

*Servicemembers Civil Relief Act (SCRA) and Uniformed Services Employment and Reemployment Rights Act (USERRA)*

**New Resources for SCRA and USERRA Practitioners**

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Almost five years after the terrorist attacks of 11 September 2001, servicemembers of all components continue to mobilize and deploy in unprecedented numbers in support of the global war on terror.<sup>1</sup> The stresses and strains of lengthy and repeated mobilizations, especially on National Guard and Reserve personnel who are called away from their civilian lives and obligations, can be significant.<sup>2</sup> Fortunately, Congress has long recognized the need for protective legislation that not only assists servicemembers during their tours of active duty, but also provides protection and relief when servicemembers return to their civilian jobs and responsibilities. Through the SCRA<sup>3</sup> and the USERRA,<sup>4</sup> Congress has provided a number of benefits and protections to servicemembers, ranging from basic financial and legal protections<sup>5</sup> to vital reemployment rights.<sup>6</sup> Given the continued use of National Guard and Reserve personnel in the global war on terror, there is little doubt that the SCRA and USERRA are more relevant than ever to servicemembers and their families.

Two new resources pertaining to the SCRA and the USERRA should prove beneficial to legal assistance practitioners. First, in March 2006, the U.S. Army Judge Advocate General's Legal Center and School updated publication *JA 260*,<sup>7</sup> *The Servicemembers Civil Relief Act Guide*, to reflect the sweeping changes made by Congress in 2003 and 2004 in adopting the SCRA (and follow-up amendments), which replaced the venerated Soldiers' & Sailors' Civil Relief Act (SSCRA).<sup>8</sup> Mirroring the SCRA's attempt to strengthen, clarify, and modernize the older SSCRA, the new *SCRA Guide* replaces the earlier *JA 260 SSCRA Guide*<sup>9</sup> and is intended to assist the practitioner in applying the new legislation to current issues. For example, the new *SCRA Guide* addresses the SCRA's significant expansion of protections to servicemembers who need to terminate residential and automobile leases,<sup>10</sup> the SCRA's straightforward clarification of the application of the six percent interest rule to servicemember debts,<sup>11</sup> and the SCRA's extension of protections to National Guard Soldiers serving on active

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<sup>1</sup> As of 26 April 2006, over 106,000 National Guard and Reserve personnel were currently serving on active duty in support of the global war on terror. See U.S. Dep't of Defense News Release, National Guard (In Federal Status) and Reserve Mobilized as of April 26, 2006 (Apr. 26, 2006), <http://www.defenselink.mil/releases/2006/nr20060426-12888.html>.

<sup>2</sup> See Brad Knickerbocker, *Money Woes on Home Front*, CHRISTIAN SCI. MONITOR, Aug. 11, 2005, at 3 (stating that many Reserve and National Guard Soldiers find themselves burdened with financial problems back home and citing studies showing that about half of all Reserve and National Guard members report a loss of income when they go on active duty); Karen Jowers, *Survey: Families Carry Worry From Tour to Tour*, ARMY TIMES, Apr. 10, 2006, at 22 (stating that Army National Guard and Reserve families reported their greatest stress is deployment length); David Hanners, *After Rifle Is Set Aside, A New Fight Begins: National Guard Finding Ways to Help Service Members and Families Cope With Big Readjustments After War*, ST. PAUL PIONEER PRESS, Apr. 25, 2006, at 1A (listing common problems experienced by Reserve component Soldiers returning from deployment, to include post-traumatic stress disorder, divorce, problems with children's behavior, and trouble re-entering the workforce).

<sup>3</sup> Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-596 (LEXIS 2006).

<sup>4</sup> Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C.S. §§ 4301-4334 (LEXIS 2006).

<sup>5</sup> Examples of benefits and protections provided by the SCRA include reduction of interest to six percent for debts incurred before entry on active duty, stays of civil proceedings, protection against default judgments, tolling of statutes of limitation, termination of residential and automobile lease provisions, and protection from evictions. See 50 U.S.C. App. §§ 501-596.

<sup>6</sup> The USERRA provides specific employment and reemployment rights to persons who have been called to active duty, to include reinstatement to their civilian jobs, accrued seniority, continuation of employment status, employer-provided health insurance and nonseniority benefits, training, and protection against discharge except for cause. See 38 U.S.C.S. §§ 4301-4334.

<sup>7</sup> ADMINISTRATIVE AND CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, *JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE* (Mar. 2006) [hereinafter *JA 260*].

<sup>8</sup> Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. app. §§ 501-594 (2000) (current version at 50 U.S.C. app. §§ 501-596 (LEXIS 2006)).

<sup>9</sup> ADMINISTRATIVE AND CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, *JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE* (July 2000).

<sup>10</sup> *JA 260*, *supra* note 7, at 4-7 to 4-14.

<sup>11</sup> *Id.* at 6-1 to 6-5.

duty in Title 32 status for more than thirty consecutive days in response to a presidential declaration of national emergency.<sup>12</sup> The new *SCRA Guide* is located on the JAGCNET website.<sup>13</sup>

The second important resource pertains to the USERRA. On 19 December 2005, the Department of Labor (DOL) published in the *Federal Register* its first-ever rules and regulations interpreting, explaining, and clarifying the USERRA.<sup>14</sup> The publication had been eagerly anticipated in the Reserve Component community. Although section 4331 of the USERRA authorized the Secretary of Labor, in consultation with the Secretary of Defense, to prescribe rules and regulations implementing the Act,<sup>15</sup> this is the first time since the passage of the USERRA in 1994 that the DOL has done so. The rules and regulations should prove to be a useful resource for legal assistance practitioners. The preamble explains the DOL's interpretation of the USERRA section by section, while the regulation generally follows the outline of the USERRA and handily addresses key issues in an easy-to-use question and answer format. For example, the regulations address frequently asked questions such as "Does USERRA cover an independent contractor?,"<sup>16</sup> "Is all service as a member in the National Guard considered 'service in the uniformed services?,'"<sup>17</sup> and "Are there any types of service that do not count against USERRA's five-year service limit?"<sup>18</sup> In addition, the regulations tackle complicated and thorny issues under USERRA such as employee pension plan benefits,<sup>19</sup> health plan benefits<sup>20</sup> and employer statutory defenses.<sup>21</sup> The USERRA rules and regulations are located on the DOL website.<sup>22</sup>

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<sup>12</sup> *Id.* at 2-4 to 2-5.

<sup>13</sup> The new *SCRA Guide* can be accessed at <http://www.jagcnet.army.mil> (click on TJAG Legal Center & School (TJAGLCS); then follow TJAGLCS Publications. The new *SCRA Guide*, JA 260, is located in the Legal Assistance section).

<sup>14</sup> Uniformed Services Employment and Reemployment Rights Act of 1994; Final Rules, 70 Fed. Reg. 75246 (Dec. 19, 2005) (to be codified at 20 C.F.R. pt. 1002).

<sup>15</sup> 38 U.S.C.S. § 4331 (LEXIS 2006).

<sup>16</sup> Uniformed Services Employment and Reemployment Rights Act of 1994, 70 Fed. Reg. at 75299, § 1002.44.

<sup>17</sup> *Id.* at 75299, § 1002.57.

<sup>18</sup> *Id.* at 75301, § 1002.103.

<sup>19</sup> *Id.* at 75309-75311, §§ 1002.259-1002.267.

<sup>20</sup> *Id.* at 75305-75306, §§ 1002.163-1002.171.

<sup>21</sup> *Id.* at 75304, § 1002.139.

<sup>22</sup> U.S. Dep't of Labor, Federal Register (Dec. 19, 2005), <http://www.dol.gov/vets/regs/fedreg/final/2005023961.pdf>.

**Update on Department of State and Department of Defense Coordination of Reconstruction and Stabilization Assistance**

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**Introduction**

The purpose of this article is to provide a brief update on the efforts of the Department of Defense (DOD), the Department of State (DOS), and the President to provide assistance to other countries for reconstruction, stabilization, or security. First, the DOS has established an Office of Reconstruction and Stabilization to lead U.S. efforts at assisting other countries. Next, the DOD has promulgated a directive providing guidance for military support for stabilization, security, transition, and reconstruction (SSTR). Finally, the President has issued a new presidential directive delineating responsibilities for such efforts.

**Department of State**

*Office of the Coordinator for Reconstruction and Stabilization*

In July 2004, with bipartisan support in Congress and with the agreement of the National Security Council, the Secretary of State established the Office of the Coordinator for Reconstruction and Stabilization (S/CRS) to lead U.S. efforts at assisting other countries in transition from conflict and helping them reach a sustainable path toward peaceful, democratic, and market-oriented societies.<sup>1</sup> The Secretary named Ambassador Carlos Pascual as Coordinator.<sup>2</sup> The Coordinator reports directly to the Secretary of State.<sup>3</sup>

The S/CRS Office was founded with the agreement of the National Security Council to coordinate U.S. planning activities across federal agencies. The office's emphasis will be to strengthen the U.S. government's institutional capacity to deal with crises in failing states and to reconstruct and stabilize societies recovering from conflict and civil strife.<sup>4</sup> "The S/CRS will engage interagency partners to identify states at risk of instability and focus attention on policies and strategies to prevent or mitigate conflict."<sup>5</sup>

In particular, the S/CRS's goal is to provide an operational field response to post-conflict situations that will emphasize transformational diplomacy to include, among other things: facilitation of peace implementation processes; coordination with international and local institutions and individuals that are developing transition strategies; implementation of transitional governance arrangements; encouragement of conflicting factions to work together; development of strategies to promote transitional security; coordination with other U.S. government agencies and the U.S. military; coordination with foreign agencies and armed forces; and, if necessary, preparation of a diplomatic base on the ground.<sup>6</sup>

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<sup>1</sup> Press Release, U.S. Dep't of State, Office of the Coordinator for Reconstruction and Stabilization (Mar. 8, 2005), <http://www.state.gov/documents/organization/43429.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

### *Active Response Corps*

Operational experiences in Haiti, Somalia, the Balkans, Afghanistan, and Iraq have vividly demonstrated that a civilian field presence is essential in the very first stages of a reconstruction or stabilization mission, both to keep the government informed of the situation and to shape the tactical-level environment for follow-on civilian elements. Accordingly, the DOS is planning to form an Active Response Corps (ARC), which will include a select, dedicated full-time, specially-trained group of State Department Foreign Service and Civil Service personnel for short-notice deployment as “first responders” to reconstruction or stability operations. The deployments may be with or without U.S. military forces and possibly in conjunction with or attached to a United Nations or international mission. When not deployed, ARC personnel will be training in U.S. government exercises or in State Department bureaus assisting with preparing and planning for countries or regions facing reconstruction or stabilization challenges.<sup>7</sup>

The DOS is forming the ARC with volunteers from State Foreign and Civil Service personnel. Training is important to the success of the ARC—all ARC personnel will receive training in area studies, emergency first aid, personal and group security, field communications systems, and field environment living. Active Reserve Corps personnel will frequently participate in staff and field exercises with the military, other agencies, and partner countries.<sup>8</sup>

### *Standby Response Corps*

The DOS is also establishing a Standby Response Corps (SRC) of volunteer Foreign and Civil Service Officers.<sup>9</sup> These individuals will supplement the skills available in the ARC and will be prepared to follow on behind the ARC to support transition efforts over the long term. These officers will continue to perform their current duties in the DOS or overseas, but as resources permit, they will also participate in training or exercises with the S/CRS or the ARC.<sup>10</sup>

### *Funding*

The President’s fiscal year (FY) 2006 budget request included a \$100 million Conflict Response Fund to strengthen the ability of the S/CRS to lead U.S. planning efforts for countries and regions of most concern, and coordinate the deployment of U.S. resources when needed.<sup>11</sup> This request, however, was not funded by Congress for FY 2006.<sup>12</sup> Nevertheless, Congress approved approximately \$16.6 million in the FY 2006 budget for funding of the S/CRS staff in the DOS and for creating, training, and maintaining the ARC. More funding will be needed to fully form the ARC. Currently S/CRS staff within the State Department consists of fifteen permanent positions, twelve interagency detailees, and forty-eight non-permanent positions funded by DOS. In FY 2007, there is expected to be an increase of fifteen additional permanent positions.<sup>13</sup>

The DOD has approximately \$200 million in its FY 2006 budget set aside for “stabilization and reconstruction,” and there has been some discussion between Congress and the Administration about allowing the DOS, in an emergency, to request funds from the DOD for conflict response.<sup>14</sup> This possibility, however, is still only at a preliminary stage. There is, however, authority for the Secretary of Defense to provide to the DOS up to \$100 million in materiel and services per year in FY 2006 and FY 2007 to support Reconstruction & Stabilization operations.<sup>15</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Oxford Analytica, *Failing Nations Threaten U.S. Security*, FORBES.COM, Apr. 15, 2005 [hereinafter Oxford Analytica].

<sup>12</sup> Steven Weisman, *Bush Gives State Dept. Priority in Helping Nations Rebuild*, N.Y. TIMES, Dec. 15, 2005.

<sup>13</sup> U.S. Dep’t of State, Office of the Coordinator for Reconstruction and Stabilization (S.CRS), S/CRS Reference Guide to President Bush’s FY 2007 Budget Request, Apr. 6, 2006, available at <http://www.crs.state.gov/index.cfm?fuseaction=layout.LayoutDisplay&layoutid=180ccabf-9d8d-441f-b72e-2127a1cd9b1d&returnto=80a55522-b068-4356-bf3e-d931f218a86>

<sup>14</sup> Carlos Pascual, Ambassador, Statement to the Senate Committee on Foreign Relations, Washington, DC (June 16, 2005).

<sup>15</sup> H.R. 1815, 109th Cong. § 1207 (2005).

## Department of Defense

### *DOD Directive 3000.05*<sup>16</sup>

The subject of the directive is military support for SSTR.<sup>17</sup> This directive establishes DOD policy, provides guidance on stability operations, and assigns responsibilities within the DOD for planning, training, and preparing to conduct and support stability operations under the legal authority of the Secretary of Defense<sup>18</sup> and the responsibilities assigned in the Strategic Planning Guidance, FY 2006-2011, March 2004.<sup>19</sup> The directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, Combatant Commands, and all other organizational entities in the DOD (i.e., the DOD Components).<sup>20</sup>

### *Policy*

Department of Defense policy states that stability operations are a core U.S. military mission that the DOD shall be prepared to conduct and support.<sup>21</sup> Stability operations shall be given priority comparable to combat operations and explicitly addressed and integrated across all DOD activities including doctrine, organizations, training, education, exercises, materiel, leadership, personnel, facilities, and planning.<sup>22</sup> United States military forces shall be prepared to perform all tasks necessary to establish or maintain order when civilians cannot do so.<sup>23</sup>

### *Goals*

The immediate goal of stability operations is to provide security, restore essential services, and meet humanitarian needs. Longer-term goals are to develop: the local capacity for securing essential services, a viable market economy, rules of law, democratic institutions, and a robust civil society.<sup>24</sup>

### *Tasks*

Many stability operations are arguably best performed by indigenous, foreign, or U.S. civilian professionals. Nevertheless, the U.S. military must be prepared to perform all necessary stability operations tasks. Such tasks include: rebuilding indigenous institutions including various types of security forces, correctional facilities, and judicial systems that are necessary to secure and stabilize the environment; reviving or building the private sector; encouraging citizen-driven, bottom-up economic activity, constructing necessary infrastructure; and developing representative governmental institutions.<sup>25</sup>

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<sup>16</sup> U.S. DEP'T OF DEFENSE, DIR. 3000.05, MILITARY SUPPORT FOR STABILITY, SECURITY, TRANSITION AND RECONSTRUCTION (SSTR) (28 Nov. 2005) [hereinafter DOD DIR. 3000.05].

<sup>17</sup> *See id.*

<sup>18</sup> *See* 10 U.S.C. §§ 113, 153 (LEXIS 2006).

<sup>19</sup> Classified document. For access, contact Director, Executive Services (Doc. No. 75774-04).

<sup>20</sup> DOD DIR. 3000.05, *supra* note 14, paras. 1 and 2.

<sup>21</sup> *Id.* para. 4.1.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* paras. 4.1-4.3.

<sup>24</sup> *Id.* para. 4.2.

<sup>25</sup> *Id.* paras. 4.3-4.5.

## *Interagency and Intergovernmental Cooperation*

Successful stability operations need proper integration of civilian and military efforts. The DOD must be prepared to work with the private sector; other U.S. agencies, foreign governments and forces; international organizations; and U.S. and foreign nongovernmental organizations.<sup>26</sup>

The DOD will lead and support the development of military and civilian teams, and participation shall be open to personnel from other U.S. agencies, foreign sources, international organizations, nongovernmental organizations, and the private sector. Assistance and advice shall be sought by the responsible DOD organization from the DOS and other U.S. agencies.<sup>27</sup>

### *Responsibilities*

The directive assigns specific responsibilities for implementing the above goals and tasks to five DOD Under Secretaries, two DOD Assistant Secretaries, the Chairman of the Joint Chiefs of Staff, the Commanders of the Geographic Combatant Commands, the Commander, U.S. Joint Forces Command, the Secretaries of the Military Departments and the Commander, U.S. Special Operations Command.<sup>28</sup>

### **Presidential Directive**

In support of these efforts and in recognition of the need to improve the U.S. government's ability to perform stabilization and reconstruction operations, President Bush issued a new presidential directive establishing the Secretary of State as the coordinator and lead integrator for U.S. government efforts, involving all U.S. Departments and Agencies with relevant capabilities, to prepare, plan for, and conduct stabilization and reconstruction activities.<sup>29</sup> When the U.S. military is involved, the Secretary of State is to coordinate such efforts with the Secretary of Defense to secure harmonization with any planned or ongoing U.S. military operations across the spectrum of conflict.<sup>30</sup>

The goal of these improved capabilities is to enable the United States to help governments abroad exercise sovereignty over their own territories and prevent those territories from being used as a base of operations or safe haven for extremists, terrorists, organized crime groups, or others that pose a threat to U.S. foreign policy, security, or economic interests.<sup>31</sup>

### **Conclusion**

The establishment of the State Department Office for Reconstruction and Stabilization, partnered with the issuance of the DOD directive and the guidance provided by the presidential directive, provides an opportunity for the United States to plan ahead and coordinate future responses to emergencies in failed states requiring some level of U.S. involvement in reconstruction and stabilization operations. The designation of the DOS as lead in this area, but with the requirement for coordination with the DOD when the U.S. military is involved, provides an opportunity for fruitful cooperation within the U.S. government that should lead to much more efficient and effective future U.S. responses to international crises. In particular, the new DOD policy that stability operations are a *core* responsibility provides the opportunity to view such problems in a new perspective. Hopefully, these new efforts will help avoid some of the pitfalls that the United States has encountered in previous efforts to address such issues in countries such as Bosnia, Afghanistan and, of course, Iraq.

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<sup>26</sup> *Id.* para. 4.4.

<sup>27</sup> *See id.* para. 4.6.

<sup>28</sup> *Id.* para. 5.

<sup>29</sup> Nat. Sec. Pres. Dir. No. 44, Management of Interagency Efforts Concerning Reconstruction and Stabilization (Dec. 7, 2005), available at <http://www.fas.org/irp/offdocs/nspd/nspd-44.html>.

<sup>30</sup> Office of the Spokesman, Dep't of State, President Issues Directive to Improve the United States' Capacity to Manage Reconstruction and Stabilization Efforts (Dec. 14, 2005), available at <http://www.fas.org/irp/offdocs/nspd/nspd-44fs.html>.

<sup>31</sup> *Id.*