

# VETERANS EMPLOYMENT RIGHTS REALIGNMENT ACT OF 2009

MAY 14, 2009.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans’ Affairs,  
submitted the following

## R E P O R T

[To accompany H.R. 1089]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 1089) to amend title 38, United States Code, to provide for the enforcement through the Office of Special Counsel of the employment and unemployment rights of veterans and members of the Armed Forces employed by Federal executive agencies, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

## CONTENTS

Amendment .....	Page 2
Purpose and Summary .....	3
Background and Need for Legislation .....	3
Hearings .....	4
Subcommittee Consideration .....	5
Committee Consideration .....	5
Committee Votes .....	5
Committee Oversight Findings .....	5
Statement of General Performance Goals and Objectives .....	5
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	6
Earmarks and Tax and Tariff Benefits .....	6
Committee Cost Estimate .....	6
Congressional Budget Office Estimate .....	6
Federal Mandates Statement .....	7
Advisory Committee Statement .....	7
Constitutional Authority Statement .....	7
Applicability to Legislative Branch .....	7

Section-by-Section Analysis of the Legislation .....	8
Changes in Existing Law Made by the Bill as Reported .....	8

## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Employment Rights Realignment Act of 2009”.

### SEC. 2. ENFORCEMENT THROUGH OFFICE OF SPECIAL COUNSEL OF VETERANS’ EMPLOYMENT OR REEMPLOYMENT RIGHTS WITH RESPECT TO EMPLOYERS THAT ARE FEDERAL EXECUTIVE AGENCIES.

(a) ENFORCEMENT OF RIGHTS THROUGH OFFICE OF SPECIAL COUNSEL.—Section 4322 of title 38, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection (a):

“(a)(1)(A) A person described in subparagraph (B) may file a complaint with the Secretary, and the Secretary shall investigate such complaint.

“(B) A person described in this subparagraph is a person who claims that—

“(i) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer other than an employer that is a Federal executive agency; and

“(ii) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.

“(2)(A) A person described in subparagraph (B) may file a complaint with the Special Counsel established by section 1211 of title 5.

“(B) A person described in this subparagraph is a person who claims that—

“(i) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer that is a Federal executive agency; and

“(ii)(I) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter; or

“(II) such employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.”;

(2) by striking subsections (d) and (e) and inserting the following new subsections (d) and (e):

“(d)(1) The Secretary shall investigate each complaint submitted pursuant to subsection (a)(1). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

“(2) If the efforts of the Secretary with respect to any complaint filed under subsection (a)(1) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint of—

“(A) the results of the Secretary’s investigation; and

“(B) the complainant’s entitlement to proceed under the enforcement of rights provisions provided under section 4323.

“(e)(1) In the case of a complaint filed under subsection (a)(2), the Special Counsel shall investigate the complaint. If the Special Counsel determines as a result of the investigation that the action alleged in such complaint occurred, the Special Counsel shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

“(2) If the efforts of the Special Counsel with respect to any complaint filed under subsection (a)(2) do not resolve the complaint, the Special Counsel shall notify the person who submitted the complaint of—

“(A) the results of the investigation by the Special Counsel; and

“(B) the complainant’s entitlement to proceed under the enforcement of rights provisions provided under section 4324.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Such title is further amended—

(1) in section 4322(b), by striking “Such complaint” and inserting “Each complaint filed under subsection (a)”;

(2) in section 4323(a)—

(A) in paragraph (1), by striking “section 4322(e)” and inserting “section 4322(d)(2)”; and

- (B) in paragraph (3)(A), by striking “section 4322(a)” and inserting “section 4322(a)(1)”;
- (3) in section 4324—
  - (A) in subsection (a)(1)—
    - (i) in the first sentence, by striking “Secretary” each place it appears and inserting “Special Counsel”;
    - (ii) by striking “section 4322(e)” and inserting “section 4322(e)(2)”;
    - and
    - (iii) by striking the second sentence; and
  - (B) in subsection (b)—
    - (i) in paragraph (1)—
      - (I) by striking “Secretary” and inserting “Special Counsel”; and
      - (II) by striking “section 4322(a)” and inserting “section 4322(a)(2) of this title”; and
    - (ii) in paragraph (2)—
      - (I) by striking “Secretary” and inserting “Special Counsel”; and
      - (II) by striking “section 4322(e)” and inserting “section 4322(e)(2) of this title”;
  - (4) in section 4325(c), by striking “section 4322(d)” and inserting “section 4322(d)(1)”;
  - (5) in section 4326—
    - (A) in subsection (a), by inserting “or the Special Counsel’s” after “Secretary’s”; and
    - (B) by striking “Secretary” each place it appears and inserting “Secretary or the Special Counsel”.
- (c) CONFORMING REPEAL.—The Veterans Benefits Improvement Act of 2004 (Public Law 108–454) is amended by striking section 204.
- (d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to complaints filed on or after the date of the enactment of this Act.

**Amend the title so as to read:**

A bill to amend title 38, United States Code, to provide for the enforcement through the Office of Special Counsel of the employment and reemployment rights of veterans and members of the Armed Forces employed by Federal executive agencies, and for other purposes.

**PURPOSE AND SUMMARY**

H.R. 1089 was introduced on March 19, 2009, by Representative Stephanie Herseth Sandlin of South Dakota, the Chairwoman of the Subcommittee on Economic Opportunity of the Committee on Veterans’ Affairs. H.R. 1089, as amended, seeks to provide for the enforcement of Uniformed Services Employment and Reemployment Rights Act (USERRA) protections through the U.S. Office of Special Counsel (OSC) of the employment and reemployment rights of veterans and members of the Armed Forces employed by Federal executive agencies.

**BACKGROUND AND NEED FOR LEGISLATION**

The OSC is an independent Federal investigative and prosecutorial agency that was created by Congress with the goal of protecting employees, former employees, and applicants for employment from prohibited personnel practices. The OSC has the duty to receive allegations of prohibited personnel practices and to investigate such allegations, as well as to conduct investigations of possible prohibited personnel practices on its own initiative, absent any allegation.

On March 4, 2009, Mr. Patrick H. Boulay, Chief, USERRA Unit, U.S. Office of Special Counsel highlighted the avenues available through which to pursue allegations and complaints. Specifically, Mr. Boulay highlighted OSC’s authority of: investigating prohibited personnel practice allegations and, where warranted, seeking cor-

rective action on behalf of Federal employees and applicants and disciplinary action against Federal officials, including by prosecuting violations before the U.S. Merit Systems Protection Board (MSPB); receiving and evaluating disclosures of government wrongdoing and, where warranted, forwarding such disclosures to subject federal agencies for investigation, report, and appropriate action; and, providing advisory opinions, investigating complaints, and prosecuting violations of the Hatch Act before the MSPB.

Mr. Boulay also emphasized that OSC employs a staff of attorneys, investigators, and personnel specialists who are experts in Federal personnel law and are trained to evaluate, investigate, analyze, and resolve Federal employment complaints. The Special Counsel, head of OSC, is nominated by the President and confirmed by the Senate to a five-year term.

Pursuant to a demonstration project established by the Veterans Benefits Improvement Act of 2004, Public Law 108-454 (118 Stat. 3598), OSC was given authority to investigate Federal-sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Currently, OSC can represent veterans before the Merit System Protective Board while the U.S. Department of Labor (DOL) does not.

Under the demonstration project, OSC also received and investigated 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. OSC administered the demonstration project, which initially ran from February 8, 2005, until September 30, 2007, and was extended to December 31, 2007.

On February 13, 2008, the Subcommittee on Economic Opportunity held a hearing entitled "Review of Expiring Programs." In the hearing, veterans service organizations expressed interest in continuing funding for the demonstration project. According to the veterans service organizations, OSC has done a good job handling claims and has increased the DOL's effectiveness by decreasing their turnaround rate for pending cases.

It is imperative that we continue to improve the efficiency of the claims process and reduce the backlog of pending USERRA claims. By assigning all Federal USERRA cases to OSC, we expect to see a more aggressive stance on resolving the Federal cases that seem to present difficulty to the DOL. The Committee will continue to monitor the progress being made by DOL on non-Federal USERRA cases and OSC on Federal USERRA cases.

#### HEARINGS

On March 4, 2009, the Subcommittee on Economic Opportunity held a legislative hearing on several bills introduced during the 111th Congress, including H.R. 1089. The following witnesses testified: The Honorable Steve Israel of New York; The Honorable Peter Welch of Vermont; The Honorable Lloyd Doggett of Texas; Mr. Justin Brown, Legislative Associate, National Legislative Service, Veterans of Foreign Wars of the United States; Ms. Cheryl Beversdorf, RN, MHS, MA, President and Chief Executive Officer, National Coalition for Homeless Veterans; Mr. John L. Wilson, Associate National Legislative Director, Disabled American Veterans; Mr. Mark Walker, Assistant Director, National Economic Commission, The

American Legion; Mr. Thomas Zampieri, Ph.D., Director of Government Relations, Blinded Veterans of America; Mr. Patrick H. Boulay, Chief, USERRA Unit, U.S. Office of Special Counsel; Mr. Keith M. Wilson, Director, Education Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Those submitting statements for the record included: Mr. John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor; The Honorable Rodney Alexander of Louisiana; The Honorable Steve Buyer of Indiana; The Honorable Bob Filner of California; Mr. David French, Vice President, Government Relations, International Franchise Association; Mr. Thomas S. Whitaker, President and Deputy Chairman, North Carolina Employment Security Commission, on behalf of National Association of State Workforce Agencies; and the Paralyzed Veterans of America.

#### SUBCOMMITTEE CONSIDERATION

On March 19, 2009, the Subcommittee on Economic Opportunity met in open markup session and ordered favorably forwarded to the full Committee H.R. 1089 by voice vote. During consideration of the bill the following amendment was considered:

An amendment by Mrs. Kirkpatrick of Arizona to replace "unemployment" rights with "reemployment" rights and clarify that the U.S. Office of Special Council has the same authority as the U.S. Department of Labor to conduct investigations and issue subpoenas when investigating USERRA complaints was agreed to by voice vote.

#### COMMITTEE CONSIDERATION

On May 6, 2009, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 1089, as amended, reported favorably to the House of Representatives, by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 1089 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 1089, as amended, reported favorably to the House of Representatives was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX  
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1089 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1089 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1089 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 13, 2009.*

Hon. BOB FILNER,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1089, the Veterans Employment Rights Realignment Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF,  
*Director.*

Enclosure.

*H.R. 1089—Veterans Employment Rights Realignment Act of 2009*

H.R. 1089 would amend the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to transfer more responsibility for investigating and resolving claims made against federal agencies under that act to the Office of Special Counsel (OSC). Assuming appropriation of the necessary amounts, CBO estimates that the OSC would spend an additional \$14 million over the 2010–2014 period to implement its new responsibilities. Enacting the bill would have no effect on revenues or direct spending.

USERRA protects the civilian employment rights of veterans by providing a claims process for individuals whose employment is affected by their military service. Under that act, employees (includ-

ing those of federal agencies) who believe that their rights have been violated may file claims with the Department of Labor's (DOL's) Veterans' Employment Training Service (VETS). VETS then investigates and attempts to resolve such claims. If VETS cannot resolve a claim made by an employee of the federal government, the case may then be referred to the OSC for further action.

Under H.R. 1089, all such claims against federal employers would be made directly to the OSC. Claims against all other entities would continue to be handled by VETS. Based on information provided by DOL and the OSC, CBO expects that handling an estimated 200 to 300 additional cases per year would increase the OSC's annual budget of \$17 million by about \$3 million a year and \$14 million over the next five years. VETS has offices in each state to handle USERRA enforcement and claims as well as other veterans' issues, including investigations and mediation, briefings to educate employers and service members, and general armed service-related employment and reemployment matters. Because VETS would continue to handle most USERRA claims and all other issues related to veterans' employment, CBO expects that the transfer of responsibility for resolving claims against federal agencies to the OSC would not significantly reduce the VETS' workload at any of its individual offices.

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1089 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1089.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 1089 is provided by Article I, section 8 of the Constitution of the United States.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section provides the short title of H.R. 1089, as amended, as the “Veterans Employment Rights Realignment Act of 2009.”

*Section 2. Enforcement through office of special counsel of veterans’ employment or reemployment rights with respect to employers that are federal executive agencies*

This section would provide the U.S. Office of Special Counsel with initial jurisdiction to investigate and prosecute all Uniformed Services Employment and Reemployment Rights Act (USERA) complaints involving Federal executive agencies and provide authority for individuals to file complaints with the U.S. Office Special Counsel. This section would clarify that the U.S. Office Special Counsel has the same authority as the U.S. Department of Labor to conduct investigations and issue subpoenas when investigating USERA complaints. Finally, this section provides that amendments made by this section shall apply to complaints filed on or after the date of enactment of this Act.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

**PART III—READJUSTMENT AND RELATED BENEFITS**

\* \* \* \* \*

**CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

\* \* \* \* \*

**SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION**

\* \* \* \* \*

**§ 4322. Enforcement of employment or reemployment rights**

[(a) A person who claims that—

[(1) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

[(2)(A) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter; or

[(B) in the case that the employer is a Federal executive agency, such employer or the Office of Personnel Management



has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter, may file a complaint with the Secretary in accordance with subsection (b), and the Secretary shall investigate such complaint.】

*(a)(1)(A) A person described in subparagraph (B) may file a complaint with the Secretary, and the Secretary shall investigate such complaint.*

*(B) A person described in this subparagraph is a person who claims that—*

*(i) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer other than an employer that is a Federal executive agency; and*

*(ii) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.*

*(2)(A) A person described in subparagraph (B) may file a complaint with the Special Counsel established by section 1211 of title 5.*

*(B) A person described in this subparagraph is a person who claims that—*

*(i) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer that is a Federal executive agency; and*

*(ii)(I) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter; or*

*(II) such employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.*

*(b) 【Such complaint】 Each complaint filed under subsection (a) shall be in writing, be in such form as the Secretary may prescribe, include the name and address of the employer against whom the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.*

\* \* \* \* \*

【(d) The Secretary shall investigate each complaint submitted pursuant to subsection (a). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

【(e) If the efforts of the Secretary with respect to any complaint filed under subsection (a) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint in writing of—

【(1) the results of the Secretary's investigation; and

【(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323 (in the case of a person submitting a complaint against a State or private employer) or section 4324 (in the case of a person submitting a complaint against a Federal executive agency or the Office of Personnel Management).】

*(d)(1) The Secretary shall investigate each complaint submitted pursuant to subsection (a)(1). If the Secretary determines as a result of the investigation that the action alleged in such complaint oc-*

*curred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.*

*(2) If the efforts of the Secretary with respect to any complaint filed under subsection (a)(1) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint of—*

*(A) the results of the Secretary's investigation; and*

*(B) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323.*

*(e)(1) In the case of a complaint filed under subsection (a)(2), the Special Counsel shall investigate the complaint. If the Special Counsel determines as a result of the investigation that the action alleged in such complaint occurred, the Special Counsel shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.*

*(2) If the efforts of the Special Counsel with respect to any complaint filed under subsection (a)(2) do not resolve the complaint, the Special Counsel shall notify the person who submitted the complaint of—*

*(A) the results of the investigation by the Special Counsel; and*

*(B) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4324.*

\* \* \* \* \*

#### **§ 4323. Enforcement of rights with respect to a State or private employer**

(a) ACTION FOR RELIEF.—(1) A person who receives from the Secretary a notification pursuant to [section 4322(e)] *section 4322(d)(2)* of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.

\* \* \* \* \*

(3) A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—

(A) has chosen not to apply to the Secretary for assistance under [section 4322(a)] *section 4322(a)(1)* of this title;

\* \* \* \* \*

**§ 4324. Enforcement of rights with respect to Federal executive agencies**

(a)(1) A person who receives from the [Secretary] *Special Counsel* a notification pursuant to [section 4322(e)] *section 4322(e)(2)* may request that the [Secretary] *Special Counsel* refer the complaint for litigation before the Merit Systems Protection Board. [Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.]

\* \* \* \* \*

(b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person—

(1) has chosen not to apply to the [Secretary] *Special Counsel* for assistance under [section 4322(a)] *section 4322(a)(2) of this title*;

(2) has received a notification from the [Secretary] *Special Counsel* under [section 4322(e)] *section 4322(e)(2) of this title*;

\* \* \* \* \*

**§ 4325. Enforcement of rights with respect to certain Federal agencies**

(a) \* \* \*

\* \* \* \* \*

(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under [section 4322(d)] *section 4322(d)(1)*.

\* \* \* \* \*

**§ 4326. Conduct of investigation; subpoenas**

(a) In carrying out any investigation under this chapter, the Secretary's or the *Special Counsel's* duly authorized representatives shall, at all reasonable times, have reasonable access to and the right to interview persons with information relevant to the investigation and shall have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the [Secretary] *Secretary or the Special Counsel* considers relevant to the investigation.

(b) In carrying out any investigation under this chapter, the [Secretary] *Secretary or the Special Counsel* may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the [Secretary] *Secretary or the Special Counsel*, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the **【Secretary】** *Secretary or the Special Counsel* or to comply with any order of the **【Secretary】** *Secretary or the Special Counsel* made pursuant to a lawful investigation under this chapter and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the **【Secretary】** *Secretary or the Special Counsel* as a contempt of court.

\* \* \* \* \*

## VETERANS BENEFITS IMPROVEMENT ACT OF 2004

\* \* \* \* \*

## TITLE II—EMPLOYMENT MATTERS

### Subtitle A—Employment and Reemployment Rights

\* \* \* \* \*

#### **【SEC. 204. DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL.**

**【(a) ESTABLISHMENT OF PROJECT.**—The Secretary of Labor and the Office of Special Counsel shall carry out a demonstration project under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

**【(b) REFERRAL OF ALL PROHIBITED PERSONNEL ACTION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.**—(1) Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under the Uniformed Services Employment and Reemployment Rights Act with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

**【(2)** For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under the Uniformed Services Employment and Reemployment Rights Act.

**【(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.**—(1) Under the demonstration project, the Secretary—

**【(A)** shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

**【(B)** may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

[(2) A claim referred to in paragraph (1) is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit, or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

[(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—(1) The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

[(2) In the case of any claim referred, or otherwise received by, to the Office of Special Counsel under the demonstration project, any reference to the “Secretary” in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed a reference to the “Office of Special Counsel”.

[(3) In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

[(e) PERIOD OF PROJECT.—The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of the enactment of this Act, and ending on September 30, 2007.

[(f) EVALUATIONS AND REPORT.—(1) The Comptroller General of the United States shall conduct periodic evaluations of the demonstration project under this section.

[(2) Not later than April 1, 2007, the Comptroller General shall submit to Congress a report on the evaluations conducted under paragraph (1). The report shall include the following information and recommendations:

[(A) A description of the operation and results of the demonstration program, including—

[(i) the number of claims described in subsection (c) referred to, or otherwise received by, the Office of Special Counsel, and the number of such claims referred to the Secretary of Labor; and

[(ii) for each Federal executive agency, the number of claims resolved, the type of corrective action obtained, the period of time for final resolution of the claim, and the results obtained.

[(B) An assessment of whether referral to the office of special counsel of claims under the demonstration project—

[(i) improved services to servicemembers and veterans;

or

[(ii) significantly reduced or eliminated duplication of effort and unintended delays in resolving meritorious claims of those servicemembers and veterans.

[(C) An assessment of the feasibility and advisability of referring all claims under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution.

[(D) Such other recommendations for administrative action or legislation as the Comptroller General determines appropriate.

[(g) DEFINITIONS.—In this section:

[(1) The term “Office of Special Counsel” means the Office of Special Counsel established by section 1211 of title 5, United States Code.

[(2) The term “Secretary” means the Secretary of Labor.

[(3) The term “Federal executive agency” has the meaning given that term in section 4303(5) of title 38, United States Code.]

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