

Written Testimony of James McVay, Deputy Special Counsel, Before the Subcommittee on Oversight of Government Management

Mr. Chairman, thank you for the opportunity to discuss how the United States Office of Special Counsel (OSC) promotes veteran's preference under titles 5 and 38 of the United States Code. My written submission gives great detail to these topics. In fact, OSC is in the middle of our special project to increase awareness and enforcement of these invaluable laws.

I would like to preface my remarks by giving the committee an understanding of my commitment to these laws and the people they are designed to protect. I believe that the citizens of any nation can be judged by how they treat those who protect and serve them. Within the area of responsibility given to me under these laws, OSC will not fail to meet its commitment. Ultimately, OSC will be judged as having vigorously protected those who protect us.

After taking office in January of 2004, the Special Counsel was struck by the difference in attitude that some had in the federal government towards those service members protected by these laws. It brought to my mind the rule of ancient Rome. At the height of the empire, the military was not allowed to enter the city for fear that they would threaten the republic. Today this would be quite dangerous considering that the federal government is the largest employer of the National Guard and Reserve forces. It is the mission of OSC that any like attitude does not pervade the federal work force.

At OSC we honor the commitment and sacrifice of these noble Americans. Unlike antiquity, we believe that these service members combine the best in us: they are citizens and soldiers. One cannot spend 5 minutes at Walter Reed or Bethesda without an overwhelming sense of gratitude, awe and understanding of our clear commitment to these American warriors.

OSC performs our mission by enforcing the Uniformed Services Employment and Reemployment Rights Act (USERRA) and 5 U.S.C. § 2302 (b)(11) of the Civil Service Reform Act, relating to veteran's preference laws. Allow me to expand on their specifics and how we have improved our enforcement of these important laws

With the passage of USERRA in October of 1994, Congress expanded OSC's role as protector of the federal merit system and the federal workplace. Under USERRA, where the Department of Labor's Veterans' Training and Employment Service (VETS) is unable to resolve claims, the matter is referred to OSC for review at the claimant's request. Where we are satisfied that the service member is entitled to relief, OSC may exercise its prosecutorial authority and represent the claimant before the Merit Systems Protection Board (MSPB) and, if required, the U.S. Court of Appeals for the Federal

Circuit. As prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either by settlements with the involved federal employer or litigation before the MSPB.¹

As I indicated above, OSC has been on our own offense to strengthen the enforcement of these laws. When the Special Counsel assumed office, he noticed that not a single USERRA case had ever been filed for corrective action before the MSPB. Several of these cases had been in OSC for years. He immediately ordered that all cases be reviewed and placed under the guidance of the new Special Projects Unit. Within a few short months we had filed 3 cases before the MSPB and obtained full corrective action for the aggrieved complainants. Let me tell you about the cases under USERRA.

- Claimant, a commissary store worker alleged that the U.S. Department of Defense, Defense Commissary Agency, Ansbach Commissary (agency) violated USERRA by failing to extend her term appointment, which had expired while she was on military duty and for which she reasonably expected to receive an extension. OSC determined that the agency's disparate treatment of the claimant violated USERRA. OSC successfully obtained full corrective action for claimant, namely: eight weeks of back pay.
- Claimant, a full-time staff nurse serving under a temporary appointment, alleged that the Department of Veterans' Affairs violated USERRA by terminating her employment because she was excessively absent from the work place due to her military service obligations. The agency had taken the position that claimant's position was not covered under USERRA. USERRA's anti-discrimination provisions, however, cover all types of appointments. OSC filed an action before the MSPB and successfully obtained full corrective action for claimant, namely: back pay, the expunging of all negative documentation relating to her termination, and issuance of an SF-50 reflecting that claimant resigned from the agency. The agency also agreed to undergo USERRA training.
- Claimant, a GS-10 Electronics Technician, alleged that his employer, the U.S. State Department, International Broadcasting Bureau, failed to grant him a career ladder promotion while he was absent for 12 months due to military service. The evidence indicated that the agency routinely promoted technicians to the GS-11 level after approximately 12 months of service at the GS-10 level. Because the agency's practice was to promote automatically to the GS-11 level after satisfaction of 12 months time-in-grade at the GS-10 level (i.e., much like a within grade increase of salary) and because there was no issue concerning the claimant's performance, OSC determined that the agency violated USERRA by failing to grant claimant his career ladder promotion while he was absent. The agency agreed and promoted complainant retroactively, granted back pay, and made up TSP contributions.

¹ There is currently no provision under USERRA that permits OSC to seek disciplinary action against federal employees who knowingly and willfully violate USERRA.

- Claimant alleged that he was offered and accepted a law enforcement position with the U.S. Department of Homeland Security, Immigration & Customs Enforcement. When the agency gave claimant an entry on duty (EOD) date, claimant informed the agency that he could not start on the EOD date because of military service obligations. In response, the agency said it would delay his employment until he returned from military service. When he returned from military service, claimant told the agency about an incident of alleged misconduct that occurred while he was on military service. The incident was one that required the agency to conduct a supplemental background check before the agency would allow the claimant to start his employment. The agency investigated the matter, cleared claimant, and hired him to the position it had offered initially. OSC determined that the agency violated USERRA by failing to place claimant on the rolls and in a leave without pay status as of the initial EOD date. Had the agency done so, there would not have been a delay in hiring claimant while it investigated the alleged misconduct. Under the terms of the settlement, the agency adjusted claimant's EOD date to when he would have started at his new, higher graded position but for his military service and paid a lump sum amount reflecting the difference in salary he would have earned upon return from military service in light of the earlier EOD date.
- Claimant had been accepted into the U.S. Postal Service's 16-week Associate Supervisory training program (ASP). Enrollees who successfully complete the ASP are noncompetitively promoted to supervisory positions. Over the first eight weeks of the ASP, claimant earned excellent performance evaluations and attained a grade point average of 3.65 on a 4.0 scale. While enrolled in the ASP, however, claimant performed reservist duties and was absent from employment and unable to attend the ASP on Saturdays. The agency expressed concern over the fact that claimant's military duties caused him to miss the ASP every Saturday. Moreover, the agency believed there would be an adverse affect on agency morale when claimant, after completing the program, would be assigned to a junior supervisory position but would be unavailable to work on Saturdays—as is expected of junior supervisors—because of his reservist duty. Thus, it decided to dismiss claimant from the ASP. Because the evidence established that claimant's military service obligations were a substantial and motivating factor in his dismissal from the ASP, OSC determined that the agency violated USERRA. OSC filed a USERRA action before the MSPB and successfully resolved the case with claimant accepting a large cash settlement.
- Claimant was appointed by the U.S. Postal Service to a 90-day term. In part, claimant's job entailed the lifting of heavy packages. Soon after starting his temporary employment, claimant notified the agency that he would be absent from work to perform military service. Claimant suffered a shoulder injury while on military duty. Although he returned to work and attempted to perform the duties of his civilian job, he was unable to do so. Claimant informed the agency and, in response, the agency informed him that he was being fired because of his non-agency injury. OSC determined that the agency violated USERRA by

terminating his term appointment and making no effort to find him a suitable alternative position. OSC filed suit and the case settled with the agency awarding full back pay to claimant and issuing appropriate documentation reinstating claimant to his position and indicating that he completed his 90-day term appointment. The agency also agreed to undergo USERRA training.

Also, shortly after taking office the Special Counsel testified before the U. S. House Veteran's Affairs Committee, explaining our role in enforcing this law. In late 2004, Congress further expanded OSC's role in enforcing USERRA. Pursuant to a demonstration project established by section 204 of the Veterans Benefits Improvement Act of 2004 (VBIA), OSC has the exclusive authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the project, OSC also receives and investigates all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number, these are so-called "mixed claims." Pursuant to the project, OSC shall administer the demonstration project and DOL shall cooperate with OSC in carrying out the demonstration project.

Thus, given the new, additional investigative responsibilities, the Special Counsel established OSC's USERRA Unit as part of his January 6, 2005, directive reorganizing the entire agency. The USERRA Unit is the in-take, investigative, and prosecutorial unit for all matters pertaining to USERRA and veteran-related employment issues. The unit investigates USERRA claims and resolves or prosecutes those claims it determines to have merit. The USERRA Unit is comprised of three investigators, three staff attorneys, and a supervisory attorney who serves as Chief of the unit. The USERRA Unit is part of OSC's Special Project Unit, which is headed by the Deputy Special Counsel.

In order to inform service members and federal agencies of OSC's new role in enforcing USERRA, we substantially modified OSC's web page. The changes describe OSC's role under the demonstration project and explain the manner in which certain federal claimants may seek OSC's assistance for alleged violation of their rights. To make the claim filing process faster and easier for service members, OSC created a new claim form solely for filing USERRA claims. Form OSC-14 entitled "Complaint of Possible Violation of USERRA" has been approved by the U.S. Office of Management and Budget and has been in use since March 2005. The unit also maintains a telephonic and web-based "hotlines" for answering USERRA-related questions from the public and private sectors. To further educate the federal public, I have sent members of my staff and the USERRA unit to conduct educational outreach to several agencies and federal employment seminars. Our goal is to inform service members of their rights and improve the awareness of federal managers of this important law.

Here are sample cases that the USERRA Unit has handled under the new demonstration project:

1. In this USERRA reemployment rights case, claimant alleged that the U.S. Drug Enforcement Administration, Mid-Atlantic Laboratory, Largo, Maryland (agency) denied

her career ladder promotion because she was absent from employment due to military service. Claimant is a Chemist for the DEA in the Mid-Atlantic Field laboratory. In June 2003, she transferred to that laboratory as a GS-11 Chemist. Previously, she worked at a DEA laboratory in Texas. Claimant performed military service from December 2004 to January 26, 2005. Upon her return, pregnancy kept claimant out of the laboratory until August 1, 2005. When she left to perform military service in December 2004, claimant had only completed nine months of the 12-month time-in-grade requirement for her career ladder promotion to the GS-12 level. On April 21, 2004, the 12-month time-in-grade requirement passed. When she returned to her civilian career, the agency did not promote her to the GS-12 level claiming that her performance at the time her departure for military service did not show an ability to perform at the GS-12 level. OSC's investigation corroborated the agency's assertion. OSC, however, also obtained evidence indicating that claimant's supervisor would have been able to work with claimant over the remaining three months prior to her career ladder promotion anniversary such that she would have been performing at the GS-12 level by her anniversary date. The agency agreed to provide claimant 90-days training, starting on August 1, 2005. Upon successful completion of the 90-day training, she was promoted retroactive to April 2004 and awarded back pay at the higher GS level from January 26, 2005.

2. In this USERRA discrimination case, claimant alleged that the U.S. Department of Justice, Bureau of Prisons, Metropolitan Detention Center, Guaynabo, San Juan, Puerto Rico, improperly charged him annual leave instead of military leave while he was absent from his civilian employment performing military service. OSC corroborated the allegation and persuaded the agency to take the necessary action to correct claimant's annual and military leave balances.

3. In this USERRA discrimination case, claimant alleged that the Bureau of Indian Affairs, Spirit Lake Health Center (agency) improperly questioned claimant's requests for authorized absences due to military service obligations. OSC contacted the agency and explained its obligations to the service members. Consequently, the agency no longer questioned claimant's right to be absent from civilian employment due to military service. Also, the agency agreed to exhibit a USERRA rights poster.

4. In this USERRA reservist discrimination case, claimant, a member of the United States Air Force Reserve, applied for two Social Insurance Specialist/Claims Representative positions with the Social Security Administration. During her job interview, the selecting official noted that she was a member of the Air Force Reserve and asked if she could be activated. Claimant responded that it was not likely that she would be. When the agency later notified claimant that she was not selected, claimant contacted the selecting official and was told that she did not have sufficient civilian experience and that her 5-point military experience did not count because that the position was an internship in the excepted service under the Federal Career Intern Program. Claimant subsequently accepted another job outside of the agency. Under USERRA, it is illegal to fail to hire an applicant because the person may be absent from employment due to military service. In this case, the evidence indicated that claimant would likely have been selected, and the selecting official's comments and questions

suggested that claimant reservist duties were a reason for claimant`s non-selection. OSC successfully persuaded the agency to provide full relief to the claimant. Specifically, the agency agreed to pay claimant a lump sum amount of \$5,910.00, an amount reflecting loss of pay from the time claimant would have been selected until the time claimant began her current employment. (Claimant did not want to work at the agency.)

5. In this USERRA discrimination case, claimant alleged that the U.S. Department of Homeland Security, Transportation Security Administration, St. Louis, Missouri (agency), which had laid off claimant and numerous of his co-workers, did not later reemploy him because he was on active duty at the time the agency began rehiring former employees it had laid off. Specifically, claimant alleged that he had received a letter from the agency offering him reemployment and that, in response to the letter, claimant telephoned the agency, accepted the offer, and informed it that he was currently on military duty. Claimant further alleged that the agency told him to contact it once he was released from military duty. Initially, the agency denied that it had made an offer of employment to claimant. Rather, it asserted that it had sent claimant a letter merely seeking to determine if he would be interested in being reemployed should a position become available. Claimant did not have a copy of the letter, but OSC obtained a copy through its investigation. The letter corroborated claimant`s version of events. Consequently, the agency agreed to reemploy claimant and to award him back pay and related benefits to which he is entitled under USERRA.

6. In this USERRA reemployment rights case, the complainant alleged that the agency violated his USERRA rights by failing to make contributions to his Thrift Savings Plan (TSP) account upon his return from military service. OSC contacted the agency to obtain relevant information. OSC corroborated claimant`s allegation and persuaded the agency to take corrective action. The agency agreed to make the required contributions to the TSP account.

7. In this USERRA reemployment rights case, claimant alleged that the U.S. Postal Service, Raleigh Airport Mail Center, Raleigh, North Carolina (agency) failed to reemploy her. OSC`s investigation uncovered that, soon after claimant began a 90-day term position with the agency, her military unit notified her that she was being called onto active military service for a one-year overseas deployment in support of Operation Iraqi Freedom. Claimant promptly informed her supervisors that she was being called to active military service and that her final day with the agency would be May 2, 2005. On May 10, 2005, after reporting for duty, Claimant received notice from her military commanders that she was being immediately released from active military service due to medical reasons. She promptly contacted an agency manager and told him that she was released from service and wished to return to her position. The request for reemployment was denied because the agency had already replaced claimant. On June 11, 2005, however, the agency appointed Claimant to another 90-day term position. Under USERRA, an employee serving in a time-limited position is entitled to complete any unexpired portion of his or her appointment upon return from military service. Thus, Claimant was entitled to complete the remainder of her 90-day term appointment upon her discharge from military service. OSC explained the law to the agency and, at OSC`s

request, the agency agreed to pay lost wages for period from May 11, 2005 (the next business day after Claimant requested reemployment) until June 10, 2005 (the last day of Claimant`s original 90-day term).

8. In this USERRA discrimination case, claimant alleged that he was offered and accepted a position with the U.S. Department of Army, Stuttgart, Germany. When the agency gave claimant an entry on duty (EOD) date, claimant informed the agency that he could not start on such date because of military service. In response, the agency withdrew the offer of employment. OSC contacted the agency and explained that it is illegal under USERRA to deny initial employment because of military service. In response, the agency re-offered the position, which claimant again accepted, and the parties agree to a new EOD.

9. In this USERRA reemployment rights case, claimant alleged that the Department of Veterans Affairs, Veterans` Administration Medical Center, San Antonio, Texas (agency) did not restore her to the status of her previously held Nurse Practitioner position. The agency explained that it was unable to so restore her because claimant`s nurse practitioner`s license and certification—which are issued by the state—had lapsed while claimant was overseas performing long-term military service. OSC informed the agency of its USERRA obligation to train returning employees and the law`s purpose of encouraging military service by minimizing the disadvantages to service member`s civilian careers that arises whenever they are called to duty. Thereafter, OSC successfully persuaded the agency to expedite claimant`s certification process and clear her to work as a Nurse Practitioner.

10. In this reemployment rights case, claimant alleged that the U.S. Department of Veterans` Affairs, Philadelphia VA Medical Center-Research Department (agency) violated USERRA by failing to reemploy her after performing military service. Claimant was a “fee basis” one-year term employee who was called to military service for several months. While absent due to military service, claimant contacted her employer and informed it that she would likely be released shortly. She was not so released as she had expected but did not subsequently so inform her employer of her continuing military service obligation. Due to a lack of communication between the claimant and her employer as to when she would return, the employer did not reemploy the employee when she was finally released from military service. Notwithstanding the communication lapse, OSC determined that claimant had satisfied her obligations under USERRA (i.e., advance notice of service, qualifying service, and request for reemployment). Thus, OSC informed the employer of its duty to reemploy claimant “promptly” and successfully persuaded the agency to reinstate the employee and award her back pay for the delay in reemploying her. Claimant was paid for 174 hours of work at \$17 per hour less withholdings.

11. In this USERRA reemployment rights case, claimant alleged that the U.S. Department of Agriculture, Agriculture Research Service, Beltsville, Maryland (agency) violated USERRA by prematurely reassigning him from a GS-12 Supervisory Farm Manager position to a WS-10 Maintenance Mechanic Supervisor position while he was

absent from work performing military service. OSC's investigation corroborated claimant's allegation. Thus, OSC persuaded the agency to grant full relief to claimant consisting of extending his temporary GS-12 promotion to the appropriate date awarding him the additional pay associated with the extension.

12. In this USERRA reemployment rights case, claimant alleged that the U.S. Department of Labor, Jacob Creek Job Corps, Bristol, Tennessee (agency) required him to provide copies of his military orders to his supervisor prior to being absent due to military service. When claimant failed to do so, it denied his request for military leave (i.e., paid leave while absent due to the performance of military service) and placed him in an absent without leave (AWOL) status. Claimant did not have official orders because he was performing Individual Duty Training (IDT). OSC interceded on claimant's behalf and informed the agency of its obligations under USERRA. The agency agreed to accept documentation other than orders when claimant performed IDT, which claimant volunteered to provide. The agency also granted OSC's request that it change claimant's AWOL status to paid military leave.

13. In this USERRA reemployment rights case, claimant alleged that the U.S. Department of Health and Human Services, Indian Health Service, Rosebud Hospital, Rosebud, South Dakota (agency) improperly placed him in "leave without pay" status and "absent without authorized leave" status instead of allowing claimant to use annual and military leave while absent from employment due to military service. OSC's investigation corroborated claimant's allegations. OSC provided information to agency about how service members are to be carried on the rolls while absent from employment due to military service. OSC also persuaded the agency to change claimant's time and attendance records and grant him leave and associated pay in accordance with USERRA.

14. In this USERRA case, claimant alleged that the U.S. Immigration and Customs Enforcement Federal Air Marshal Service, New York Field Office (agency) failed to promote him while he was absent due to his military obligations and suspended him for 12 days in reprisal for seeking assistance from the Employer Support of the Guard and Reserve. The evidence showed that the agency did not grant claimant, a Federal Air Marshal, a career ladder promotion to the next pay band while claimant was absent due to military service even though he was performing at a successful level at the time the claimant was eligible for his promotion in May 2004. Agency officials indicated that claimant would have been promoted had not been absent. The agency subsequently promoted claimant in August 2005. The agency agreed to make claimant's promotion retroactive and to award claimant back pay associated with the delay. (The agency's attorneys are currently reviewing the settlement.) There was insufficient evidence, however, to support claimant's retaliation and, thus, no corrective action was sought for that aspect of the claim.

15. In this reemployment rights case, claimant alleged that the U.S. Postal Service, Eagan Accounting Service Center, Eagan, Minnesota (agency) wrongfully cancelled his health insurance while he is absent from employment due to military service. The

USERRA Unit contacted the agency to obtain information about claimant's insurance coverage and confirmed that it had erroneously cancelled claimant's coverage. OSC requested and obtained representations from the agency ensuring that corrective action had been taken including the agency informing claimant's health care provider that his insurance has been reinstated.

16. In this USERRA mixed claim, claimant, a GS-15 Administrative Officer who is also a Colonel in the Air Force Reserves, alleged that the U.S. Attorney's Office, San Francisco (USAO), proposed to remove her effective August 8, 2005, because she is allegedly disruptive to the workplace as evidenced by disparaging remarks she made to co-workers about management officials and the U.S. Attorney. For example, claimant allegedly referred to management as "twisted pretzels." Claimant transferred to USAO only a few months prior to her proposed removal and alleges that she was never counseled and that her proposed removal shocked her. The agency allowed her to go on an "AWS" work schedule to accommodate her reservist duties, but management officials do not appear to like the fact that claimant, as part of upper management, is not in the office everyday. The notice of proposed removal was issued soon after claimant informed the agency of an impending absence due to her reservist duties. After obtaining some information from witnesses about claimant's whistleblower reprisal claim, OSC requested an informal stay on August 4, 2005. The agency granted the stay. Claimant eventually left the agency for another job. The investigation is still ongoing.

17. In this USERRA reemployment rights case, claimant alleged that the U.S. Department of Homeland Security, Immigration and Customs Enforcement (agency) failed to allow him to make up Thrift Savings Plan (TSP) contributions missed as a result of his military service in 2002, 2003 and 2004. Under USERRA, employees may be permitted to make up TSP contributions missed as a result of military service. In addition, employees covered by the Federal Employees Retirement System who elect to make up TSP contributions will also receive the appropriate retroactive agency matching contribution to their TSP account. As a result of OSC's inquiry into the matter, the agency promptly processed claimant's request for retroactive TSP deductions. In addition, the agency processed the payments it owes claimant for matched contributions and forwarded the appropriate documentation to the National Finance Center.

18. In this USERRA discrimination case, claimant alleged that the civilian personnel advisory center (CPAC) serving U.S. Department of the Army, Camp Zama, Japan, failed to hire him because of his military service obligation. The CPAC issued a vacancy announcement number for an overseas Logistics Management Specialist GS-0346-12 position. Claimant applied and was selected. Soon after claimant accepted the position, the CPAC allegedly informed claimant that he would not be hired because he was unavailable for employment within 45 days of his acceptance of the employment offer. Claimant was unavailable because of military service obligations. OSC contacted the agency and the agency agreed to hire claimant and place him in a LWOP status until he was available. Also, the agency agreed to receive USERRA training. (Claimant, however, eventually determined that he did not want the overseas position as he had found employment stateside.)

19. In this USERRA case, claimant filed against the U.S. Department of Agriculture, Office of Inspector General (USDA OIG) and the U.S. Department of the Air Force, Office of Special Investigations (AFOSI). He alleged that USDA OIG improperly denied him military service credit under your Law Enforcement Officer Retirement Plan. He alleged that AFOSI violated USERRA by changing his assigned duty station, failing to promote him to a GS-12 level position because of his absence from his civilian employment due to military service, and not crediting his thrift savings plan (TSP) account upon being reemployed. OSC favorably resolved the complaint against claimant's present employer and the TSP issue with the former employer. Specifically, the present employer granted claimant the full military service credit to which he was entitled under your retirement plan, and the former agency made appropriate contributions and adjustments to his TSP account. (There was not a sufficient basis to seek corrective action from the former employer on the other issues about which claimant complained. In part, there was insufficient evidence of a violation and, in part, claimant's acceptance of a promotion at the new agency, where he is currently employed, made moot the reassignment and the career ladder promotion issues.)

20. In this USERRA discrimination case, claimant sought the recovery of erroneously charged military leave from the U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management ("agency"). Under the "Butterbaugh" line of cases, OSC persuaded the agency agreed to restore eight days of annual leave to claimant's leave balance.

As I commented earlier, OSC also provides relief under Title 5 of the U.S. Code to veterans under our authority granted in the Civil Service Reform Act, also known as a prohibited personnel practices. Section 2302 (b) (11) forbids managers from taking, or failing to take, a personnel action if it would violate a veteran's preference law. However, for OSC purposes, the most significant change to title 5 is set forth in section 2302(e)(2), which states that the MSPB does not have authority to order corrective action for (b)(11) violations and, in turn, divests OSC of authority to seek corrective action for such violations. Hence, OSC's role with respect to allegations of violations of § 2302(b)(11) is limited to seeking disciplinary action in appropriate cases.

A person alleging a prohibited personnel practice under § 2302(b)(11) may seek redress by filing a written complaint with the Secretary of Labor within 60 days of the alleged violation. Further, the veteran's preference laws require the Secretary of Labor to investigate the complaint and, upon determining that a violation occurred, to attempt to resolve the complaint by making reasonable efforts to ensure that the agency complies with the statute or regulation relating to veteran's preference. The task of investigating the complaint is delegated to Department of Labor's Veterans' Training and Employment Service (VETS). If VETS is unable to resolve a complaint within 60 days, it is to provide notification of an unsuccessful effort to resolve the complaint to the complainant. Upon receipt of a notification of an unsuccessful effort to resolve the complaint to the complainant, the complainant may elect to appeal the alleged violation to the MSPB.

In lieu of continuing the administrative redress through the MSPB, veteran's preference law permits a preference eligible veteran to terminate appellate proceedings before the MSPB and file an action with the appropriate United States District Court. In light of the laws 60-day statute of limitations, whenever OSC receives an allegation of a violation of § 2302(b)(11), OSC will notify the claimant of the administrative process to be followed as soon as possible. This is accomplished by providing the claimant with the address and telephone number of the VETS office closest to the claimant.

Pursuant to a Memorandum of Understanding (MOU) between OSC and VETS, VETS refers to OSC cases involving egregious violations of veteran's preference rights for possible disciplinary action.

I want to thank the committee for allowing me to testify today. I truly believe the issues we are focusing on today cut to the core of our values as a nation. Some have called America a modern Roman empire. Perhaps there are parallels, but let us hope that we are not like Rome in distrusting service members. These are our brothers and sons – sisters and daughters, also – and should be treated equally by employers. According to Congress in enacting USERRA, federal employers should be model employers in this regard. OSC strives to hold agencies to that high standard.