The ESGR Chief, OS may revoke the qualification of an ombudsman who does not comply with all established instructions and procedures. If an ombudsman is not following ESGR guidance, complying with ADRA or other issues arise; the state OD/AOD or NCM will consult with the HQ ESGR Chief, OS to determine an appropriate course of action.

9. PROCEDURES FOR REQUESTING USERRA ASSISTANCE.

- 9.1. Service members may request USERRA assistance from ESGR regarding USERRA concerns or questions or civilian employment conflicts related to their uniformed service obligations.
- 9.2. Service members may request ESGR assistance through the following methods:
 - 9.2.1. Contact the CSC at (800) 336-4590, option 1.
 - 9.2.2. Submit the USERRA assistance request via the ESGR website at <https://www.esgr.mil>.
- 9.3. Service members may also request USERRA support from other agencies by:
 - 9.3.1. Filing a formal claim with DOL/VETS by completing DOL Form 1010, which can be found at the DOL/VETS website <https://www.DOL.gov/vets>. Choosing to file a formal claim with the DOL/VETS will result in termination of mediation efforts by ESGR.
 - 9.3.2. Hiring a civilian attorney; however, this terminates mediation efforts by ESGR.
 - 9.3.3. If the Service member is a Federal employee, filing a claim with the Merit Systems Protection Board and/or DOL/VETS; however, doing so will result in termination of mediation efforts by ESGR.
 - 9.3.4. Seeking assistance through a Service member's employer, human resources department, union, or advocacy group.

10. PROCESSING REQUESTS FOR USERRA INFORMATION

- 10.1. Requests for USERRA information may arrive by telephone, e-mails, website submissions, outreach activities, briefings, and other interactions where employers, Service members, family members, or others ask for USERRA guidance, clarification, or assistance.
 - 10.1.1. These inquiries should receive an immediate response or be referred to the CSC.
 - 10.1.2. The CSC records all inquiries into the ICMS.
 - 10.1.3. Inquiries initially handled by the SC or other volunteers will be reported via an EventPLUS after action report for each event. ESGR ombudsmen may enter SC

inquiries directly into ICMS instead of a manually consolidated report in EventPLUS.

- 10.1.4. Ombudsmen may use the ICMS USERRA Inquiry Form located at Appendix 3, or equivalent, located in ICMS USERRA Consent Letter at Appendix 4 of this instruction to obtain and record a Service member's information when an inquiry is received.
- 10.2. When SC staff or volunteers receive a general request for USERRA information or explanation, they may answer the requests by giving information from the "frequently asked questions" posted on ESGR's public website at <https://www.esgr.mil>, the ESGR Employer Resource Guide, or applicable Federal statutes and regulations, including USERRA.
- 10.3. When SC staff or volunteers receive a complex inquiry, the requester must be referred to the CSC for response.
- 10.4. When a Service member requests USERRA assistance, they must open a case by calling the CSC at 1-800-336-4590, option 1, or completing a USERRA support request form at <https://www.esgr.mil>.
- 10.5. Treat an employer request for an ESGR representative to contact them about a general USERRA policy or procedure as a request for information. When an employer requests assistance, refer the employer to the CSC at 1-800-336-4590 option 1 or online web submission at <https://www.esgr.mil>.

11. PROCEDURES FOR MEDIATING USERRA CASES

- 11.1. ESGR USERRA cases may only be mediated by a qualified ESGR ombudsman and only upon the Service member's request.
- 11.2. A Service member must request that an ESGR USERRA case be opened to initiate mediation services.
- 11.3. The CSC agent will:
 - 11.3.1. Ensure that the Privacy Act/Confidentiality Statements are clearly communicated to the Service member.
 - 11.3.2. Explain the ESGR mediation process.
 - 11.3.3. Ensure the Service member is aware that he/she may, at any time, file a case with DOL/VETS for a more formal investigation, or hire a private attorney.

- 11.3.4. Not initiate a case if the Service member indicates a case is filed with DOL/VETS or that the Service member has hired a private attorney. Record this interaction as an inquiry into ICMS.
- 11.3.5. Record contact information and case summary in ICMS providing enough detail to assist with case assignment and preparation for the ombudsman initial contact with the Service member.
- 11.3.6. Assign the case to the appropriate SC OD, AOD, or NCM based on employer's location or type of employer.
- 11.4. The OD or AOD will assign/reassign cases to a qualified ombudsman based on availability, workload, and characteristics of the case. ODs or AODs will rotate assignment of cases to ensure ombudsmen share the case load and maintain proficiency.
- 11.5. Once the case is assigned, the responsible ombudsman will make contact within 2 calendar days of case origination and update ICMS accordingly.
 - 11.5.1. The NCM will contact the assigned ombudsman to verify contact has been made if ICMS is not updated by the third calendar day of assignment. The NCM will attempt to contact the OD/AOD or Service member to verify contact has been made if unable to reach the assigned ombudsman. The NCM may assume control of the case if the Service member has not been contacted within 4 calendar days.
 - 11.5.2. If the Service member and/or employer do not return the ombudsman's or NCM calls after 4 calendar days (96 hours) of the last contact made, administratively close the case.
 - 11.5.3. Upon initial contact with the involved parties the ombudsman will inform them of his or her role as an ombudsman and the mediation process. Find sample introductions and Ombudsman Best Practices in Appendices 5, 6 and 7 of this instruction.
 - 11.5.4. Ombudsmen should not individually meet with the Service member or employer concerning a dispute due to safety concerns and perception of advocating for or representing one party over another.
 - 11.5.5. Ombudsman may determine that bringing the parties together in person or via telephone conference in a mediation session is necessary to resolve a dispute.

NCMs can assist in coordinating telephone conferences.

11.5.6. It is not uncommon for employers to get legal advice during the process of resolving a USERRA case. Ombudsman can communicate with an employer's attorney. The ombudsman must explain that ESGR's mediation efforts are confidential and related communications are protected as codified in Title 5, U.S.C.

11.5.7. Ombudsman may receive cases that involve Service members with disabilities, appearing to be suicidal and or difficult Service members or employers. When these situations are encountered see specific guidance below in the Appendices.

11.5.7.1. Guidance for mediating cases for Service members with disabilities is in Appendix 8

11.5.7.2. Guidance for working with Service members appearing to be suicidal is in Appendix 9

11.5.7.3. Guidance for working with difficult Service members and or employers is in Appendix 10.

11.6. In accordance with Title 5, U.S.C., an ombudsman or other neutral party shall not voluntarily disclose, through discovery, or compulsory process, any dispute resolution communication or any communication provided in confidence to any party or group, unless:

11.6.1. All parties to the dispute resolution proceeding, including the neutral party, consent in writing;

11.6.2. Directed to do so by Defense Human Resources Activity Office of General Counsel; or

11.6.3. A court order requesting such testimony or disclosure.

11.7. ESGR OS Timelines.

11.7.1. The intent of these timelines is to ensure that there is no delay by either the Service member or the employer to reach case resolution.

11.7.2. USERRA cases will be processed in accordance with the timelines defined in paragraphs 4.1 through 4.3 of this instruction.

- 11.7.3. Exceptions to the deadlines in paragraphs 4.1 and 4.3 may be granted after consultation with the OD/AOD and concurrence of the supporting NCM. The ombudsman must explain why the case needs to exceed the 7-day rule for termination/loss of job cases and 14-day rule for all other types of cases.
- 11.7.4. Upon concurrence of the OD/AOD, and approval of the NCM, loss of wage cases may be worked for a maximum of 14 calendar days.
- 11.7.5. All other types of cases may remain open for a maximum of 30 calendar days.
- 11.7.6. When an extension request is denied by the NCM, the servicing OD/AOD will close the case within 24 hours. If the OD/AOD does not close the cases, NCMs will close cases after contacting the Service member, assigned ombudsman, and Ombudsman Director with an explanation of why this action is being taken. The NCM will inform the Service member of their options to file a case with DOL VETS or hire a private attorney.
- 11.7.7. Cases will not be held open to await physical reemployment or action to satisfy the USERRA concern or case written correspondence. Close cases prior to established timelines when a resolution is reached.

11.8. USERRA Case Procedures and Case Notes.

- 11.8.1. Ombudsman will provide sufficient USERRA-related factual information to employers and Service members as a means to achieve an expeditious resolution of employment disputes. An ombudsman generally corresponds with one party at a time, normally telephonically, enabling them to discuss the issues, consider potential solutions, and reach a mutually agreeable resolution consistent with USERRA requirements.
- 11.8.2. Ombudsman will enter case notes, employer information, and Service member information in ICMS. This detail is required in the event that another ombudsman must assume the case. Appendix 4 of this instruction contains example case notes.
- 11.8.3. In the event that an employer requires a signed consent to release information about the case, the ombudsman may use a template, provided in Appendix 2 of this instruction. The signed letter should be placed on ESGR SC letterhead.
- 11.8.4. ICMS is the system of record for ESGR USERRA cases.

11.8.5. Ombudsmen will update all pertinent data and case notes in ICMS after each contact with a Service member, employer, or other individual contacted until resolution or non- resolution.

11.8.6. Case notes should be short and concise, containing enough detail that the OD, AOD, NCM, and ombudsmen can track the case status.

11.8.7. The resolution notes must be detailed enough to allow for follow-up on case resolution implementation and responding to court orders.

11.8.8. All documentation received from the relevant parties and local notes made by an ombudsman are Federal government records and are considered resolution communications in accordance with Title 5, U.S.C.

11.8.9. Ombudsmen will treat and protect faxes, postal mail, or e-mails received from any party as dispute resolution communications.

11.8.10. If faxes, postal mail, or e-mails are sent by an ombudsman to a party, the ombudsman may sign the document. If the ombudsman is an attorney, he/she should include a statement that explains his/her role to the DoD. Appendix 11 has a sample signature line for e-mails, faxes, and letters.

11.8.11. The ombudsman will not disclose the content of an e-mail when sent between an ombudsman and any party in accordance with Title 5, U.S.C.

11.9. Ombudsman who are required to disclose their profession (attorney, arbitrator, counselor, etc.) must also include a disclaimer that clearly states they are not working in that capacity.

11.10. An ombudsman must take appropriate measures to protect the computer records generated by his/her ombudsman work. Ideal measures include password protection of the computer and/or files containing case information, in addition to maintaining updated anti-virus software, and a firewall.

12. OMBUDSMAN ASSISTANCE

12.1. An ombudsman may seek assistance in resolving a case from a NCM, OD/AOD, or ombudsman subcommittee member. These individuals are considered neutral participants in accordance with Title 5, U.S.C.

12.2. Technical assistance may be obtained from a local DOL/VETS representative; however, the ombudsman will not disclose any information that would identify the parties in controversy.

12.3. When a case is mediated and closed, an ombudsman will:

12.3.1. Inform all parties that the Service member retains the right to file a claim with DOL/VETS or hire a private attorney. Provide the Service member the appropriate DOL/VETS contact information.

12.3.2. Update ICMS to reflect case closure summary guidance located in Appendix 4 of this instruction.

12.4. When discussing cases in training/ mentoring sessions, or other opportunities to share lessons learned, an ombudsman is prohibited from revealing the parties in the particular issue. Example of case discussion: “A few years ago I handled a case about a missed promotion opportunity for a city police officer (without identifying the city). The Service member was deployed and unable to take a test for promotion. The police department only offers the test every 18 months. Upon returning the employer wanted the Service member to wait until the next test in ten months. I was able to resolve the issue by providing the police chief a copy of 20 CFR Article 1002.193.”

13. EFFECTIVE DATE: Effective immediately. HQ ESGR will review this operating instruction on an annual basis.

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Brian S. Davis
Director

APPENDIX 1

Procedures for Handling Request for Sensitive Case Information

POLICY: This section details ESGR’s policy and procedures for handling requests for USERRA case information, such as subpoenas, summons from courts, FOIA requests, Privacy Act requests, news agency requests.

- Ombudsmen are volunteers pursuant to Section 1588 of Title 10, United States Code (authority to accept certain voluntary services) and are treated as Federal employees while acting within the scope of their services as an ombudsman regarding United States Code, Title 5, Section 552a, the United States Code, Title 5, Sections 571-584, DoD Directive 5405.2, “Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses, and Federal laws and regulations applicable to releasing information or testifying in litigation United States Code of Federal Regulations, Title 32, Part 97. ESGR volunteers must not respond to any litigation request or demand to produce, disclose, release, comment upon or testify concerning any ESGR case information without prior written approval of the DHRA Office of General Counsel (OGC). Do not provide notes or information on ESGR USERRA cases without the expressed approval of DHRA OGC or Department of Defense OGC attorneys.

Subpoena or Summons Procedures:

- Immediately notify (by phone or e-mail) HQ ESGR OS. Provide details as to when the subpoena or summons was received, which court or administrative body issued it, and provide the point of contact (POC) information (name/phone number/e-mail) of the appropriate person at the court in order for the Department of Defense legal advisor to make contact.
- If request is by phone or if immediate answer is demanded, you may respond that: In your role as an ESGR ombudsman you function as a Federal employee subject to the Federal laws and regulations. The DHRA OGC has advised that you may not appear in court to testify or produce any documents unless and until the DoD has been properly served with the subpoena and has authorized you to testify or produce documents; and you have forwarded the subpoena and/or summons to HQ ESGR and that a DoD attorney will contact them within 2 working days.’

Congressional Inquiry Procedures

- All congressional inquiries should be considered formal requests for information.

- Notify OD and/or state ESGR full-time staff. They, in turn, notify the HQ ESGR OS team by sending a copy of the request with the contact information for the agency or person submitting the request.
- HQ ESGR OS team will review the request and coordinate a response with the appropriate offices (Defense Human Resources Activity, OSD Legislative Affairs, etc.).

Other types of case information request procedures (attorneys, DOL investigators, parties involved in the mediation, FOIA, Privacy Act, news agencies, etc.):

- Notify OD and/or State ESGR full-time staff. They, in turn, notify the HQ ESGR OS team by sending a copy of the request with the contact information for the agency or person submitting the request.
- HQ ESGR OS team will review the request and coordinate a response with the HQ ESGR Director, OS.

APPENDIX 2

Sample Ombudsman Case Notes

Suggestions for ombudsman when updating ICMS with case progress:

- Service member contacted on (date). Updated employer contact information and summary of the issue. Service member gave permission to contact their employer.
- Employer contacted on (date). Supervisor referred me to the human resource department. Update employer contact information.
- Provided Employer and Service member applicable USERRA information via ESGR's website frequently asked questions and employer resources guide. Employer stated they will review and call back in days. If not called on (date), ombudsman will contact employer.
- Employer requested additional information. It has been provided. I will check back in 2 days and if no response in 2 days. I will close the case and provide the Service member his/her options to file a case with DOL/VETS or seek private counsel.
- Service member issues involve pay, medical benefits, and bonus. Employer has agreed to reinstate medical and pay. Employer is reviewing company policy on how bonuses are calculated. Anticipate determination for bonus issue by (date). (Close case as resolved because the employer said they are looking into the bonus issue. Do not wait for date of action, service member can open another case if employer does not meet obligation). Employer is cooperative and has agreed a mistake was made. However, employer, by company policy, Board of Directors is required to vote on certain personnel actions. Next Board of Directors meeting is scheduled for (date). Service member has been notified on the plan of action. Case is closed with tentative resolution. Service member will be given the options to file a case with DOL/VETS or seek legal counsel, if not satisfied with outcome. (Note: do not inject personal opinions in case notes, simply state the relevant facts.)
- If a Service member(s) is not satisfied with the resolution outcome and wants to take the USERRA complaint/allegation further, the ombudsman will provide the Service member with the options to file a complaint with DOL/VETS or obtain private legal counsel.

Administrative Notes:

- Other:
 - Appears not to be USERRA related
 - Service member withdraws

- Service member has attorney/legal counsel
- Service member currently has a USERRA case with DOL/DOJ/Merit Systems Protection Board (MSPB)/OSC/other agency in which ESGR mediation service is not appropriate.
- Administrative: No contact with employer: Unable to reach employer after four days of an ombudsman attempting contact.
- Administrative: No contact with Service member: Unable to reach Service member after four days of an ombudsman attempting contact.
- Administrative: Administrative error: Duplicate case. Note reason case was duplicated.
- Resolved: Parties reach an agreement: Resolved: Parties reached agreement: Employer will (state employer's plan of action). Service member will (state Service member's responsibilities). For example: Employer is restoring job with 3 weeks back-pay. Service member is expected to report to work on (date). Close case upon agreement being reached. Do not wait for implementation of the agreement.
- Not Resolved: An agreement has not been reached between the Service member and employer through mediation. Service member was provided options to file case with DOL/VETS or seek private counsel. Service member was also provided directions on how to file a DOL/VETS Form 1010 and local DOL/VETS POC information.

APPENDIX 3
Sample ICMS USERRA Inquiry Form

General Information

Entered by:	Created Date:
Requestor:	How inquiry was received:
How did you hear about ESGR:	Inquiry Type:

Inquirer Information

First Name:	Middle Name:	Last Name:
State:	Phone:	
Org Name/Company:	Email:	

Service Member Military Information

Branch:	Component:	Pay Grade:
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Responder Action

<input type="checkbox"/> Provide Contact info for DOL	<input type="checkbox"/> Provide Contact info for DOE	<input type="checkbox"/> 12055YV - Five (5) year limit/exemption
<input type="checkbox"/> 120SEEP - Key or Emergency Essential Personnel	<input type="checkbox"/> 1205TDF - Contact Mil Authority - Timing, frequency duration	<input type="checkbox"/> 1205VMS - How to contact service member/verify military status

Initial Comment

Comment:

APPENDIX 4
Sample Consent Letter

.. Employee's Consent for Employer to discuss USERRA Issues with ESGR Ombudsman

[Employee's Home Address]

[Date]

[Employer's Business Address]

Dear Sir/Madam:

I, _____, (full name of employee/Service member) hereby authorize _____ (company/name of employer) to furnish and discuss information related to an Employer Support of the Guard and Reserve (ESGR) Uniformed Services Employment Reemployment Rights Act (USERRA) case with _____ (name of ESGR Ombudsman). This authorization is in accordance with the Administrative Dispute Resolution Act of 1996 and the Federal Privacy Act of 1974.

The ESGR Ombudsman assigned to this case will not be serving as an advocate, attorney, or judge. The ESGR Ombudsman role is to provide USERRA information and assist the parties through voluntary, non-binding, informal mediation to resolve issues related to my service in the military and my civilian employment. The discussions are generally confidential and there are statutory and judicial exceptions to the facilitator's duty of confidentiality.

The results of ESGR's mediation do not override my rights to file a case with the U.S. Department of Labor Veteran's Employment Service (VETS) or to hire a private attorney.

Sincerely,

[Signature]

Note: Print on ESGR Letterhead

Appendix 5
Ombudsman Opening Statement to a Service Member

“I am an ombudsman appointed by Employer Support of the Guard and Reserve, a Department of Defense program, to serve as a neutral representative to assist in resolving a dispute related to military obligations. Before I assist in this matter, I need to advise you that you have the right to file your complaint directly with the Department of Labor’s Veterans’ Employment and Training Service, which can also provide you free assistance and conduct a formal investigation of your complaint. You can also hire a private attorney at any time. If you choose either of these options, I will close the case with the Department of Defense.”

“My communication with you is governed by Federal statute which generally provides confidentiality for our communications. As a neutral representative in this process, I am not here to judge or to decide who is right or who is wrong, just to facilitate communication between the parties and assist in resolving the dispute by providing information on how USERRA applies to the issues. After you discuss your issues and concerns with me, I will then speak with your employer and get back in touch with you. If there is something you say to me that you do not want me to discuss with your employer, please tell me. If you and your employer resolve the case, I will close the file at the Department of Defense.”

Appendix 6
Ombudsman Opening Statement to an Employer

“I am an ombudsman appointed by Employer Support of the Guard and Reserve, a component of the Department of Defense, to serve as a neutral mediator in an issue related to one of your employees. I am assigned cases to assist in resolving workplace disputes related to a Service member’s military obligations. I have been assigned the case of (Service member’s name). I have spoken with (Service member’s name) who has given me permission to speak with you. My role is to assist you and (Service member’s name) resolve this dispute/issue. My communication with you is governed by Federal statutes which generally provide confidentiality for our communications.”

“After you discuss your issues and concerns with me, I will speak again with (Service member’s name). If there is something you have said to me that you do not want me to discuss with (Service member’s name), please tell me. If you and (Service member’s name) resolve the case, I will close the file with the Department of Defense. If the case is not resolved, (Service member’s name) has the right to file a complaint with the Department of Labor or hire a private attorney.”

APPENDIX 7

Ombudsman Best Practices

Email: Setup an email account dedicated for ESGR duties. This will keep personal and business separate from mediation information. It reduces the chance of personnel within your company having access to confidential communications. It also reduces the chance that the parties would get the impression of a lawyer appearing to be representing either party. When a case is closed, it will be easier to find and delete related email history. Examples: JSmith.USERRA@yahoo.com, JSmith.ESGR@gmail.com, JSmith.USERRA1@comcast.net.

Initial Contact: Make the initial contact with the Service member and employer by phone. The Service member and employer do not know the name of the ombudsman assigned to the case until that first call. Email may be appropriate if voice message was left as a request for a return call. Follow up may be done with e-mail to confirm the phone discussion and any agreements made. Input notation of first contact into ICMS even if you did not actually speak to the Service member.

Employer Point of Contact: Find an employer point of contact. Look for a decision maker and someone who understands employment regulations at the employer place of employment. With larger employers, this might be a Human Resource Specialist. With smaller employers, it may be the owner.

E-mail transactions received and sent from a company's electronic systems are records that belong to that company and or agency. If you close a case and receive a subpoena before you deleted relevant e-mails, you cannot now delete those e-mails. They must be retained until the litigation concludes. Your employer's e-mail system may get entangled in discovery during legal investigations and litigation. Who knows what else an e-mail search may reveal and what can be discovered.

Avoid the following:

- Using the term "violation". ESGR does not make a formal determination as to whether or not the USERRA issue is actually a "violation." Stick to the use of the words in USERRA and Code of Federal Regulations to help the parties involved understand and make decisions.
- Sending case law, Reserve Officer Association opinion, or other information that may be interpreted as threatening. This type of information can be good for learning and understanding scenarios of how USERRA applies, but intimidating to employers. Ombudsman need to maintain a position of neutrality and stick to using sections directly from the law or the US Code of Federal Regulations.

Listening: Make a conscious effort to hear only the words that the other person is really saying. Reflect on what is said by paraphrasing. Respond with statements like "What I'm hearing you say is," or "Sounds like you are saying" to help with confirming your understanding of the discussion.

Cases Involving Federal Organizations: Refer to United States Code of Federal Regulations, Title 5, Part 353 (also known as “Office of Personnel Management, Restoration to Duty from Uniformed Service or Compensable Injury”) as your primary reference. The Office of Personnel Management (OPM) website military related fact sheet may have the information needed to resolve a case: [https://www.opm.gov/policy-data-oversight /pay-leave/leave-administration/fact-sheets/military-related-leave-issues](https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/military-related-leave-issues).

APPENDIX 8

Guidance for Mediating Cases for Service Members with Disabilities

Mediating disability cases can be a complex matter for the Service member. The employer may have sensitive concerns about the Service member's return to the job and the legal issues can be very complex. USERRA protects the reemployment rights of Service members returning to their civilian employment; even when returning with a service related or aggravated injury. As with any other service connected disability, post-traumatic stress disorder (PTSD) is protected by USERRA, and also by the Americans with Disabilities Act (ADA)

Helpful tips if you are assigned a case involving service related injuries or disabilities, including PTSD:

- Mediate a disability case like any other USERRA case. You serve as an informal neutral, assisting the Service member and employer in reaching an agreement to resolve a USERRA dispute.
- Understand the application of USERRA. USERRA requires an employer to make reasonable efforts to accommodate a Service member returning with a service related or aggravated disability in accordance with 20 CFR, Part 10.
- Help both parties understand their obligations. The employer should make reasonable efforts to assist the Service member with a service-connected disability in becoming qualified to perform the duties of the position. But after reasonable efforts by the employer, if the Service member cannot qualify for the appropriate reemployment position, the employer is not required to reemploy the Service member (See 20 CFR 1002.226). Although you may not provide legal counsel to either party, in your efforts to facilitate resolution, you may refer the parties to relevant provisions of USERRA in order for them to make their own decisions as to whether or not USERRA applies.
- ESGR ombudsmen are not trained to diagnose PTSD or any other medical condition. The medical (and legal) issues associated with disability cases - especially PTSD - are very complex. Your role is to act as a neutral representative, facilitating to resolve a dispute. That does not mean that you provide medical (or legal) advice to either party involved. As an ombudsman you are not functioning as a doctor or a lawyer – even if you are either one of those in your regular employment.
- Avoid making assumptions or diagnosing a medical condition. You should not attempt to evaluate what constitutes a disability or what, if any, accommodations are appropriate. If the employer has questions about proper accommodations direct him/her to contact the ADA Information Hotline at 1-800-514-0301 or the DOL, Job Accommodation Network at 1-800-526-7234.

- Respect the Service member's privacy. If the Service member does not disclose any medical issues, you should not ask for or assume this information, and you should continue to work the case as usual.
- Do not request any medical documentation. As the ombudsman, you do not need the Service member's medical records nor should you request them. If the Service member offers them to you, do not accept them. The Service member may provide them to his/her employer if he/she wishes to do so, but you must not accept medical records or possess them.
- Adhere to case closure guidelines. If mediation appears to be working toward a resolution, and the 7 or 14-day deadline is approaching, inform the OD and NCM of the progress and request a time extension. Don't ask for an extension if there appears to be no progress towards resolving the case.
- Provide the Service member with his/her options. As with all USERRA cases, you should close cases that cannot be resolved in a timely manner and give the Service member his/her options to seek additional assistance from the DOL/VETS 1-866-487-2365 or seek private counsel.

APPENDIX 9

Guidance Working with Service Members Appearing to be Suicidal

In your work as an ESGR ombudsman, you may encounter Service members experiencing severe anxiety or stress. Although you are a neutral party, looking out for the well-being of a Service member who appears to be showing high levels of stress is not “taking sides” in the dispute and may be vitally important in recognizing warning signs that could prevent suicide or other traumatic events. If you suspect a Service member is in imminent danger or poses a threat to themselves or others, you should seek immediate assistance by doing the following:

- Do not leave this person alone/keep him or her on the phone.
- Call the local authorities, if possible, immediately via 911.
- Call the Veterans and Military Crisis Line at 1-800-273-8255, press 1; send a text message to 838255; or connect on the web at <https://www.veteranscrisisline.net/get-help/chat> for chatting or other information. More information on this resource is below.
- Collect pertinent information if you can, such as: the Service member’s name, address, phone number, and unit of assignment (release of this information to proper authorities to protect the Service member or others from imminent harm is not a violation of the Privacy Act or the ADRA).
- Inform your state chair, OD, AOD and NCM of the situation and only the information related to the emergency.

Guidelines

- Be direct. Talk openly and matter-of-factly about suicide.
- Be willing to listen
- Be non-judgmental.
- Get involved.
- Don’t dare him to or her to do it.
- Don’t allow yourself to be sworn to secrecy.
- Offer hope that alternatives are available.

Get help from persons or agencies specializing in crisis intervention and suicide prevention.

- The Veterans and Military Crisis Line is a toll-free, confidential resource, with support 24/7, that connects Veterans, Service members, including members of the National Guard and Reserve, and their family members with qualified, caring responders.
- The Veterans and Military Crisis Line, text-messaging service, and online chat provide free support for all Service members and Veterans, even if they are not registered with the Department of Veterans Affairs (VA) or enrolled in VA health care.
- If you are supporting a Service member who is overseas, the following locations have direct crisis line numbers:
 - In Europe: Call 00800 1273 8255 or DSN 118
 - In Korea: Call 0808 555 118 or DSN 118
 - In Afghanistan: Call 00 1 800 273 8255 or DSN 111
 - Crisis chat support is available internationally at <https://www.veteranscrisisline.net/get-help/chat>

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 Oftentimes, Service members will express signs of distress that do not rise to the level of a crisis requiring immediate intervention. If they have contacted ESGR for assistance, it is very likely they are experiencing a stressful situation. Providing a referral to support for challenges before they become crises can help save a life.

- Military OneSource is available 24/7/365 to help with a wide variety of topics that can improve Service member and family well-being. Topics include:
 - Relationship counseling
 - Non-medical counseling for stress relief
 - Financial counseling
 - Child care options
- Military OneSource is available to eligible Service members, including National Guard and Reserve members, and family members at 1-800-342-9647 or through live chat www.militaryonesource.mil.

APPENDIX 10

Guidance for Working with Difficult Service Members and/or Employers

As an ESGR ombudsman, it is possible that you may encounter a case where a Service member is emotionally distraught or angry about his/her employment situation. On occasion, you may also find yourself in a phone conversation with a hostile employer. How you handle yourself in these situations has the potential to impact the overall outcome of the case for both the Service member and employer.

Below are some suggestions as to how you can ensure the best results for the parties involved:

- Listen actively. Sometimes attentive silence will help diffuse the situation, but as the person talks, make it clear that you're listening by asking questions, for example, that involve repeating parts of the conversation back to the person. ("Tell me what you mean when you say..." or "You said thus and such happened; what happened next?" etc.).
- Remain calm. Avoid getting angry or upset with the person. It's important to monitor your own tone of voice and volume. Having a consistent, calm tone of voice will encourage others to do the same.
- Maintain your personal and professional integrity at all times. Always remain polite. If the person is abusive, calmly interject with something to the effect of "I appreciate your frustration with your situation, however, attacking me won't improve anything- I'd like to help you resolve the problems you're facing."
- Don't patronize or tell the person he/she is being irrational. Allow the person to communicate personal feelings without passing judgment. The goal is to calm the upset Service member to a level that will produce an effective conversation.
- Reassure the person that you're trying to understand the situation. Emphasize that it will help you better understand the problem if it's explained in a calm voice. Ask questions about facts and details of the matter at hand to steer the conversation from being emotionally charged, to one that is fact based.

Annotation: Annotate only the facts of your conversation in ICMS. Do not document your personal feelings or opinions about the situation in the official record. If the person makes suicidal comments or personal threats against anyone, for example, record what is said; not what you thought or felt about what was said.

- If you do not feel comfortable handling the case, let your OD know and/or speak to a NCM at 1-800-336-4590, option #1.

Report it to the proper authorities. If you feel the person is a threat to him/herself or to others, contact the local authorities and let your OD, AOD and your NCM know as soon as possible. In an emergency situation it is not a violation of the Privacy Act or the ADRA to provide whatever information is necessary in order to protect the Service member or others from harm.

- Dealing with a difficult employer: Find a better time to talk if possible. Much of the above also applies when dealing with an employer, of course. If after explaining your role as an ombudsman the employer is still being difficult, ask if it would be better to call back at another time.
- Reinforce your role. If an employer is being difficult, reaffirm your role as a neutral and that your role is to facilitate resolution of the USERRA dispute, not take sides or advocate for either party.
- Seek assistance. If you feel uncomfortable working with the employer, call your OD/AOD to discuss your concerns. You can also report your concerns to a NCM, 1-800-336-4590, option #1.

APPENDIX 11
Sample Signature Line for e-mails, Faxes, and Letters

Signature Block:

I. M. Ombudsman
Ombudsman
(State) Committee
Employer Support of the Guard and Reserve
Phone:

“CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, may contain information that is protected by the Privacy Act and/or Administrative Dispute Resolution Act. This e-mail transmission is intended solely for the addressee(s). If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, disclose, distribute, or use this message, any part of it, or any attachments. If you have received this message in error, please immediately notify the sender by telephone or return e-mail and delete this message and any attachments from your system without reading or saving in any manner. You can obtain additional information about the Privacy Act and DoD policies at <http://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>.”

Attorney, arbitrator, counselor, etc. notes in accordance with state licensing requirements:

I. M. Ombudsman
Ombudsman
(State) Committee
Employer Support of the Guard and Reserve
Phone:

“CONFIDENTIALITY NOTICE: While I am also an attorney with (ORGANIZATION), in my role as Department of Defense ombudsman I am not working in a legal capacity as an attorney.

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