



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 20, 2011

The Honorable Joseph R. Biden, Jr.
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Members of the armed forces make tremendous sacrifices in order to protect our Nation, and safeguarding the civil rights of these servicemembers and their families is therefore one of the highest priorities of the Department of Justice. We are pleased to transmit to Congress the enclosed legislative proposals, which would significantly strengthen the protections afforded to servicemembers and their families under existing civil rights laws.

This legislative package contains three titles. Title I would strengthen protection of housing and lending rights under the Servicemembers Civil Relief Act (SCRA), the Fair Housing Act, and the Equal Credit Opportunity Act. Title II proposes changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to better ensure that servicemembers and overseas citizens have the opportunity to vote and to have their votes counted. Title III would strengthen enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA) as well as Title VII of the Civil Rights Act of 1964. These proposals are summarized below.

Title I. The SCRA suspends certain civil legal obligations of active duty servicemembers so that they can focus full attention on their military responsibilities without adverse consequences for themselves and their families. The relief authorized under the SCRA includes civil protections and the temporary suspension of judicial and administrative proceedings in areas such as mortgage interest rate payments and foreclosure, rental agreements, credit card and auto loans, and other civil proceedings. As explained in more detail in the attached section-by-section analysis, we propose to strengthen enforcement of the SCRA by, among other things, doubling the civil penalties currently available and authorizing the Attorney General to issue civil investigative demands to obtain documents in SCRA investigations. We also urge Congress to make parallel changes to the Fair Housing Amendments Act and the Equal Credit Opportunity Act.

Title II. These proposals would strengthen enforcement of the voting rights of military personnel and American citizens living overseas. The Military and Overseas Voter Empowerment Act of 2009 (MOVE Act) amended UOCAVA to establish new voter registration and absentee ballot procedures that States must follow in all federal elections. As a result of the

Department's enforcement actions during the 2010 elections, thousands of military and overseas voters were afforded an opportunity to cast their ballots despite the failure of some election officials to send out ballots on time. In the months since the last election, the Department has assessed the causes of these delays and developed proposals designed to remedy these problems.

In particular, we recommend the addition of pre-election reporting requirements on the status of ballot transmission to provide the Department with comprehensive and timely information regarding whether enforcement actions may be needed. We also propose to eliminate the hardship waiver provision (authorizing waiver of the 45-day ballot transmission deadline upon a showing of undue hardship) in favor of a uniform, nationwide standard that equally protects all military and overseas voters. To further strengthen the Act's protections and provide additional incentives for States to comply, we also propose an express mail requirement, and the establishment of civil penalties and a private right of action for an individual voter aggrieved by a violation of the Act. In recognition of the efficacy of such private rights of action in enforcing laws that protect civil rights, this proposal also would make explicit the right of private individuals to enforce Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

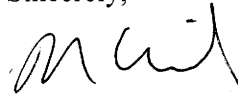
Title III. Title III would strengthen the protection of employment rights for military servicemembers and civilians alike. USERRA entitles servicemembers to return to their civilian employment upon completion of their military service with the seniority, status, and rate of pay that they would have obtained had they remained continuously employed by their civilian employer. These proposals would authorize the Department of Justice not only to challenge individual instances of USERRA violations, but also, consistent with the Department's authority under Title VII of the Civil Rights Act of 1964, to investigate and bring suit to stop a pattern or practice of USERRA violations. We also propose to improve USERRA enforcement by allowing the United States to serve as a named plaintiff in all suits filed by the Department, rather than in only those suits filed against State employers. Finally, to enhance the Department's enforcement of employment rights under both USERRA and Title VII of the Civil Rights Act of 1964, these proposals would provide for civil investigative demand authority to obtain documents equivalent to that provided in Title I of this legislative package in both USERRA and Title VII investigations.

The Department of Justice is committed to vigorous enforcement of the housing, lending, employment, and voting rights established by federal civil rights laws. We believe that the enclosed proposals would strengthen our ability to enforce these laws on behalf of servicemembers and civilians.

The Honorable Joseph R. Biden, Jr.
Page 3

Thank you for the opportunity to present these proposals. The Office of Management and Budget has advised us that there is no objection to submission of this proposal from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald Weich', written in a cursive style.

Ronald Weich
Assistant Attorney General

Enclosures

IDENTICAL LETTER SENT TO THE HONORABLE JOHN A. BOEHNER, SPEAKER
OF THE HOUSE OF REPRESENTATIVES



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Speaker of the House
United States House of Representatives
Washington, D.C. 20515

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In particular, we recommend the addition of pre-election reporting requirements on the status of ballot transmission to provide the Department with comprehensive and timely information regarding whether enforcement actions may be needed. We also propose to eliminate the hardship waiver provision (authorizing waiver of the 45-day ballot transmission deadline upon a showing of undue hardship) in favor of a uniform, nationwide standard that equally protects all military and overseas voters. To further strengthen the Act's protections and provide additional incentives for States to comply, we also propose an express mail requirement, and the establishment of civil penalties and a private right of action for an individual voter aggrieved by a violation of the Act. In recognition of the efficacy of such private rights of action in enforcing laws that protect civil rights, this proposal also would make explicit the right of private individuals to enforce Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

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Ronald Weich
Assistant Attorney General

Enclosures

IDENTICAL LETTER SENT TO THE HONORABLE JOSEPH BIDEN, PRESIDENT OF
THE UNITED STATES SENATE

A bill to strengthen enforcement and clarify certain provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. 501 *et seq.*; the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff *et seq.*; and the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 *et seq.*; and to reconcile, restore, clarify, and conform similar provisions in other, related civil rights statutes.

TITLE I - SCRA AMENDMENTS

- SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.
- SEC. 102. RESIDENCY OF MILITARY FAMILY MEMBERS
- SEC. 103. INCREASE IN CIVIL PENALTIES.
- SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.
- SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.
- SEC. 106. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—
INCREASE IN CIVIL PENALTIES.
- SEC. 107. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—CIVIL
INVESTIGATIVE DEMANDS.
- SEC. 108. RELATED CHANGES TO THE EQUAL CREDIT OPPORTUNITY ACT—CIVIL
INVESTIGATIVE DEMANDS.

TITLE II - UOCAVA AMENDMENTS

- SEC. 201. PRE-ELECTION REPORTING REQUIREMENTS.
- SEC. 202. EXPRESS DELIVERY REQUIREMENT.
- SEC. 203. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND
PRIVATE RIGHT OF ACTION.
- SEC. 204. REPEAL OF WAIVER PROVISION.
- SEC. 205. SATURDAY MAILING DATE RULE.
- SEC. 206. BALLOT REQUESTS BY OVERSEAS CIVILIAN VOTERS.
- SEC. 207. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.
- SEC. 208. RELATED CHANGES TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964—
CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION,
AND AVAILABLE RELIEF.
- SEC. 209. RELATED CHANGES TO TITLE IX OF THE EDUCATION AMENDMENTS OF
1972—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF
ACTION, AND AVAILABLE RELIEF.

TITLE III - USERRA AMENDMENTS

- SEC. 301. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE
EMPLOYER.
- SEC. 302. CIVIL INVESTIGATIVE DEMANDS.
- SEC. 303. RELATED CHANGES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964—
CIVIL INVESTIGATIVE DEMANDS.

TITLE I - SCRA AMENDMENTS

SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

Subsection (b)(1) of section 201 of the SCRA (50 U.S.C. App. 521) is amended as follows:

“(b) Affidavit requirement

“(1) Plaintiff to file affidavit

“In any action or proceeding covered by this section, the plaintiff, before seeking a default judgment, shall file with the court an affidavit—

“(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

“(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

“Prior to filing the affidavit, the plaintiff shall conduct a diligent and reasonable investigation to determine whether or not the defendant is in military service, including but not limited to a search of available Department of Defense records and any other information available to the plaintiff. The affidavit shall set forth all steps taken to determine the defendant’s military status.”

SEC. 102. RESIDENCY OF MILITARY FAMILY MEMBERS

Section 705 of the SCRA (50 U.S.C. App. 595) is amended as follows:

“§ 595. Guarantee of residency for military personnel and family members of military personnel

“(a) In general

“For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence,—

“(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

“(2) be deemed to have acquired a residence or domicile in any other State; or

“(3) be deemed to have become a resident in or a resident of any other State.

“(b) Family Members

“For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a family member of a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of absence, whether or not accompanying the servicemember,—

“(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

“(2) be deemed to have acquired a residence or domicile in any other State; or

“(3) be deemed to have become a resident in or a resident of any other State.”

SEC. 103. INCREASE IN CIVIL PENALTIES.

Subsection (b)(3) of section 801 of the SCRA (50 U.S.C. App. 597) is amended as follows:

“(3) may, to vindicate the public interest, assess a civil penalty—

“(A) in an amount not exceeding \$110,000 for a first violation; and

“(B) in an amount not exceeding \$220,000 for any subsequent violation.”

SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.

Section 801 of the SCRA (50 U.S.C. App. 597) is amended by adding the following language at the end of that section:

“(d) Issuance and Service of Civil Investigative Demands

“Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this Act, the Attorney General, or a designee, may, before commencing a civil action under subsection (a), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

“(1) the production of such documentary material for inspection and copying;

“(2) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

“(3) the production of any combination of such documentary material or answers.

“The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this Section, except that references to false claims law investigators or investigations shall be read as references to SCRA investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to ‘false claims law’ shall not apply; and provisions relating to qui tam relators shall not apply.”

“(e) Application

“This section applies to any violation of this Act occurring on, before, or after October 13, 2010.”

SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.

Section 802 of the SCRA (50 U.S.C. App. 597a) is amended by adding the following language at the end of that section:

“(c) Application

“This section applies to any violation of this Act occurring on, before, or after October 13, 2010.”

SEC. 106. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—INCREASE IN CIVIL PENALTIES.

Subsection (d)(1)(C) of section 814 of the Fair Housing Amendments Act (42 U.S.C. 3614) is amended as follows:

“(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

“(i) in an amount not exceeding \$110,000 for a first violation; and

“(ii) in an amount not exceeding \$220,000 for any subsequent violation.”

SEC. 107. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—CIVIL INVESTIGATIVE DEMANDS.

Subsection (c) of section 814 of the Fair Housing Amendments Act (42 U.S.C. 3614) is amended as follows:

“(c) Enforcement of subpoenas and civil investigative demands

“(1) The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

“(2) Issuance and Service of Civil Investigative Demands

“Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this Act, the Attorney General, or a designee, may, before commencing a civil action under subsection (a) or (b), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

“(A) the production of such documentary material for inspection and copying;

“(B) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

“(C) the production of any combination of such documentary material or answers.

“The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this Section, except that references to false claims law investigators or investigations shall be read as references to fair housing investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to ‘false claims law’ shall not apply; and provisions relating to qui tam realtors shall not apply.”

SEC. 108. RELATED CHANGES TO THE EQUAL CREDIT OPPORTUNITY ACT—CIVIL INVESTIGATIVE DEMANDS.

Subsection (h) of section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended to read as follows:

“(h) Authority for Attorney General to bring civil action; jurisdiction

“(1) When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

“(2) Issuance and Service of Civil Investigative Demands

“Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this Act, the Attorney General, or a designee, may, before commencing a civil action under subsection (h)(1), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

“(A) the production of such documentary material for inspection and copying;

“(B) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

“(C) the production of any combination of such documentary material or answers.

“The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this Section, except that references to false claims law investigators or investigations shall be read as references to fair lending investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to ‘false claims law’ shall not apply; and provisions relating to qui tam relators shall not apply.”

TITLE II - UOCAVA AMENDMENTS

SEC. 201. PRE-ELECTION REPORTING REQUIREMENTS.

(a) Section 102 of UOCAVA (42 U.S.C. 1973ff-1) is amended by inserting after subsection (b) the following new subsections:

“(c) Report on absentee ballot availability – Not later than 55 days before any Federal election each State shall submit a report to the Attorney General and the Presidential Designee, and make that report publicly available that same day, certifying that absentee ballots are or will be available for transmission by 45 days before the election. The report shall be in a form prescribed by the Attorney General and shall require the State to certify specific information about ballot availability from each unit of local government which will administer the election.

“(d) Report on absentee ballots transmitted – Not later than 43 days before any Federal election each State shall submit a report to the Attorney General and the Presidential Designee, and make that report publicly available that same day, certifying whether all absentee ballots have been transmitted by 45 days before the election to all qualified absent uniformed services and overseas voters whose requests were received at least 45 days before the election. The report shall be in a form prescribed by the Attorney General and shall require the State to certify specific information about ballot transmission, including the total numbers of ballot requests received and ballots transmitted, from each unit of local government which will administer the election.”

(b) Current subsections (c) through (i) are renumbered accordingly.

SEC. 202. EXPRESS DELIVERY REQUIREMENT.

(a) Section 102 of UOCAVA (42 U.S.C. 1973ff-1) is amended by inserting after subsection (a)(8)(A) the following new subsection:

“(B) If the State fails to transmit any absentee ballot by the 45th day before the election as required by subparagraph (A), it shall transmit such ballot by express delivery to any absent uniformed services voter or overseas voter who did not request electronic ballot transmission pursuant to Section 102(f)(1). In addition, if the State fails to transmit any absentee ballot by the 40th day before the election, it shall enable the ballot to be returned by express delivery from any absent uniformed services voter or overseas voter pursuant to Section 102(f)(1). The State may satisfy the requirement in the preceding sentence as to absent uniformed services voters in regularly scheduled general elections by notifying absent uniformed services voters of the procedures established in § 1973ff-2A for collection and delivery of marked absentee ballots. A State’s compliance with this subparagraph does not bar the Attorney General from seeking additional remedies necessary to effectuate the purposes of this Act.”

(b) Current subparagraph (B) is redesignated as subparagraph (C).

SEC. 203. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

(a) Section 105 (42 U.S.C. § 1973ff-4) of UOCAVA is amended as follows:

“(a) In general – The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this title. In any such action, the only necessary party defendant is the State. It shall not be a defense to such action that local election officials are not also named as defendants.

“(b) Civil penalty – In a civil action brought under subsection (a), if the court finds that the State violated any provision of this title, it may, to vindicate the public interest, assess a civil penalty against the State –

“(1) in an amount not exceeding \$110,000, for a first violation.

“(2) in an amount not exceeding \$220,000, for any subsequent violation.

“(c) Report to Congress – Not later than December 31 of each year, the Attorney General shall submit to Congress an annual report on any civil action brought under subsection (a) during the preceding year.

“(d) Private right of action – A person who is aggrieved by a State’s violation of this Act, may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this Act. In any such action, the only necessary party defendant is the State. It shall not be a defense to such action that local election officials are not also named as defendants.

“(e) Attorney’s fees – In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney’s fees, including litigation expenses, and costs.”

(b) Section 576 of the Military and Overseas Voter Empowerment Act of 2009, 42 U.S.C. § 1973ff-1 note, is repealed.

SEC. 204. REPEAL OF WAIVER PROVISION.

Subsection (g) of section 102 of UOCAVA (42 U.S.C. § 1973ff-1(g)) is repealed.

SEC. 205. SATURDAY MAILING DATE RULE.

Subsection (a)(8)(A) of section 102 of UOCAVA (42 U.S.C. § 1973ff-1(a)(8)) is amended as follows:

“(A) in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election or if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, for requests received by that business day; and”

SEC. 206. BALLOT REQUESTS BY OVERSEAS CIVILIAN VOTERS.

Section 104 of UOCAVA (42 U.S.C. § 1973ff-3) is amended to cover early ballot requests by overseas voters, as follows:

“(a) Prohibition of refusal of applications on grounds of early submission – A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101) submitted by an absent uniformed services voter or overseas voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services or overseas voters. Also, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101) submitted by an absent uniformed services voter or overseas voter during the preceding year shall be accepted or processed, with respect to any election for federal office, if held in the first 120 days of the following year.

“(b) The Presidential designee shall revise the official postcard form (prescribed under section 1973ff of this title) to enable a voter using the form to--

“(1) request an absentee ballot for each election for Federal office held in a State during a year and the first 120 days of the following year; or

“(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.”

SEC. 207. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

Subsection (6) of section 107 of UOCAVA (42 U.S.C. § 1973ff-6(6)) is amended to include the Commonwealth of the Northern Mariana Islands, as follows:

“(6) ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands;”

SEC. 208. RELATED CHANGES TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964—
CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION,
AND AVAILABLE RELIEF.

(a) Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

(1) by striking “No” and inserting “(a) No”; and

(2) by adding at the end of that section the following new subsection:

“(b) Discrimination based on disparate impact is established under this title only if—

“(1) a person aggrieved by discrimination on the basis of race, color, or national origin demonstrates that a program or activity receiving Federal financial assistance (referred to in this title as ‘covered entity’) has a policy or practice that causes a disparate impact on the basis of race, color, or national origin and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the covered entity; or

“(2) the aggrieved person demonstrates that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

“In this subsection, the term ‘demonstrates’ means meets the burdens of production and persuasion.”

(b) Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) is amended—

(1) by striking “Each” and inserting “(a) Each”; and

(2) by adding at the end of that section the following new subsection:

“(b) Any person aggrieved by the failure of a covered entity to comply with this title may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person’s rights and may recover equitable relief, reasonable attorney’s fees, and costs. The aggrieved person may also recover legal relief (including compensatory and, from non-governmental entities, punitive damages) in the case of intentional discrimination.”

SEC. 209. RELATED CHANGES TO TITLE IX OF THE EDUCATION AMENDMENTS OF 1972—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

(a) Section 901 of the Education Amendments of 1972 (20 U.S.C. 1681) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

“(c) Subject to the conditions described in paragraphs (1) through (9) of subsection (a), discrimination based on disparate impact is established under this title only if—

“(1) a person aggrieved by discrimination on the basis of sex demonstrates that an entity subject to this title has a policy or practice that causes a disparate impact on the basis of sex and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

“(2) the aggrieved person demonstrates that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

“In this subsection, the term ‘demonstrates’ means meets the burdens of production and persuasion.”

(b) Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682) is amended—

(1) by striking “Each” and inserting “(a) Each”; and

(2) by adding at the end of that section the following new subsection:

“(b) Any person aggrieved by the failure of a covered entity to comply with this title may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person’s rights and may recover equitable relief, reasonable attorney’s fees, and costs. The aggrieved person may also recover legal relief (including compensatory and, from non-governmental entities, punitive damages) in the case of intentional discrimination.”

TITLE III - USERRA AMENDMENTS

SEC. 301. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE EMPLOYER.

(a) Subsection (a) of section 4323 of title 38 (USERRA) is amended as follows:

“(a) Action for relief

“(1) A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or 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 commence an action for relief under this chapter. The person on whose behalf the complaint is referred may, upon timely application, intervene in such action, and may obtain such appropriate relief as provided in subsections (d) and (e) of this section.

“(2) Whenever the Attorney General has reasonable cause to believe that a State (as an employer) or a private employer is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this chapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may commence a civil action under this chapter.

“(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) of this title;

“(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

“(C) has been notified by the Department of Justice that the Attorney General does not intend to bring a civil action.”

(b) Subsection (f) of section 4323 of title 38 (USERRA) is amended as follows:

“(f) Standing.—An action under this chapter may be initiated only by the United States or by a person claiming rights or benefits under this chapter under subsection (a).”

(c) Subsection (h)(2) of section 4323 of title 38 (USERRA) is amended as follows:

“(2) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(1) or subsection (a)(3) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.”

SEC. 302. CIVIL INVESTIGATIVE DEMANDS.

Subsection (j) of section 4323 of title 38 (USERRA) is amended as follows:

“(j) Issuance and Service of Civil Investigative Demands

“Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this chapter, the Attorney General, or a designee, may, before commencing a civil action under subsection (a), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

“(1) the production of such documentary material for inspection and copying;

“(2) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

“(3) the production of any combination of such documentary material or answers.

“The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this section, except that references to false claims law investigators or investigations shall be read as references to USERRA investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to ‘false claims law’ shall not apply; and provisions relating to qui tam relators shall not apply.”

SEC. 303. RELATED CHANGES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964— CIVIL INVESTIGATIVE DEMANDS.

(a) Subsections (b) through (e) of section 707 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6) shall be redesignated as subsections (c) through (f).

(b) Section 707 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6) is amended by inserting the following new subsection at the end of subsection (a):

“(b) Issuance and Service of Civil Investigative Demands

“Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this subchapter, the Attorney General, or a designee, may, before commencing a civil action under subsection (a), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

“(1) the production of such documentary material for inspection and copying;

“(2) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

“(3) the production of any combination of such documentary material or answers.

“The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this section, except that references to false claims law investigators or investigations shall be read as references to employment discrimination investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to ‘false claims law’ shall not apply; and provisions relating to qui tam relators shall not apply.”

TITLE I – SCRA AMENDMENTS

SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

This section clarifies that the plaintiff in a default judgment action has an affirmative obligation to determine the defendant's military status and that the plaintiff must take steps accordingly, including but not limited to reviewing available Department of Defense records.

SEC. 102. RESIDENCY OF MILITARY FAMILY MEMBERS.

This section clarifies that a family member of a servicemember does not have to accompany that servicemember who is absent from a State in compliance with military or naval orders in order for the family member to retain a residence or domicile in that State. Often if a servicemember is called to Iraq or Afghanistan or deploys on ship for 6-12 months a family member will return to a parent's home during that time for the support network, particularly when there are small children, rather than remaining in a place with no family support. This clarification will allow the military family member the same residency rights as a servicemember even if the family member is unable to accompany the member to the duty station and due to the change in duty station needs to also move to a different place during that deployment.

SEC. 103. INCREASE IN CIVIL PENALTIES.

This section doubles the amount of civil penalties currently authorized.

SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.

This section grants authority to the Attorney General to issue civil investigative demands in investigations under the SCRA. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories. This section also clarifies that the Attorney General's authority to enforce the Act applies to violations of the Act that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such authority explicit.

SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.

This section clarifies that a private right of action may be filed by any person aggrieved by a violation of the SCRA that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such right explicit.

SEC. 106. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT— INCREASE IN CIVIL PENALTIES.

This section increases the amount of civil penalties currently authorized so that they are congruent with the amount of civil penalties authorized for violations of the SCRA, as amended by this bill.

SEC. 107. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—CIVIL INVESTIGATIVE DEMANDS.

This section grants authority to the Attorney General to issue civil investigative demands in fair housing investigations and makes that authority congruent with the Attorney General's authority to issue such demands in SCRA investigations, as amended by this bill.

SEC. 108. RELATED CHANGES TO THE EQUAL CREDIT OPPORTUNITY ACT—CIVIL INVESTIGATIVE DEMANDS.

This section grants authority to the Attorney General to issue civil investigative demands in fair lending investigations and makes that authority congruent with the Attorney General's authority to issue such demands in SCRA investigations, as amended by this bill.

TITLE II - UOCAVA AMENDMENTS

SEC. 201. PRE-ELECTION REPORTING REQUIREMENTS.

This section amends Section 102 of UOCAVA to require that States submit two pre-election reports to the Departments of Justice and Defense on the status of ballot transmission to military and overseas voters. It requires that States submit the first report 55 days before the election and identify any jurisdictions that may not be able to send ballots by the 45th day before the election. It requires that States submit the second report 43 days before the election and certify whether each of its jurisdictions transmitted its ballots by the 45th day. These two pre-election reports would provide the Department with information necessary to assess, at the most critical and timely stages, whether enforcement actions are needed, and alleviate the need to rely on voluntary reporting by the States.

SEC. 202. EXPRESS DELIVERY REQUIREMENT.

This section amends Section 102 of UOCAVA to require States that have failed to mail absentee ballots by the 45-day deadline to voters who request ballots by the 45th day to send them by express delivery, and to require States that have failed to mail absentee ballots by the 40th day to enable such voters to return their ballots by express delivery. These requirements would increase the likelihood that ballots arrive in time for the voters to receive, mark, and return the ballots by Election Day, and would create a strong financial incentive for strict State compliance with the 45-day rule.

SEC. 203. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

This section amends Section 105 of UOCAVA to clarify that States bear the ultimate responsibility for ensuring timely transmission of absentee ballots; to provide for civil penalties for violations of the Act in appropriate circumstances; and to provide for an express private right of action. The clarifying language in this amendment would preclude State officials from successfully arguing, contrary to Congress's intent and the Act's legislative history, that they lack sufficient authority to be held responsible for localities' failures to timely send overseas ballots. This section also repeals 42 U.S.C. § 1973ff-1 note, which addresses the delegation of administrative control of absentee voting, to avoid confusion regarding State responsibility for compliance with the Act. The inclusion of civil penalties and an express private right of action strengthens the Act's protections by providing additional incentives for State compliance.

SEC. 204. REPEAL OF WAIVER PROVISION.

This section repeals UOCAVA's hardship waiver provision, 42 U.S.C. § 1973ff-1(g), which currently waives the 45-day deadline for States that cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating ballots due to a legal contest; or (3) a prohibition in the State's Constitution. The Department's experience with the waiver provision during the 2010 Federal general election

cycle shows that its marginal benefits are outweighed by its downsides, including the significant enforcement and administrative resources expended on its implementation. All 11 States that applied for a waiver did so based on the date of their primary elections, and a majority of them were denied a waiver, which required them to take additional, immediate steps to come into compliance at a time when the Federal general election date was fast approaching. Repealing the waiver provision would strengthen the protections of the Act by ensuring that the 45-day deadline is the standard that all States should meet, even if it requires changing the date of their primary elections. A uniform, nationwide standard ensures that all military and overseas voters are afforded its benefits equally.

SEC. 205. SATURDAY MAILING DATE RULE.

This section amends Section 102 of UOCAVA to require that absentee ballots be sent on the business day preceding the 45th day before the election when the 45th day is a weekend or holiday. Because elections for Federal office are almost always held on a Tuesday, the 45th day almost always will fall on a Saturday. This amendment is therefore necessary to clarify that when the 45th day falls on a weekend or holiday, the deadline is moved up to the next preceding business day as opposed to the following business day.

SEC. 206. BALLOT REQUESTS BY OVERSEAS CIVILIAN VOTERS.

This section amends Section 104 of UOCAVA to add overseas civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election, and provides that voter registration applications or absentee ballot requests submitted by all absent uniformed services voters and overseas voters in a calendar year shall be accepted and processed for each election for Federal office held in a State during the first 120 days of the following year. The inclusion of overseas civilian voters in this provision is consistent with other provisions of the Act. It also provides that all absent uniformed services voters and overseas voters have the option of applying for ballots for all federal elections held during the period prescribed by this section and requires the Presidential designee to revise the Federal postcard application to provide for that option.

SEC. 207. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

This section amends UOCAVA to make its requirements applicable to the Commonwealth of the Northern Mariana Islands, which, as of 2008, has a nonvoting Delegate to the House of Representatives.

SEC. 208. RELATED CHANGES TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964— CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

This section responds to the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), by clarifying that discrimination that has a disparate impact on protected classes

is prohibited under Section 601 of Title VI. In addition, it makes explicit the right of individuals to enforce Title VI and clarifies that an aggrieved person may recover equitable relief, reasonable attorney's fees, and costs. It also makes clear that compensatory and punitive damages are available for claims of intentional discrimination, but not for disparate impact claims, and that punitive damages may only be recovered from non-governmental entities.

SEC. 209. RELATED CHANGES TO TITLE IX OF THE EDUCATION AMENDMENTS OF 1972—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

This section responds to the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), by clarifying that discrimination that has a disparate impact on the basis of sex is prohibited under Section 901 of Title IX. In addition, it makes explicit the right of individuals to enforce Title IX and clarifies that an aggrieved person may recover equitable relief, reasonable attorney's fees, and costs. It also makes clear that compensatory and punitive damages are available for claims of intentional discrimination, but not for disparate impact claims, and that punitive damages may only be recovered from non-governmental entities.

TITLE III - USERRA AMENDMENTS

SEC. 301. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE EMPLOYER.

This section strengthens enforcement of USERRA rights by allowing the United States to serve as a plaintiff in all suits filed by the Attorney General, as opposed to only suits filed against State employers. The amendment preserves the right of the aggrieved persons to intervene in such suits, or to bring their own suits where the Attorney General has declined to file suit. This section also strengthens enforcement by granting independent authority to the Attorney General to investigate and file suit to challenge a pattern or practice in violation of USERRA. The pattern-or-practice language is modeled after Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(a).

SEC. 302. CIVIL INVESTIGATIVE DEMANDS.

This section grants authority to the Attorney General to issue civil investigative demands in its USERRA investigations. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories.

SEC. 303. RELATED CHANGES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964— CIVIL INVESTIGATIVE DEMANDS.

This section grants parallel authority to the Attorney General to issue civil investigative demands in pattern-or-practice investigations under Title VII of the Civil Rights Act of 1964.