

USAWC STRATEGY RESEARCH PROJECT

**MAINTAINING SMALL BUSINESS SUPPORT IN TIMES OF INCREASED ARMY
NATIONAL GUARD UTILIZATION: AN IMPENDING CRISIS**

by

Lieutenant Colonel Tracy L. Settle
United States Army National Guard

Professor Glenn Cunningham
Project Adviser

This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 15 MAR 2006		2. REPORT TYPE		3. DATES COVERED 00-00-2005 to 00-00-2006	
4. TITLE AND SUBTITLE Maintaining Small Business Support in Times of Increased Army National Guard Utilization An Impending Crisis				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Tracy Settle				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army War College, Carlisle Barracks, Carlisle, PA, 17013-5050				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT See attached.					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 28	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

ABSTRACT

AUTHOR: Lieutenant Colonel Tracy L. Settle

TITLE: Maintaining Small Business Support in Times of Increased Army National Guard Utilization: An Impending Crisis

FORMAT: Strategy Research Project

DATE: 13 February 2006 WORD COUNT: 7273 PAGES: 28

KEY TERMS: Employer Support, ESGR, Reserve Component

CLASSIFICATION: Unclassified

Approximately 40% of American troops in Iraq today are citizen-soldiers. The continued and unprecedented use of the Army National Guard (ARNG) to fight the war on terrorism abroad, while simultaneously supporting natural disasters at home, is having a significant impact on small business support across America. To date, there has been little resistance from the business community. However, the tide is about to turn unless substantial tax and financial incentives are provided to employers that offset the temporary loss of these dedicated Americans. Workforce strains and financial pressures on employers due to continued Guard utilization could ultimately translate into increased discrimination of ARNG members in the workforce. Personnel readiness of the ARNG is at substantial risk unless these issues are addressed at the highest levels of Department of Defense (DOD) and Congress. This thesis will examine the reasons for erosion in small business support for the ARNG, the impact on recruiting and retaining soldiers, incentives that would entice business leaders to hire Guard members, and recommendations on how to improve grassroots support in the business community.

MAINTAINING SMALL BUSINESS SUPPORT IN TIMES OF INCREASED ARMY NATIONAL GUARD UTILIZATION: AN IMPENDING CRISIS

The positive impact of employing a National Guard member still outweighs the negative issues. Soldiers set exemplary examples for other employees in regard to discipline, personal appearance, and assuming responsibility. However, if NG members continue to be deployed as in the past few years or moved to supporting a rotational brigade concept, employer support could diminish. Providing some sort of financial relief for employers will be important. This does not necessarily mean direct financial payment, but either providing health insurance and/or tax breaks. Lacking such subsidies, employers may flee camp!

—Small Business Owner from South Dakota

Approximately 40% of American troops in Iraq today are citizen-soldiers.¹ The continued and unprecedented employment of the Army National Guard (ARNG) to fight the war on terrorism abroad, while simultaneously supporting natural disasters at home, is having a significant impact on small business support across America. To date, there has been little resistance from the business community. In fact, many businesses have gone above and beyond their obligatory duty to ensure that their soldier-employees and families are taken care of during mobilizations as well as providing rapid reinstatement of their jobs upon return from deployments. Is the tide of business support about to turn unless substantial tax and financial incentives are provided to employers that offset the loss of these dedicated Americans? Are the unprecedented levels of mobilizations, coupled with mandatory weekend drills, two-week annual training periods, and professional development school requirements, too much to ask of our traditional soldiers and families in their service to America? The ARNG may even experience a precipitous drop in meeting recruiting objectives as well as a sharp increase in attrition within the ranks if not addressed immediately. Will workforce strains and financial pressures on employers, as well as soldiers, translate into increased discrimination of ARNG members in the workforce? The personnel readiness of the ARNG is at substantial risk unless these issues are addressed at the highest levels of Department of Defense (DOD) and Congress. This thesis will examine the reasons for erosion in small business support for the ARNG, the impact on recruiting and retaining soldiers in the ARNG, incentives that would entice business leaders to hire and retain ARNG members, and recommendations on how to improve grassroots support in the business community.

The Current Mobilization Model

...the launch of the Global War on Terrorism has resulted in the largest activation of National Guard forces for overseas missions since World War II. In addition,

Guard members have been called upon to perform new homeland security missions as well as state missions ranging from fighting forest fires to providing hurricane relief. As of July 2005, more than 30 percent of the Army forces deployed to Operation Iraqi Freedom are National Guard members and as of September 2005 over 50,000 National Guard personnel from over 48 states, 2 U.S. territories and the District of Columbia supported the hurricane disaster response in the Gulf Coast.²

–David M. Walker,
Comptroller General of the United States

On September 11th, 2001, the roles and missions of the ARNG changed forever.

Responding to the nation's emergency requirements, both at home and abroad, the Guard has activated and deployed over 300,000 soldiers in support of a myriad of vital domestic and foreign missions. State directed and managed operations have included disaster mitigation (fires, floods, tornadoes, blizzards), key infrastructure protection (bridges, tunnels, dams, nuclear sites), security at the 2002 Olympics, airport security, border security, U.S. Air Force Base security (U.S. and Europe), peace-keeping and stabilization operations in 4 regions, and significant participation in Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom. Prior to 9/11, the Guard spent the majority of its sanctioned time responding to state disasters, training the force at wartime tasks, and providing troops to Federal authorities, when required, in support of humanitarian and combat missions. The operating environment for both Guard leaders and soldiers had been fairly stable and routinely predictable, with call-ups rare. Deployments were characteristically infrequent, predominantly short in duration, and consisted of essentially long-range, annual, pre-planned stateside and overseas exercises.

Simultaneously, the Guard was tracing the footsteps of the active Army by beginning to plan for and implement force transformation to a more mobile, readily deployable force, while remaining a viable asset of governors, ready to respond to a myriad of state-wide contingencies when needed. The events of September 11th more than validated the requirement to change and dictated acceleration of the processes. The Global War of Terrorism (GWOT) and Homeland Security missions took center stage, with the Guard being a central actor in the play. All functional areas were radically impacted: training, budgeting, equipping, maintaining, missioning, and staffing. Full-time Guard members were working 80+ hour weeks to accomplish their routine training support tasks while concurrently preparing hundreds of units and thousands of traditional Guard soldiers for mobilization. Citizen-soldiers who never envisioned long-term deployments when they enlisted were now called to active duty for undetermined, extended periods of time. This change in organizational dynamics and heightened optempo coalesced with unpredictability of missions and increased duration and

frequency of deployments had a significant impact on the psyche of soldiers, families, and employers. While the immediate obligation for the ARNG to provide operational support at both home and abroad was clear, the future missioning and rotational plans of the Guard were now being questioned at the highest levels of DOD. Predictability of combat deployments coupled with future missioning assignments for the ARNG became central to the continued readiness and viability of the ARNG. Change in the use, employment, and roles of the Guard became essential.

One revolutionary change to systemically employing the Guard in future operations is the Army Force Generation Model (ARFORGEN). The model was developed to provide a predictable method of staffing, training, equipping, and deploying forces through a continuum of worldwide, operational, deployment requirements.

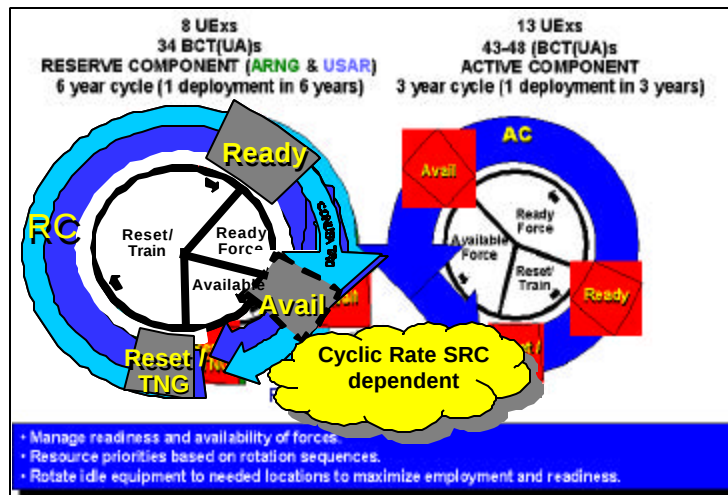


FIGURE 1. ARMY FORCE GENERATION MODEL

The model provides the structure for an increase in unit readiness over time, resulting in availability of units that are trained and ready for operational deployment in support of combatant commander requirements world-wide.³ While this model serves to provide improved predictability in Guard deployments supporting federal missions, it does not address operations other than war (OOTW) or stability and support operations (SASO) compelling Guard involvement. DOD is currently analyzing an increased role for the ARNG in homeland defense efforts, combined with a redirection and refocus of resources toward a “train, alert, and deploy” model vs. the older operational paradigm of “alert, mobilize, train, and deploy.” These shifts

further challenge the Guard to maintain a more continuous, higher level of readiness at all times, while concurrently supporting a three-prong mission approach: traditional war fighting, SASO, and homeland security missions. Collectively, these escalating mission requirements present tremendous readiness issues for Guard leaders, as well as impose added hardship and stress on soldiers, families, and employers, possibly diminishing their levels of commitment and support. Debates will continue to address the ARNG of the future. However, it remains clear that in a world of unprecedented threats and challenges, the Guard will be fully engaged and routinely utilized in the long term, providing the powerful link to the American public and serving as the reserve element in times of national and international crisis. With this level of participation comes risk. For soldiers and employers who have continued to support U.S. military efforts since 9/11, their resolve and will to remain vigilant in a world of covert threats and ideology power struggles, both domestically and abroad, will be tough to sustain.⁴

Impact on Employers

The majority of businesses across America are presently providing more than generous financial and immeasurable moral support for NG soldiers and their families during these challenging times. The departure of a valued employee for a substantial period of time (6 months or more) could present an agonizing dilemma for a small business owner. Some of the key issues presently facing employers include the following: filling vacancies, decisions to provide partial/ supplemental pay and benefits to deployed soldiers and their families, of deployed soldiers, and equitable processes to incorporate returning soldiers back into an organization that has most likely undergone some type of procedural, structural, or sizing transformation during their absence.⁵ Crucial and valued company contracts can be lost or terminated, sales drastically reduced, existing customers may switch to competitors and never return, or remaining employees might be required to expand their responsibilities and cover the absent employee's additional shifts, or work overtime to meet company requirements.⁶ In some cases where feasible, replacement or temporary workers must be hired to fill the employee gap, many times burdening the employer with additional training, educational, and certification costs. Loss of an employee serving in a key management or sales position means the loss of specialized talents and experience, supervisory and leadership skills, and in some circumstances, a co-manager in the organization. Frequently, the business, as well as the employee, has no idea of when the employee will be returning to the workplace.

A short survey of several business owners from South Dakota, known to the command as enthusiastic and staunch supporters of the Guard, indicated that while they personally perceived

no degradation of support in their own organizations, they felt that the Guard was overextended in their mission support of active duty forces and that overall business support was beginning to erode due to the negative impact on business revenue and operations resulting from lengthy and frequent Guard mobilizations. The majority of respondents in this group also indicated that they had incurred unforeseen additional costs to their operations in the hiring, training, and pay/benefits of temporary replacement workers, as well as extra pay to existing employees to cover for Guard members' absences. Several respondents also experienced a loss of revenue due to the departure of sales personnel. However, in summary, all indicated that the benefits of hiring Guard members as employees far outweighed the negative aspects of their military service, and they would continue to employ Guard members in their businesses.

While many self-employed Guard members experience an increase in earning power when ordered to active duty, many others face daunting, overwhelming financial responsibilities and realities. Loss of income and employment for supporting staff, loss of business clientele, additional costs to hire a manager or replacement workers, complete loss of family income, and in extreme situations, bankruptcy, are all potential crisis situations facing the self-employed soldier.⁷ Many of these individuals are not so much concerned about going out of business, as they are about how to take care of their few remaining employees and loyal customer base in their absence. Many business owners end up losing thousands of dollars in lost sales while simultaneously spending tens of thousands of dollars in labor costs to hire replacement workers and managers to keep the business going while they are deployed. The ability of small and self-employed business owners to absorb these financial hardships during times of more frequent and longer deployments raises ominous issues for the future. The bottom line in small businesses that employ Guard members is "most employers incur real costs when they lose workers to active duty...employers who follow the law simply have to suck it up."⁸ This environment could lead to some type of surreptitious employment hiring practice of screening citizen-soldiers from the applicant pool, thus averting employment issues in the future. These practices will be difficult to detect and nearly impossible to prove against a firm should a Guard member allege these practices in a formal complaint.

Employers of military reservists must comply with public law that governs employment and reemployment rights, as well as the responsibilities of both employers and military employees in the workplace. The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 was created after Operation Desert Storm to protect the rights of military members during periods of training and active duty, including mobilizations. According to Barry Shitamoto, a physician from Maui, Hawaii, "The headache isn't the law. Rather, it's the

extended active-duty missions...Everybody is pitching in to help out, but it's a problem. It changes our work schedule and stretches some people."⁹ In many cases, neither the employer nor the employees are versed on the detailed aspects of USERRA. If the employer has never experienced the loss of an employee or the soldier has never been deployed or briefed on the requirements under the law before, during or after deployment, both parties don't know how to handle the situation as it unfolds.

The issues surrounding the increased use of the ARNG and potential harmful impact to small business organizations have recently been addressed by the Congressional Budget Office (CBO). According to 2004 CBO data acquired from DOD for Selected Reservists (Army/Air National Guard and reserve component members) working for civilian employers, only 6% of business organizations employ reservists, with 18% working for private firms with fewer than 100 employees and approximately 55,000 reservists classified as self-employed. Problems associated with the loss of an employee are more severe for small businesses that lose critical key employees, businesses that employ workers with highly specialized skills, and the self-employed.¹⁰ Small businesses face other critical financial decisions, some of which include the hiring of replacement workers, shifting of work and personnel to complete the existing workload, and/or foregoing new sales or production lines altogether. Other effects that target small businesses disproportionately are related to the unforeseen extension of tours of duty, a lack of advance warning, the uncertainty of activation, the imposition of USERRA parameters on labor costs, flexibility to manage the workforce, as well as potential litigation costs associated with failures to comply with provisions of the law.¹¹

Several surveys, representing the input from approximately 140,000 soldiers nationwide, have been completed since ARNG soldiers' return from participation in Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom. These metrics provide some insight into the magnitude of potential employer-employee problems related to increased utilization of the ARNG since 9/11. In general, approximately 60% of the respondents indicated employment in at least one full-time job, with the majority involved in blue collar, retail, or professional lines of work. When asked if their civilian work schedule had conflicted with Guard duty, approximately 40% responded that this situation had indeed occurred at least once during their employment, with nearly 20% stating this situation existed 4 or more times during their period of employment. Approximately 7.5% of the respondents specified that if they were leaving the service of the Guard, their departure was due to problems with their civilian employer. Thirty-seven percent of the respondents indicated that they were either neutral, agreed, or strongly agreed that they have had problems with their civilian employer related to their Guard duties.¹²

Projecting these survey results and assuming an ARNG annual average end-strength of 330,000 soldiers for the short-term, the following extrapolated numbers could be predictive of problems on the horizon: (1) 66,000 (20%) soldiers could experience four or more scheduling conflicts, (2) 9,400 soldiers (7.5% of the 38% electing to leave service) may terminate their service with the ARNG due to employer problems, and (3) 119,000 soldiers will most likely experience some type of conflict or problem with their employer due to military service requirements. Another survey completed by over 1200 South Dakota ARNG soldiers, indicated that nearly 20% of the respondents were neutral, disagreed, or strongly disagreed with their employer being supportive of their Guard membership and mobilization experience. Some 6% indicated that some type of employer problems or civilian career plans troubled them most during their mobilization.¹³

Communications with several prominent small business employers in South Dakota, all of which have provided immeasurable, stalwart support for the Guard and their employee soldiers in the past, now reveal increased levels of frustration and concern with employing citizen-soldiers. Potential repeat mobilizations, future austere missioning requirements of the Guard, unpredictable, added cost burdens to their organizations, and stressors on their existing workforce are all taking their toll on small businesses. In as much as they acknowledge that the benefits of employing Guard members far outweigh the negatives of mobilizations and extended duty, all indicate that they foresee an over-arching erosion in small business support for hiring and employing Guard members in the future. Even when presented with a high quality prospective applicant, who is also a member of the Guard, employers might now consider the benefits of *not* hiring Guard members who could be activated for frequent, lengthy deployments, even in light of the law. The indications are beginning to point to a negative shift in overall business support, one that America can ill afford to ignore for very long.

An Increasing Burden on Soldiers and Their Families -- Recruiting and Retention Fallout

The following Top Line Results from an ARNG Survey (Fig. 2-5), completed in August of 2005, provide some insight into the factors that influence Guard soldiers in their decisions surrounding work/life balance, military job, civilian job, Guard culture, and career intentions.¹⁴

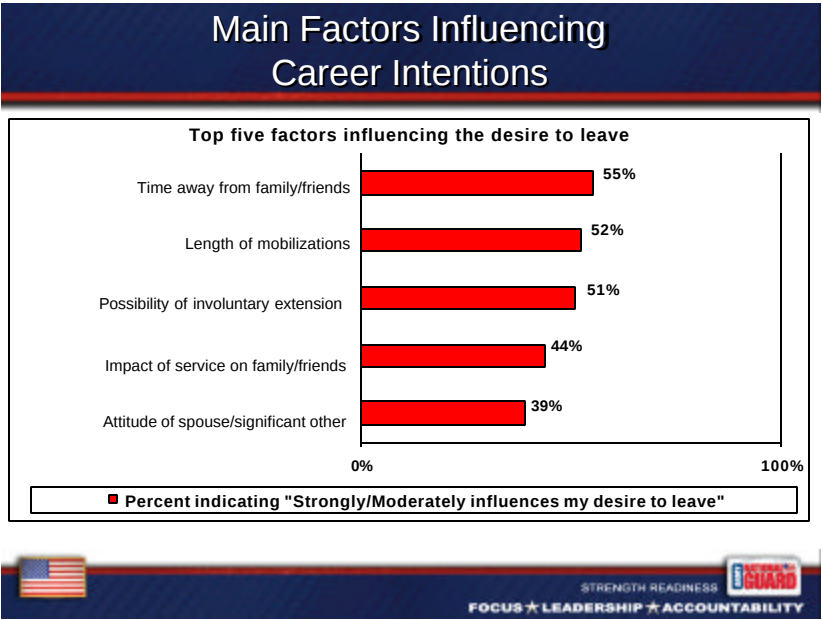


FIGURE 2

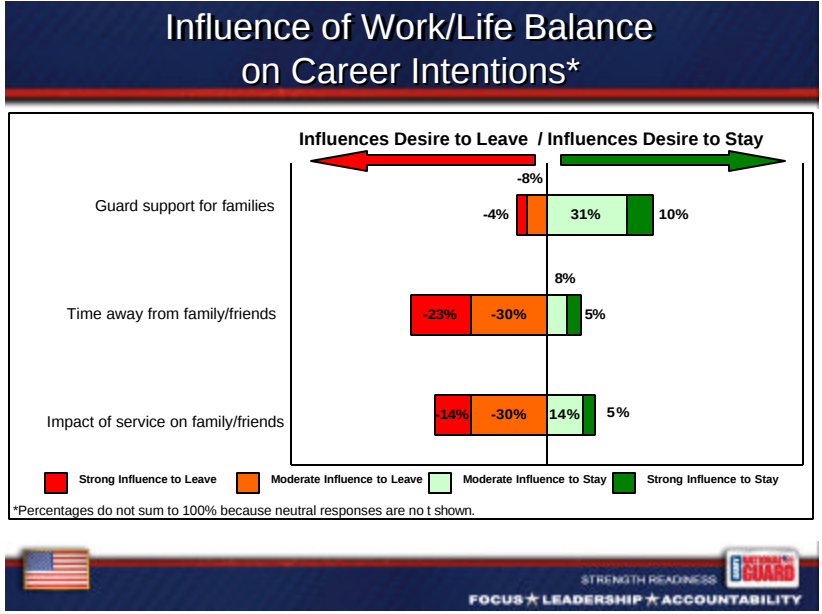


FIGURE 3

Influence of Work/Life Balance on Career Intentions (continued)*

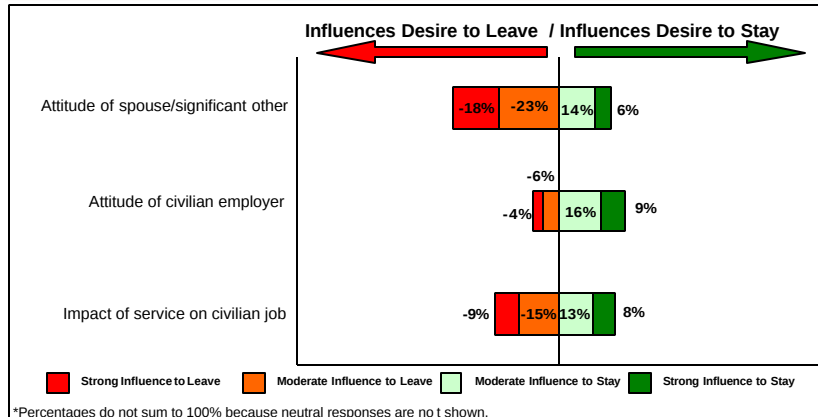


FIGURE 4

Influence of Mobilizations on Career Intentions*

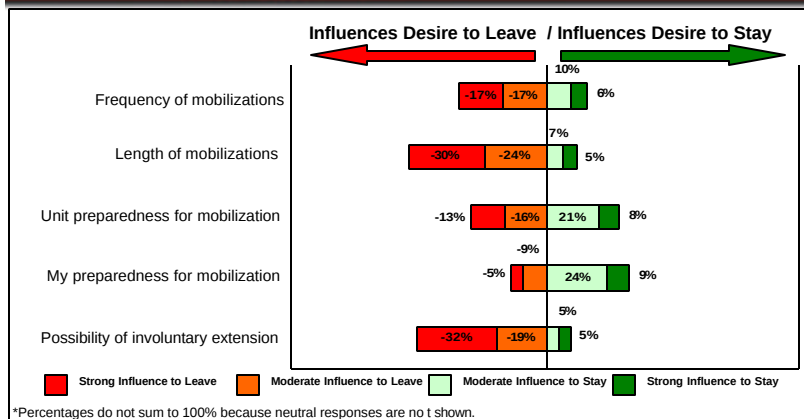


FIGURE 5

Many critics in defense of the ARNG premise that the Guard is overused, under-funded, poorly equipped, and unable to maintain its authorized personnel strength and readiness levels in this challenging environment. Others suggest that DOD is wearing out the all-volunteer Army with a plethora of new and enlarged missions in addition to those allocated to fighting traditional wars – GWOT, homeland defense and security, peace-keeping, SASO, and large-scale disaster relief and humanitarian efforts. The increase in missions places additional military service requirements on soldiers, affecting families and employers along the way. Accumulating debt, increased health problems, uncertain job outlooks, differentials in benefits between the reserve and active duty forces, and unprecedented stress on family relationships due to length of separations are all contributing factors in soldiers' decisions to stay or leave the service. Evidence suggests that as many as 30% of the soldiers returning from combat zones are experiencing, or will experience, some type of psychological difficulty affecting their families as well as employers. The all-volunteer service member, as compared to the troops drafted during Vietnam, is more likely to be married with a family – 55% as compared to 40% in Vietnam. Soldiers returning from deployments struggle with integrating themselves back into family life, grieving for unit losses, adjusting through war-related nightmares, and assimilating back into a family unit that has adapted their daily activities to their absence. In the meantime, the probability of additional deployments looms over their lives.¹⁵

Mobilized soldiers and their families have many fundamental decisions to make, both pre- and post-deployment, regarding civilian health care insurance, pension plan contributions, changes in income levels, and job retraining and familiarization programs. Add these weighty decisions to the ultimate fear “that your loved ones will be killed” and it's apparent to understand why soldiers and families are experiencing extreme difficulty in evaluating their decision to remain in uniform.¹⁶ Even senior Army officials express concerns that these stressors might be too much for today's combat-proven troops and that the personal and professional rewards and sacrifices of military service may not be worth the price of losing one's family. “I worry about the soldiers on their second and third tour by 2007, as well as how well we can take care of the families,” General Richard Cody, the Army's Vice Chief of Staff, said earlier this year.¹⁷

Due to the extensive deployments coupled with a tentative economy, employers are becoming hard pressed to hold jobs open for returning soldiers. Reports from soldiers across the nation reveal many are taking pay cuts to serve on active duty. Small companies would like to step up to the plate and provide stipends to soldier pay, but simply cannot afford to make up the difference in pay and benefits during repeated deployments. Soldiers are also beginning to reveal instances where they were fired upon their return, laid off during their deployment due to

company reorganization or downsizing action, or simply not reinstated to a comparable job upon their return, as required by federal law. Many are reluctant to formally report this discrimination for fear of losing their present job or their ability to be hired in the future. Therefore, many cases go unreported or are resolved informally without mediation or a formal complaint lodged with the Department of Labor (DOL).¹⁸ While precise methods of capturing the exact volume of grievances are not yet in place, the increase in willingness of soldiers to come forward with their cases presents potential indications of a rise in discrimination in the workplace for Guard members.

Bottom line is that employment pressures, coupled with the above mission creep and tremendous familial and personal challenges, are beginning to take their toll on recruiting and retention efforts within the ARNG. The pressures on soldiers to sacrifice and endure for the long haul are immense. On the other hand, the strains on the military should young Americans not elect to continue serving in the armed forces, could be catastrophic for future military operations and personnel readiness. Taking care of soldier employers is one area that requires focus and strategy on the part of DOD in order to avoid damaging long-term relationships and credibility.

Employer Support for the Guard and Reserve (ESGR) and USERRA

Today with approximately 46% of total military personnel requirements coming from the reserve forces and future operations projected to continue this trend, amicable and healthy working relationships between citizen-soldiers and their employers are vital to the readiness of the ARNG. The current National Defense Strategy amalgamates National Guard and Reserve forces as full cohorts into the integrated total force defense plan. "In this environment, civilian employers play a critical role in the defense of the nation by complying with existing employment laws protecting the rights of workers who serve in the Reserve component."¹⁹ One DOD organization whose sole mission is to gain and maintain healthy relationships between reservists and their employers is the ESGR program. The National Committee for ESGR (NCESGR) was established in 1972 as a staff group under the Office of the Assistant Secretary of Defense for Reserve Affairs (ASD/RA). The Committee consists of a network of thousands of volunteers across the country who promote teamwork and cooperation between Reserve component members and their civilian employers and assist with conflict resolution arising from employees' participation in military activities and requirements.²⁰

ESGR responsibilities concentrate on several customer and stakeholder groups including employers, military members, DOD, the military components, and volunteers. Strategic

initiatives consist of gaining employer support for military members, advocating for employers within DOD, ensuring viability of the all-volunteer force, and educating customers and stakeholders on available ESGR programs and services. Several essential tools and programs, such as the Statement of Support, My Boss is a Patriot, 5 Star Employer, and Ombudsman mediation have all contributed to overall success in achieving ESGR strategic goals and objectives since its inception.²¹ However, a March 2004 DOD Report on Reserve/Employer Relations, in response to a 2003 U.S. House of Representatives Appropriations Committee request, alluded to a potential future erosion in employer and business support due to the extended and rotational deployments of reserve forces. The response cited the difficulty facing DOD in acquiring adequate information about employers and the nature of the problems that they faced, but cited their desire and priority to understand the issues and gather more information on existing employers.²² While employer support continues to remain at historically high levels, there are innumerable indications that fissures are beginning to appear in the armor of this once stalwart and loyal faction of supporters. Without an intense effort to identify these affected employers and ascertain the impact of ongoing deployments on their business operations, this crack will surely widen to a level of unfortunate proportions. Grassroots efforts of the NCESGR and its complimentary state committees will be further discussed in detail in the recommendations portion of this essay.

USERRA, enacted in 1994 with updates in 1996 and 1998, provides military members with reemployment protection, protects them from discrimination in hiring, promotion, and retention on the basis of present and future membership in the armed forces, and specifies reemployment procedures, entitlements, documentation requirements, benefits protection, dispute assistance, and law enforcement.²³ While the law serves to protect both employers and employees alike and strives to assist in maintaining a ready and trained Reserve force in support of military operations worldwide, it mandates inherently increase the costs of doing business to employers. As stated previously, the issues surrounding employment of military members tends not to center around this law, but focuses on the negative impact on the business community due to the frequency and length of deployments. Below (Fig. 6) is a summary of USERRA and the requirements of both employers and employees.







YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the Internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.



U.S. Department of Justice



U.S. Department of Labor
1-866-487-2363



ESGR
1-800-336-4590

Publication Date—December 2005

FIGURE 6 DEPARTMENT OF LABOR/VETS EMPLOYMENT POSTER

Ongoing Legislative Efforts to Provide Relief to Soldiers and Employers

The Bush Administration, U.S. Congress, and military lobbying groups have been proposing, debating, and enacting legislation in support of Guard members and employers since the military's elevated involvement in security operations after 9/11. It cannot be overstated that federal and state executive and legislative authorities all clearly understand the inexplicable stress placed upon the all-volunteer force, especially the reserve forces, requiring their immediate attention and action. The personnel readiness of the Guard depends on its ability to attract and retain quality soldiers, and their families. Increased pay and benefits undoubtedly advance these objectives. Legislation creating incentives for military members can and will make the difference. The question becomes at what level of compensation and support will soldiers and their families choose to stay the course.

While the President's Executive Order under the provisions of Section 12302, 10 United States Code, dated 14 September 2001, authorizing the Partial Mobilization of the Ready Reserve for a period of active duty for not more than 24 months,²⁴ has had significant impact on soldiers' and families' future Guard participation decisions, legislation aimed at targeting presidential call-up mobilization authority and lengths of duty will be not be addressed in this essay. However, other pertinent areas affecting the force provide the Congress and state legislatures ideal opportunities to improve the financial and quality of life aspects of military members as well as a reduction in the impact mobilizations have on employers. Many Congressional panels in the last year have mutually communicated to elected officials a dismal state of affairs for Guard soldiers, families, and employers due to ongoing mobilization strain -- issues associated with personal debt, bankruptcy, employment ambiguity, mental and physical combat-related stress, and health care. Another targeted area and a major point of contention among Guard officials and soldiers, focused on inequities between Reserve and Active Duty pay and benefits. Hearing this onslaught of support for increased pay and benefits, legislative bodies in Washington and across America have taken decisive and quick action to improve the lives of Guard soldiers, their families, and their employers.

The crucial issues of pay (basic, incentive, hazardous duty, and separation), life insurance, healthcare, retirement, and employment/re-employment rights still remain a priority among elected officials and military members. Presently, 139 bills in Congress are working their way through the halls of the U.S. Capitol. One of the many key players working behind the scenes to lobby for this legislation is The Military Coalition (TMC), comprised of 36 military related organizations representing more than 5.5 million members of the uniformed services -- active, reserve, retired, survivors, veterans, and their families. The primary goal of the TMC is

to focus on sustaining a strong national defense through maintenance of a competitive compensation and benefits structure for military members and their families. By working together with association members, grassroots efforts can be better harnessed and legislative positions may be better presented as a unified voice to Congress on behalf of its substantial membership base.²⁵ The TMC has been very successful in protecting the pay and benefits of Guard members as well as promoting new initiatives and enhancements in other areas including employer incentives. While many efforts are focused on military members and their families, employers also benefit greatly from these enhancements. Providing Guard members with extra pay, retirement pay, healthcare programs, job protection, and other unique benefits and privileges, citizen-soldiers are more predisposed to be a more productive, better quality employee in the workplace at a smaller cost for most employers. In most cases it is a win-win situation for both employers and soldiers.

A review of current U.S. Congressional initiatives affecting both military members and employers provides the following summary of bill provisions:

- Mandatory and accurate civilian employer information database.
- Employer tax credits, with limits, for compensation not paid to members during military absences. Self-employment credit for those members affected.
- Penalty free withdrawals from member civilian retirement plans.
- Difference in pay supplement for mobilized Federal employees.
- Employer credit for income differential pay, with limits, during military member absences.
- Employer payments to member retirement plans without loss of tax benefits.
- Member income preservation, with limits, paid by the Services.
- Permanent TRICARE Health Benefits enrollment for all members of the Reserve and their families. Cost share plan when not on Active Duty.
- Fund child care for members on Active Duty.
- Reduce retirement age from 60 to 55 for members to receive retirement pay.
- Business loan incentives for employers of members.
- Work opportunity tax credit for employers hiring temporary employees as replacements for members.
- Continue employer health care coverage for members, with reimbursement from DOD for employer share of premiums.
- Increase military death gratuity from \$12,000 to \$250,000.

- Increase mental health counseling services, post-mobilization.
- Expand USERRA to allow for adjustment in interest rate drop below 6%, protection for family members impacted by deployments, college refund provisions, and additional credit rating protections.
- Provide incentives to businesses employing military members for future government contracts.²⁶

Many of the same or similar provisions above are included in several different bills; however, the bill providing the preponderance of incentives is the 2006 Defense Authorization Bill which recently passed both the Senate and House of Representatives on 22 December 2005. The bill:

- Increases hardship duty pay from \$300 to \$750 per month.
- Provides pilot program to match soldier Thrift Savings Plan contributions up to 5%.
- Provides income replacement up to \$3,000 for reservists on active duty for 18 months.
- Raises reserve reenlistment bonuses to \$20,000 for prior military enlistments.
- Creates soldier referral bonus program of \$1,000 per newly accessed soldier upon completion of training.
- Creates bonuses for sailors and airmen transferring to the Army.
- Extends TRICARE benefits to some reservists regardless of duty status.
- Raises enlistment age cap from 35 to 42.
- Makes permanent tax-free \$100,000 gratuity payment for all troops killed while in service.
- Increases payout for injured soldiers from \$225 to \$430 per month while recuperating.²⁷

While the Congress has been very receptive and energized over implementing improvements to military member entitlement programs, especially with the ongoing operations in Afghanistan and Iraq and disaster relief efforts here at home, continued legislative efforts will be required in future sessions in order to sustain the required level of personnel readiness and employer support needed to support military exigencies henceforth.

State legislatures and assemblies have also “stepped up to the plate” and provided many effective incentives for Guard members and their families during deployments. While not as exhaustive as Federal entitlements, state programs are predominantly directed at reduced/free tuition for members and families at state universities and vocational technical

institutes, pay differentials for state employees, veteran cash bonus programs, complimentary licenses (vehicle, hunting, fishing, park) and vehicle plates, state income and other tax reductions/exemptions, state death gratuity payments, and emergency assistance funds and programs for family members. Many states are also adopting the provisions of the Soldier and Sailors Civil Relief Act (SSCRA) of 1940, recently revised and signed into law on 19 December 2003 as the Servicemembers Civil Relief Act (SCRA). "Historically, the SSCRA applied to members of the National Guard only if they were serving in a Title 10 status. Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the President or the Secretary of Defense. This continues in the SCRA."²⁸ The law basically provides for reduced interest rates on mortgage and credit card payments, protection from eviction in certain circumstances, and delay of all civil court actions, including bankruptcy, foreclosure or divorce proceedings, while members are mobilized. As it applies only to federalized soldiers, states are finding it prudent to adopt the same provisions for soldiers activated under state authorities.²⁹

Improvements That Will Make a Difference

Presently several Federal government agencies, as well as the Congress, are analyzing the impact of Guard and Reserve mobilizations on soldiers, families, and employers and the impact of implementation USERRA provisions within the business community in order to provide recommendations to DOD and other affected organizations on ways to better address current employment issues. Concurrently, feedback is beginning to flow from employers through military chains of command, civilian employment organizations, and other public fora, that provides some insight into what explicit measures, if enacted, would have a positive effect on recruiting/retention and business support efforts for the future. Several of these organizations and their recommended courses of action will be presented for consideration.

In October 2005 the Government Accounting Office completed a study for Congress that addressed USERRA and the transition of Federal employees between their Federal military assignment and civilian employment. The study examined the extent to which agencies obtain reliable data on USERRA compliance, conduct efficient and effective educational outreach, and address servicemember complaints.³⁰ The analysis described a continued use of paper forms to document cases, little visibility of complaint status across agency lines, a considerable lack of employment data on servicemembers, and lastly, DOL's inability to provide accurate data to Congress necessary to implement the provisions of the law. The report recommended that

DOD gather complaint information through annual servicemember surveys, servicemembers provide and maintain current civilian employment information, DOD share employer information with other federal agencies, agencies develop a system to enable electronic transfer of complaint information between organizations, and reduce the paper file system while adopting an automated complaint filing system.³¹ While the surfacing of employee complaints will continue to be a challenge, improvements in the reporting and assistance processes would suggest a positive development for those soldiers and employers formalizing their grievances. Addressing complaints and issues in a professional, timely manner within government agencies, enhances credibility and public support, as well as strengthens healthy employer-employee relationships through clear and non-threatening communication channels.

The CBO Report to Congress in May 2005 opined that several measures could be implemented to mitigate the adverse effects of call-ups on business entities. Compensation through tax credits or direct payments to companies could be based on one or more of the following valuations: lost profits, costs of continued benefits for deployed members, or employee replacements costs. Subsidized loans to employers through the Small Business Administration (SBA), fully paid or subsidized call-up insurance for activated employees, and possible exemptions of certain identified reservists for call-ups due to their potential significant adverse effect on their employers, are other possible options for consideration.³² While these proposals may perhaps partially offset the direct costs and financial losses of activated employees, increase military recruiting efforts in the workplace, and reduce the number and frequency of call-ups, the direct and indirect costs to the government of implementing such programs could be substantial and therefore not palatable to the Congress at this time.³³ Nonetheless, they are high impact tools worth substantial consideration due to the direct placement of funds in business coffers.

The U.S. Chamber of Commerce (Chamber) and National Federation of Independent Businesses (NFIB), the two largest and most influential business associations in the nation, fully support efforts at all levels which create and sustain healthy company-employee relationships in organizations that employ citizen-soldiers. An extensive communications plan, to include an all-encompassing internet webpage detailing the laws and policies governing Reservists' employment and military participation, exists in both organizations for association member use. Both sites are linked to ESGR and SBA websites for additional user clarification as required. The Chamber has engaged the issues further by providing recommendations to the Congress and DOD on how to better predict the frequency and length of call-ups. Improving data collection of human resources within the Reserves, increasing quality and frequency of

communication between DOD and the private sector, and implementing an activation system that provides a minimum 30 days notification to troops, families, and employers prior to call-ups, are several options they recommend to strengthen business-military relationships and maintain vital employer support over the long-term.³⁴

In determining which options will provide the greatest benefit to business leaders, employers know best. While the impact of the incentive depends upon the size of the organization, this essay examines those which would most likely provide the maximum benefit to small businesses. The most noteworthy consideration focus on (1) furthering improvements in the Guard-employee-supervisor communications flow and (2) providing direct financial payments as compensation for direct expenses incurred due to employee absences. Recommended communication enhancements between Guard members and supervisors center on timely notification of deployments and military requirements and better exchanges of pertinent information regarding the timelines for absences, pay and benefits, and return to work decisions. A small business owner's most critical resource is quality, trained employees. The unforecasted departure of just one key employee without a programmed replacement can send a small business into a death-spiral. Failure of a citizen-soldier to provide advance notification of extended military duty can sour a healthy relationship forever and possibly affect future hiring decisions for those employers who experience similar challenging situations. Additionally, several compensation options offered as most advantageous to businesses include tax credits for each military member hired, compensation for unemployment benefits for replacement employees, and insurance policies to cover the costs of hiring and training additional employees. All provide significant, positive impact to the bottom line financial health of small business owners. In small business, every dollar generated and saved makes a difference, so incentives which keep dollars in employers pockets will be regarded as having the greatest benefit.

Recently, both the ARNG and Army Reserve established programs to target improvement in civilian employer support of Reserve forces soldiers, with second order effects projected in the recruiting and retention arena. The two programs – the Army Reserve Employer Relations (ARER) Program³⁵ and the ARNG Campaign Plan Pinnacle Advance³⁶ – recognized ESGR as a priority mission for leaders, with a focus on assigning responsibility at all levels of command for ESGR initiatives, improving communication between employers and soldiers, and managing an active rewards program to recognize outstanding employer accomplishments and levels of support. While these programs serve to empower soldiers to sustain and improve civilian workplace relationships, they provide little in the way of financial relief for those businesses

which suffer monetary setbacks during the absence of deployed soldiers. The bank accounts of small businesses continue to be severely impacted by ongoing Guard utilization in support of military operations around the world. Initiatives for this group of stalwart and loyal supporters should be focused in the financial realm to achieve the greatest, positive impact.

Recommendations for the Future

The Army National Guard is defending our nation at home and abroad, shoulder-to-shoulder with our Active Component brothers and sisters. One of the most effective means of improving recruiting and retention, and thereby readiness, is increasing civilian employer support of our Soldiers. Soldiers' civilian employers are patriot partners in the Global War on Terrorism and we need their assistance if we are to accomplish our mission...Civilian employers are the community center-piece because of our "shared workforce." We must gain and maintain positive relationships with our civilian employers.³⁷

—Lieutenant General Clyde A. Vaughn,
Director, Army National Guard

Optempo in the ARNG is higher than ever before in its 369-year history. Employers and business owners are repeatedly being asked to sacrifice their organizational resources at unprecedented levels in order to support Guard soldiers and their families during deployments. The Global War on Terrorism and Homeland Security requirements of the nation depend on the availability of trained, professional soldiers, poised to leave their homes and employers on a moment's notice in order to serve wherever and whenever the Commander-in-Chief deems necessary. Employer support is crucial and cannot erode in these challenging times of unprecedented world events. It only seems realistic that our partners in the business community should be remunerated, partially or in total, for their contributions and sacrifices to the effort. Without their support, the ARNG would not be a contributor to the fight.

The following recommendations, not in order of priority, are presented as viable tools to reduce the burden on employers and business owners who serve their nation by employing reservists.

- DOD improve soldier input to the required civilian employer information database. Accurate employer information serves as the basis for all ESGR based programs in support of both soldiers and their employers.
- DOD provide financial incentives to employers through tax credits and direct payments. Use the percentage of actual documented losses and/or the increase in business expenses as the basis for determination. Develop criteria for payouts and streamlined methods for credit and/or payment.

- Congress implement permanent TRICARE health benefits system for all reservists and authorized families on a cost-share premium basis. Benefits accrue to the ARNG, its soldiers, their families, and employers who cannot afford to offer this benefit to their employees.
- Congress increase Veterans Administration capability to provide post-mobilization counseling services to all soldiers and their families. The emotional health of soldiers is key to stable family life as well as productivity in the workplace.
- Congress require states to provide to soldiers, as minimum, tuition-free educational services at state-sponsored institutions. This benefit improves quality of soldiers as well as provides training opportunities for work-related skill improvement and leadership development.
- Congress/DOD encourage states to provide favorable incentives to Guard members, such as reduced fees on state licenses, Guard retention bonuses, veteran deployment bonuses, and other financial benefits dependent upon local resource availability.
- Department of Labor streamline and automate the USERRA complaint processing system to better support complainants and employers as well as share information among government agencies involved in the process.
- DOD analyze the cost and practicality of mobilization insurance for activated soldiers and employers.
- NGB develop and implement a Community Action Program in each state with the principle objectives of increasing visibility of the Guard and developing proactive, effective relationships with the public, business, educational, and government sectors. This initiative facilitates promoting the Guard story, providing access to schools and businesses for recruiting, and maintains crucial communication with vital centers of influence within the community, establishing the Guard as a key player in state and federal affairs.

While these recommendations are only a few of those being discussed in venues across the nation, they provide compelling actions to maximize positive impact on both soldiers and employers alike. Allocating finite resources has always been a challenge for Congress and continues to be as the nation's security and defense requirements increase at a mind-boggling pace. The decisions that face our administration and public officials today regarding the strength of the military and use of the Guard and Reserve forces all hinge around providing competitive levels of compensation and benefits to those that serve their nation in harm's way. Asking employers to sacrifice without predictability or compensation just does not make good

business sense. Looking out for the welfare of business owners and employers who also serve during these trying times, must be a priority on everyone's agenda in DOD and Congress. America can ill afford to lose business support of our amazing citizen-soldiers.

Endnotes

¹ Kimberly Wetzel, "Senators Told of Guard Struggles," *Seattle Times*, 20 October 2005 [newspaper on-line], available from <http://ebird.afis.mil/ebfiles/e20051021397498.html>; Internet; accessed 21 October 2005.

² U.S. Congress, House of Representatives, Committee on Government Reform, *Reserve Forces – Army National Guard's Role, Organization, and Equipment Need to be Reexamined: Hearings before the Committee on Government Reform, House of Representatives*, 109th Congress, 1st session, 20 October 2005, 1.

³ Colonel Robin Swan, "Army Force Generation," briefing slides, Carlisle Barracks, U.S. Army War College, 10 November 2005.

⁴ Jay Smith, "A Changing of the Guard: The U.S. National Guard and Homeland Defense." BCSIA Discussion Paper 2003-04, ESDP Discussion Paper ESDP-2003-01, John F. Kennedy School of Government, Harvard University, May 2003.

⁵ Institute of Management and Administration, "Managing Military Service Employees," *HR Focus*, June 2005 [Journal on-line]; available from <http://proquest.umi.com/pqdweb?index=0&did=851750491&SrchMode=1&sid=1&Fmt=3&VInst=PRO>; Internet; accessed 18 August 2005.

⁶ Repps Hudson, "Businesses Should Step Up for Reservists, National Guard," *St. Louis Post-Dispatch*, 6 November 2005 [newspaper on-line]; available from <http://www.stltoday.com/stltoday/emaif.nsf/Popup?readForm&db=stltoday%5Cbusiness%5Ccolumnists>; Internet; accessed 9 December 2005.

⁷ Elizabeth Olson, "War Service Is Taking Toll On The Self-Employed," *New York Times*, 25 August 2005.

⁸ Hudson, 1.

⁹ Harold Nedd, "Employers Struggle to Cover for Deployed Guard Members," *Pacific Business News*, 4 February 2005 [newspaper on-line]; available from <http://www.bizjournals.com/pacific/stories/2005/02/07/focus1.html?t=printable>; Internet; accessed 9 December 2005.

¹⁰ U.S. Congressional Budget Office, *The Effects of Reserve Call-ups on Civilian Employers* (Washington, D.C.: Congressional Budget Office, May 2005), 2.

¹¹ *Ibid.*, 12-15.

¹² National Guard Bureau, "Strength Management Attrition Model (SMAM)", survey available from http://216.152.237.190/SMAM/n_profilenatl_report.asp, accessed 8 December 2005.

¹³ National Guard Bureau, "Strength Management Attrition Model (SMAM)", survey available from http://216.152.237.190/SMAM/n_home.asp; Internet; accessed 8 December 2005.

¹⁴ Army National Guard, "Top Line Results from the Citizen Soldier Survey – National Report", briefing slides unscripted, email message to author, 23 November 2005.

¹⁵ Greg Jaffe, "For Army Families, Repeat Tours Strain Life On Home Front", *The Wall Street Journal*, 16 December 2005 [newspaper on-line]; available from <http://ebird.afis.mil/ebfiles/e20051216407220.html>; Internet; accessed 16 December 2005.

¹⁶ David Englin, "Endangering the National Guard", *AlterNet*, 5 October 2004 [newspaper on-line]; available from <http://www.alternet.org/module/printversion/20083>; Internet; accessed 9 December 2005.

¹⁷ Jaffe.

¹⁸ Dawn House, "Staying in the Guard", *The Salt Lake Tribune*, 23 October 2005 [newspaper on-line]; available from <http://ebird.afis.mil/ebfiles/e20051024398171.html>; Internet; accessed 24 October 2005.

¹⁹ *The National Committee for Employer Support for the Guard and Reserve*, available from <http://www.esgr.org>; Internet; accessed 7 November 2005.

²⁰ Ibid

²¹ Ibid.

²² U.S. Office of the Secretary of Defense for Reserve Affairs, *Employer Support of the Guard and Reserve Congressional Report*, (Washington, D.C.: OASD-RA, 31 March 2004), 3.

²³ . *The National Committee for Employer Support for the Guard and Reserve*.

²⁴ U.S. Army Human Resources Command Home Page, available from <http://www.hrc.army.mil>; Internet; accessed 2 January 2006.

²⁵ *The Military Coalition Home Page*, available from <http://www.themilitarycoalition.org/>; Internet; accessed 2 January 2006.

²⁶ *The Library of Congress Thomas Home Page*, available from <http://Thomas.loc.gov/>; Internet; accessed 1 November 2005.

²⁷ Leo Shane, "The 2006 Defense Authorization Bill: What it Means for You", *Stars and Stripes*, 20 December 2005 [newspaper on-line]; available from <http://www.estripes.com/article.asp?section=104&article=33062&archive=true>; Internet; accessed 2 January 2006.

²⁸ *About.com Homepage*, available from <http://usmilitary.about.com/od/sscra/blblscramenu.htm>; Internet; accessed 2 January 2006.

²⁹ *Ibid.*

³⁰ U.S. General Accounting Office, *Military Personnel: Federal Management of Servicemember Employment Rights Can Be Further Improved* (Washington, D.C.: U.S. General Accounting Office, October 2005), 1.

³¹ *Ibid.*, 40-41.

³² CBO, *The Effects of Reserve Call-ups on Civilian Employers*, 22-27.

³³ U.S. Congress, House of Representatives, Committee on Small Business, Subcommittee on Regulatory Reform and Oversight, *How Reserve Call-Ups Affect Civilian Employers*, 109th Cong., 2d sess., 29 September 2005, 3-4.

³⁴ *U.S. Chamber of Commerce Home Page*, available from <http://www.uschamber.com/issues/index/defense/nationalguard.htm>; Internet; accessed 30 November 2005.

³⁵ Major Ted Hart, "Well-Being: Army Reserve Employer Relations is Key To "Optimizing a Shared Workplace", " *Army Reserve Magazine*, Summer 2005, 12-14.

³⁶ National Guard Bureau, "Army National Guard Support of Employer Support of the Guard and Reserve (ESGR), " memorandum for the Adjutant Generals of All States, Puerto Rico, Guam, The U.S. Virgin Islands, and the Commanding General of the District of Columbia, Washington, D.C., 2 December 2005.

³⁷ *Ibid.*