

## COSTS OF WAR TO THE CITIZEN SOLDIERS AND THEIR EMPLOYERS

BY

LIEUTENANT COLONEL PAMELA POWERS  
United States Air Force

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U.S. Army War College, Carlisle Barracks, PA 17013-5050

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**COSTS OF WAR TO THE CITIZEN SOLDIERS AND THEIR EMPLOYERS**

by

Lieutenant Colonel Pamela Powers  
United States Air Force

Colonel Oliver Norrell  
Project Adviser

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



## **ABSTRACT**

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The Reserve Components (RC) provide operational and strategic capabilities for the nation's defense and are integral to the ongoing world-wide operations. They have answered our nation's call to service time and again. Since September 11, 2001, over 760,000 Guard and Reserve members have been mobilized or deployed at home and abroad and nearly one third of them have been deployed more than twice. The decade of global operations has significantly strained the Guard and Reserve and those strains will undoubtedly be felt for years to come.

Employers are also bearing significant war costs. They are shouldering the burden of lost workers and extra expenses when their reservists deploy. Small businesses have been particularly affected by the increased use of the RC and many have incurred significant financial losses and in some cases, insolvency.

This research paper discusses the strains placed on the Reserve Component members and their employers, including an overview of the RC, examines employer support to the Guard and Reserve, analyzes pertinent protections afforded to reservists, and provides recommendations for the future.





## COSTS OF WAR TO THE CITIZEN SOLDIERS AND THEIR EMPLOYERS

“From our nation’s inception, its security has depended on the strength of those citizens who took up arms in our defense. They have had many names over the years—minuteman, national guardsman, soldier, sailor, airman, marine, and coastguardsman; volunteer, draftee, and reservist—but they all served our nation when needed”

—CNGR Report  
Jan 31, 2008

The Reserve Components (RC) provide operational and strategic capabilities for the nation’s defense and is integral to ongoing world-wide operations. Its members have answered our nation’s call to service time and again. The RC force has transformed from the strategic force of the past to an operational force that is essential to the nation’s defense. Since September 11, 2001, over 760,000 Guard and Reserve members have been mobilized or deployed at home and abroad and nearly one third of them have been deployed more than twice.<sup>1</sup> This decade of global operations has significantly strained the Guard and Reserve and those strains will undoubtedly be felt for years to come.

Employers are also bearing significant costs of war. They are shouldering the burden of lost workers and additional expenses when their Reservist employees deploy. Small businesses have been particularly affected by the increased use of the Reserve Component and many have incurred significant financial losses and, in some cases, insolvency. While legal protections have gone a long way to protect RC members, employers do not share the same protections.

This research paper discusses the strains placed on the Reserve Component members and their employers, including an overview of the RC, examines employer

support to the Guard and Reserve, analyzes pertinent protections afforded to reservists, and provides recommendations for the future.

### Reserve Component

Over 1.1 Million members currently make up the Reserve Components, which are about 43% of the total military force.<sup>2</sup> Reservists<sup>3</sup> are regionally based and recruited (unlike their active duty counterparts) and serve in seven components of all five branches of the military.<sup>4</sup> The components include: Army National Guard, Army Reserve, Air National Guard, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and the Coast Guard Reserve. Reservists are generally required to perform, at a minimum, 39 days of military service per year, which includes monthly drill weekends and fifteen days of annual training.<sup>5</sup> Guard and Reserve personnel in an active status receive the same pay and allowances as the full-time Active Component (AC) personnel, while part-time reserve personnel receive prorated pay and allowances.<sup>6</sup>

While required to be organized, trained, and equipped nearly the same as the active duty, members of the Reserve Components are unique in their structure and mission sourcing. In addition, because they must leave their civilian jobs in order to perform their federal duties, their employment/re-employment rights are protected by special laws, policies and regulations. Two of these, the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemember's Civil Relief Act (SCRA), will be addressed in this paper.

The Reserve Component has transformed over the last few decades from a strategic force to an operational force. During the cold war era, the RC was a force that was rarely tapped. From 1945 to 1989, reservists were involuntarily activated only four times and only during wartime and national emergencies<sup>7</sup>:

- Korean War (1950-1953): 857,877 reservists involuntarily activated
- Berlin Crisis (1961-1962): 148,034 reservists involuntarily activated
- Cuban Missile Crisis (1962): 14,200 reservists involuntarily activated
- Vietnam War/U.S.S. Pueblo Crisis (1968-69); 37,643 reservists involuntarily activated).

Since the end of the Cold War, the Reserve Component has been used in record numbers across the globe. Some activations<sup>8</sup> were in support of wars and contingencies, while others were primarily in support of natural disasters, peacekeeping and nation building missions. The historical “one weekend a month and two weeks a year” standard is no longer typical. Figure 1 displays the RC Utilization Status since Sep 11, 2001 for Operations’ Nobel Eagle, Enduring Freedom, and Iraqi Freedom.

<p align="center"><b>Currently Activated: 131,066</b>  <b>Deactivated Since 9/11: 638,452</b>  <b>Total: 769,518</b></p>				
Reserve Component	Ready Reserve*	Total Currently Activated	Total Deactivated Since 9/11	Total Activated Since 9/11
<b>Army Nat Guard</b>	<b>352,600</b>	<b>67,057</b>	<b>259,761</b>	<b>326,818</b>
<b>Army Reserve</b>	<b>205,000</b>	<b>31,734</b>	<b>158,701</b>	<b>190,435</b>
<b>Navy Reserve</b>	<b>66,700</b>	<b>6,399</b>	<b>39,431</b>	<b>45,830</b>
<b>Marine Corps Res</b>	<b>39,600</b>	<b>6,724</b>	<b>50,083</b>	<b>56,807</b>
<b>Air Nat Guard</b>	<b>106,700</b>	<b>11,177</b>	<b>72,319</b>	<b>83,496</b>
<b>Air Force Reserve</b>	<b>67,400</b>	<b>7,141</b>	<b>51,462</b>	<b>58,603</b>
<b>Coast Guard Res</b>	<b>14,282</b>	<b>834</b>	<b>6,695</b>	<b>7,529</b>
<b>TOTAL</b>	<b>852,282</b>	<b>1,310,666</b>	<b>638,452</b>	<b>769,518</b>

Figure 1. RC Utilization Status (Unique SSAN Activations as of May 18, 2010)  
 Source: Contingency Tracking System (CTS) Daily Processing Files<sup>9</sup>; \*Ready Reserve Manpower Numbers from the DMRR Report To Congress 2009.<sup>10</sup>

The Army National Guard and Army Reserve have been activated significantly more than the other components with 66% of the total activations; however, they make up 65% of the Reserve Component manpower. All the services have shared the burden of the nation's defense.

Activations between the Reserve Components vary based on the needs of the component services. Figure 2 shows the length of activation by component since Sep 2001.<sup>11</sup> The Air National Guard and Air Force Reserve have numerous short-term activations, while the Navy Reserve and the Marine Corps Reserve primarily activate 6 months to a 1 year at a time. The longest average is in the Army Guard and Army Reserve, with over 50% of their activations greater than 1 year in length.

Time Frame	Air National Guard	Navy Reserve	Army Reserve	Coast Guard Reserve	Air Force Reserve	Marine Corp Reserve	Army National Guard
Less than 6 Months	76.85%	18.75%	20.03%	32.16%	75.96%	16.98%	17.17%
6 Months to 1 Year	13.44%	55.06%	24.73%	13.52%	11.34%	46.78%	24.20%
1 Year to 1.5 Years	5.87%	15.42%	39.35%	29.20%	8.41%	23.73%	44.54%
1.5 Years to 2 Years	2.77%	8.07%	10.65%	7.32%	1.80%	6.67%	9.71%
Greater than 2 years	1.08%	2.69%	5.24%	17.79%	2.49%	5.86%	4.37%

Figure 2. Length of Activation by Component<sup>12</sup>  
(Data Taken from the Defense Data Management Center)

The Department of Defense (DoD) has made great strides in developing sustainable force rotation policies that allow Guard and Reserve members, their families, and their employers the ability to predict and plan for deployments. The Secretary of Defense Policy dated 19 Jan 2007 set a goal for AC units and members to deploy no more than one year for every two years non-deployed.<sup>13</sup> The DoD goal for RC units and members is no more than one year mobilized for every five years demobilized. In addition, the Department of Defense is also working to: minimize stop loss for both

AC and RC; provide compensation and incentives to RC members required to deploy/mobilize early or often, or extend beyond new rotation goals; provide hardship waivers that recognize exceptional circumstances; manage mobilization of RC ground forces on a unit basis; and limit involuntary mobilizations of RC to a maximum of one year.<sup>14</sup>

### Reserve Components Employment Issues and Concerns

Reservists face unique challenges due to their geographic separation from their military requirements and the stress and demands of their civilian employment. Many have to juggle two careers along with the separation from their families during deployments. “The balancing act of multiple job requirements, coupled with geographic isolation, combines to put a strain on the reserve force”, said Army Reserve Brigadier General Margaret Wilmoth, Assistant for Mobilization and Reserve affairs for the Office of the Assistant Secretary of Defense for Health Affairs.<sup>15</sup> The general, speaking at a Trauma Spectrum Disorders Conference in 2009, stated that civilian employment is the highest level of stressors for reservists.

Some reservists have experienced financial loss moving from their civilian occupations to military status. Because of the numerous complaints received by reserve constituents, Congress enacted a provision to provide special pay of up to \$3000 to reservists who experience income loss while mobilized.<sup>16</sup> The amount of compensation available under this provision is equal to the member’s “average monthly civilian income” minus “total monthly military compensation.”<sup>17</sup>

To combat the loss in pay and benefits while activated, many industry leaders provide significant support to their activated reservists to include full, partial, or

differential civilian pay and benefits. However, “most small businesses can not afford to pay differential pay and supplemental benefits”.<sup>18</sup>

*Status Of The Forces Survey.* Reserve Component members often face lost opportunities for advancement, overtime and extra pay due to their military commitments. The Department of Defense conducted a “Status of Forces Survey of Reserve Component Members” and found several issues related to the RC and their employers.<sup>19</sup> Since 2001, four DoD surveys have been performed to address attitudes and opinions of RC members on their employment issues with approximately 55,000 to 71,000 members participating in each of the four surveys. When respondents were asked “how often do you lose opportunities for overtime/extra pay because of National Guard and Reserve (NG&R) obligations”, almost 30% responded “always” and another 50% responded “occasionally”.<sup>20</sup> The results indicate that 80% of NG&R felt they were losing out on opportunities for overtime/extra pay in their civilian careers.

Many reservists feel they are losing out on promotion opportunities as well. Figure 3 shows the problems that were experienced during the most recent activation of survey respondents. Of significant concern is the percentage of Reserve Component members who had a “serious problem” or “somewhat of a problem” with loss of promotion opportunity (35%) and advances in their civilian occupation (36%).

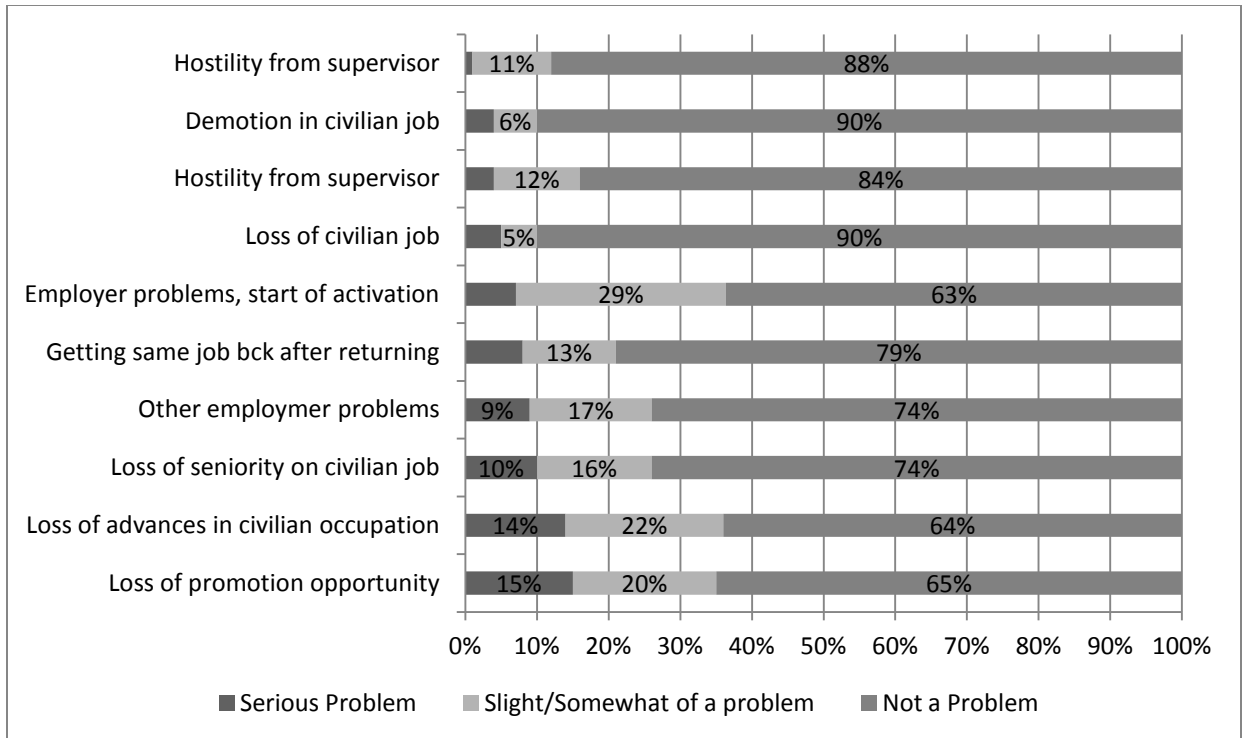


Figure 3. Problems Experienced During Most Recent Activation (Activated Reserve Component Members Working for an Employer)<sup>21</sup>

When survey respondents were asked whether “the return to your civilian employer was been better or worse than expected”, 19% responded that it was “better”, 64% said “it was about what was expected”, and 17% stated is was “worse”.<sup>22</sup> The same question was asked to those that returned to a family business or self-employment and 29% said returning to that employment was “worse” than they expected.<sup>23</sup>

However, respondents overwhelmingly had an acceptable or positive view of the support they received from their employers. When asked “in general, how supportive is your principle civilian employer of your NG&R obligations”, 68% responded “supportive”, 25% responded “neither supportive nor unsupportive”, and only 6% responded “unsupported”.<sup>24</sup>

Overall the survey results show that while Reserve Component members generally feel their employers are supportive of their military obligations, many still feel they are losing out on promotion opportunities and overtime pay. In addition, close to one third of reservists who are self-employed or work for a family business feel that their return to civilian employment after their military obligation was worse than expected. These negative views could have an impact on whether or not a reservist will commit to stay in the service for the long-term and may potentially impact retention and readiness in the Reserve Components.

### Reserve Employers and Unemployment Trends

As reserve activations have increased over the years, so too have the costs to their employers. This especially holds true with small businesses. A Congressional Budget Office (CBO) study revealed that “most large employers are unaffected by the activation of reservists”, however numerous “small businesses are unable to operate for lengthy periods-or at all-without their reservist and may experience financial loss or insolvency.”<sup>25</sup> These problems are likely to be more severe for small businesses that lose essential employees, businesses that require workers with highly specialized skills, and self-employed reservists.<sup>26</sup> Reserve activations create vacancies that the small businesses would not have otherwise had.

CBO estimates that small businesses (generally those with fewer than 100 employees) employ about 18 percent of all reservists who hold civilian jobs.<sup>27</sup> “Out of the 826,000 reservists in the Selected Reserve, between 7,000 and 28,000 of them probably hold key positions in small business”.<sup>28</sup> The Budget Office also estimates that with more than 580,000<sup>29</sup> reservists mobilized since September, 2001, as many as 20,000 small businesses may have experienced financial losses or had significant



problems.<sup>30</sup> A 2007 Department of Defense Special Working Group on Transition to Civilian Employment of National Guard and Reserve Members found that number to be even higher; “small business employers represent nearly 70 percent of selected reservists’ employers”.<sup>31</sup>

The deployment of reservists who own their own small businesses creates unique challenges and has resulted in numerous business failures, losses of business income, bankruptcies and economic losses.<sup>32</sup> Unlike their fellow service members who are guaranteed their civilian jobs when they return from their deployment, reservists who are small business owners do not have the same protections. In his testimony to the House Veteran’s Affairs Committee, the Director of the Arkansas State University Small Business Development Center stated that “the playing field between reserve component business owners and non-military business owners is no longer even and their service to their country is resulting in significant losses in their civilian careers.”<sup>33</sup> The impact of the continued deployment of business owners is a critical issue, and one that deserves congressional attention.<sup>34</sup>

There is also a growing concern among members of Congress and the Department of Defense that employers are becoming reluctant to hire members of the Reserve Components because of repeat, second and third deployments.<sup>35</sup> While no studies have been conducted to measure this, anecdotal evidence suggests this may be of concern. An unscientific online poll by the magazine “Workforce Management” asked its employer readership whether they would hire citizen soldiers knowing they could be called away from their jobs and “52% of the 412 respondents said no, they wouldn’t knowingly hire today’s Citizen Soldier”.<sup>36</sup> Businesses will make hiring decisions to help

their organization be successful, and hiring an employee that will be absent much of the time is not always in the best interests of a company's "bottom line". As the Arkansas Adjutant General, William Wofford, stated in his 2008 testimony to the House Veteran's Affairs Committee:

"It has become apparent that those traits exhibited by members of the Guard and Reserve that make them valuable employees: leadership, professionalism, physical condition, maturity, and a "can-do" attitude, are no longer considered to be cost effective advantages if they are going to be deployed for twelve months every 3 or 4 years."<sup>37</sup>

In his testimony, General Wofford said that if "we do not make it cost effective for business men and women to hire members of the Reserve Component, we may not be able to maintain a Reserve Component five years from now."<sup>38</sup>

While there are laws in place that have provided employment protections for reservists, a Congressional Budget Office testimony revealed that it "might be exacerbating the difficulties that call-ups present for individual employers. The legislation limits a firms' flexibility in avoiding vacancies and mandates continuation of certain benefits...imposing additional costs on some employers".<sup>39</sup> That said, the laws are needed to protect the reservists, but Congress should consider incentives for the employer as well. In the 2009 Reserve Officer's Association Fortune 500 Survey, the companies were asked what was needed to maintain or improve their support to reservists and "the top answer was a tie between tax credits and predictability of call-ups".<sup>40</sup> Military coordination, USERRA training, service member cooperation, and military-provided healthcare were also among the list of items checked.<sup>41</sup>

*Unemployment Trends.* A significant concern for reservists and their employment is the increase in the unemployment rate. Due to the economic situation in the United States, unemployment is a nation-wide issue but it seems to be even more prevalent for

veterans and in particular, Guard and Army Reserve soldiers. Reserve veterans returning from deployments do so at difficult time, with high unemployment and rising competition for fewer openings in the job market. In 2010, the unemployment rate for returning vets from Iraq and Afghanistan hit an all-time high of 21% for 18-24 year olds; up from 14.1% in 2008.<sup>42</sup> For the same period, the unemployment rate for non-veterans in the same age group was 16%. In addition, another approximately 21% of the veterans returning from the wars have service-connected disabilities that make it difficult for them to find or hold a job.<sup>43</sup> Others come home to find their jobs have been eliminated or that their company went out of business altogether.

According to the Bureau of Labor, the unemployment rates for veterans are higher than the rate of any other generation of veterans since World War II.<sup>44</sup> It equates to approximately 193,000 recent veterans who remain jobless, many of whom are in the Reserve Components.<sup>45</sup> "Veterans' unemployment has on average increased about one percent since 2007, although for the Reserve Components it has actually quadrupled in the same period."<sup>46</sup> These are staggering numbers that may have an affect on the long-term viability of the reserve force.

### Reserve Components Protections

Veterans and service members are provided protections through the Uniformed Services Employment and Reemployment Act (USERRA) of 1994, the Servicemember's Civil Relief Act (SCRA) and the Veterans' Employment and Training Service (VETS). In addition, the National Committee for Employer Support of the Guard and Reserve (ESGR) provide re-employment assistance. USERRA & SCRA laws apply to private employers, the federal government, and state and local government to include employers operating overseas.<sup>47</sup> The Department of Labor's VETS and the Department

of Defense's ESGR "provide extensive public education, outreach, and compliance assistance with the goal of preventing violations caused by ignorance or misunderstanding of the law".<sup>48</sup> In addition, they also ensure individuals understand their rights under the law and help them to understand what assistance is available.<sup>49</sup> Despite these protections and the initiatives by congress, in many cases reservists still face reemployment issues.

*ESGR & VETS.* The Department of Labor's VETS program assists veterans with employment and re-employment. The organization "provides resources and expertise to assist and prepare veterans to obtain meaningful careers, maximize their employment opportunities, and protect their employment rights".<sup>50</sup> For returning seriously wounded and injured reservists, VETS provide personal job training, counseling and re-employment services for those who cannot return to active duty or their service units (referred to as the Recovery Employment Assistance Lifelines Program).<sup>51</sup> VETS works hand-in-hand with ESGR to educate and protect reservists.

The National Committee for ESGR is the "primary DoD office for all matters concerning employer support of the Guard and Reserve, as well as for employer relations initiatives relative to employee participation in the Reserve components."<sup>52</sup> It is DoD policy that the ESGR shall:

Promote both public and private understanding of the National Guard and Reserve in order to gain employer and community support for the Reserve components as demonstrated through implementing personnel programs, policies, and practices that encourage employee and citizen participation in the National Guard and Reserve.<sup>53</sup>

Almost 4,600 ESGR volunteers and workers serve across the nation to conduct employer and military outreach programs, as well as Ombudsmen services.<sup>54</sup> The nation-wide Ombudsmen program provides education and information to employers and

servicemembers. It also provides informal mediation services to resolve employment issues.<sup>55</sup>

ESGR has developed several ongoing outreach and incentive programs, such as employer briefings, awards and statements of support, to gain support from employers of reservists. Some of the awards include:

- The Patriot Award: recognizes individual supervisor, not necessarily employer organization as a whole. In fiscal year 2007, 15,124 employers were nominated by reservists.
- The Above and Beyond Award: honors employers of reservists who go above and beyond the requirement of USERRA, for example, an employer providing continuation of benefits or pay differential.
- The Pro Patria Award: the highest award that an ESGR field committee may bestow upon employers within its purview.
- The Freedom Award: (The Secretary of Defense Employer Support Freedom Award) is given to exemplary employers in three categories: large business, small business, and the public sector. In fiscal year 2007, more than 1,000 reservists nominated their employers for this award and 15 organizations were selected.<sup>56</sup>

While ESGR has made great strides in improving outreach, communication and support to reserve members, there are some areas that could use improvement.

As mentioned earlier, small businesses are experiencing financial issues with supporting their reservists. DoD and officials acknowledge that small businesses are particularly affected by reserve deployments. However, a GAO study found that ESGR “has not implemented any specific programs or activities that explicitly target small businesses”.<sup>57</sup> In addition, the Department does not measure how effective its efforts are at achieving its goals.<sup>58</sup>

## UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT RIGHTS ACT

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. §§ 4301 – 4335) is a federal law intended to ensure that persons who serve or have served in the Armed Forces, Reserves, National Guard or other “uniformed services:” (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present or future military service.<sup>59</sup>

-U.S. Office of Special Counsel

USERRA protects individuals when they transition between military deployments and their civilian employment. It provides employment and reemployment rights for service members and prohibits discrimination by their employers based on military service or obligation.<sup>60</sup> To be eligible for USERRA rights, service members must meet certain criteria, including proper notification to their civilian employers prior to their deployments. If reservists meet the USERRA requirements, upon their return “employers are required, with certain exceptions, to provide training to restore competency in duties, and to restore seniority, status, pay, pensions, and other benefits that would have accrued but for the employee’s absence due to military service.”<sup>61</sup>

Responsibility for promoting a clear understanding of USERRA among employers and individuals is shared by the Department of Defense (DoD) and the Department of Labor (DOL).<sup>62</sup> The DOL’s VETS and the DoD’s ESGR “provide extensive public education, outreach, and compliance assistance with the goal of preventing violations caused by ignorance or misunderstanding of the law, ensuring that protected individuals understand their rights and know what assistance is available to secure those rights.”<sup>63</sup> Even with their extensive efforts to educate and prevent violations, reservists still face reemployment and discrimination issues.

*USERRA Complaint Process.* Considering the U.S. has used its RC members in record numbers over the last decade, the complaint process for reemployment issues has had to undergo expansion and transformation over the years. In the same period, the Department of Justice (DOJ) reported a record number of lawsuits against employers for failing to give jobs back to returning RC members.<sup>64</sup> There are several agencies that play a part in the extensive complaint process: Department of Labor, Department of Defense, Department of Justice, and Office of Special Council.

The process is complaint driven and begins with the service member. An individual who believes his or her USERRA rights have been violated initiates a complaint with VETS online or in writing. ESGR also receives some complaints but forwards them to VETS for processing. Once VETS receives the complaint, they open a formal investigation and notify the member of his or her process rights. An investigator is assigned who interviews necessary witnesses under the protection of subpoena if necessary, and collects pertinent evidence.<sup>65</sup> The investigators are highly trained in the legal aspects of USERRA. VETS has 90 days to complete the investigation unless an extension is agreed to.

Once the investigation is complete and if is not resolved to the member's satisfaction, VETS advises the service member in writing of the right to have the case referred to either the DOJ or the Office of Special Council (OSC). Before the case is sent to them, the Department of Labor's Office of Solicitor (SOL) conducts a legal review to determine if it has merit for litigation.<sup>66</sup>

If, after review and consultation, it is still not resolved to the member's satisfaction and the DOJ Attorney General (AG) is satisfied that the member is entitled to relief, the AG may commence an action in federal court on behalf of the member.<sup>67</sup>

If the case is found to be in favor of the service member, the remedies afforded by law include:

(d) (1) In any action under this section, the court may award relief as follows:

- A. The court may require the employer to comply with provisions of this chapter.
- B. The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions in this chapter.
- C. The court may require the employer to pay the person an amount equal to the amount referred to in subparagraph (B) as liquidated damages<sup>68</sup>. If the court determines that the employer's failure to comply with the provisions of this chapter was willful.
- D. Any compensation awarded under subparagraph (B) or (C) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided under this chapter.

(e) Equity powers. The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights of benefits of persons under this chapter.<sup>69</sup>

In Fiscal Year 2009, the DOL opened 1,437 new USERRA cases, which is a record number of new cases<sup>70</sup>. DOL reviewed cases based on the following issues:



<b>Cases Opened by VETS in FY 2009: USERRA ISSUE</b>	<b>VETS CASES ALLEGING ISSUE</b>	
	<b>NUMBER</b>	<b>PERCENT</b>
Military obligations discrimination	490	34.2%
Reinstatement	392	27.4%
Other non-seniority benefits	51	3.6%
Promotion	94	6.6%
Vacation	35	2.5%
Status	67	4.7%
Pay Rate	74	5.2%
Reasonable accommodation/retraining for non-qualified/non-disabled	6	0.4%
Discrimination as retaliation for any action	125	8.7%
Seniority	47	3.3%
Pension	53	3.7%
Initial hiring discrimination	79	5.5%
Layoff	103	7.2%
Special protected period discharge	20	1.4%
Health benefits	20	1.4%
Reasonable accommodation/retraining for disabled		2.0%
Other	63	4.4%

Figure 4. CASES REVIEWED BY THE DOL IN 2009<sup>71</sup>

Developed in 1994, USERRA was originally written with a strategic reserve force in mind, so it is not a surprise that USERRA complaints are escalating. Its Cold War design does not appear to be fully applicable to the operational reserve force of today. For example, USERRA rights do not prohibit employers from asking prospective employees if they are in the Guard and Reserve. This would not have been an issue in the late 90s. But due to the increased utilization of the RC, this may be a significant issue today, especially with the anecdotal evidence that indicates employers are increasingly less inclined to hire reservists due to their service commitments.

The USERRA complaint process is cumbersome and lengthy. Records are not transferred between agencies and the service members are responsible for migrating through the various agencies with their records, which is an added burden on top of the other post-deployment issues they may already be facing. Also, because the process is lengthy and cumbersome, many reservists chose to retain private attorneys at their own expense.

Numerous governmental agencies play a part in the process, but the lack of oversight makes it difficult for the agencies to effectively manage their USERRA responsibilities.<sup>72</sup> The Committee for the National Guard and Reserve (CNGR) concluded that USERRA could also benefit from creating a single entity accountable for overseeing the entire USERRA complaint resolution process.<sup>73</sup> The report states that USERRA adequately “defines the roles and responsibilities of individual agencies in aiding reservists, but does not make any single individual or office accountable for overseeing the entire complaint resolution process”, which is an issue of concern.<sup>74</sup>

*Servicemember’s Civil Relief Act.* Passed in December of 2003, the Servicemember’s Civil Relief Act (SCRA) expanded and improved the former Soldiers’ and Sailors’ Civil Relief Act (SSCRA) and provides a wide range of protections for individuals entering the military, serving in the military, or deployed. The purpose of the Act is to allow service members to perform their duties without the worry of civil prosecution, foreclosure or eviction.<sup>75</sup> “It is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty and relieve stress on the family members of those deployed servicemembers.”<sup>76</sup>

There are three primary areas of coverage under the SCRA: (1) protection against the entry of default judgments; (2) stay of proceedings where the servicemember has notice of the proceeding; and (3) stay or vacation of execution of judgments, attachments and garnishments.

- 50 U.S.C. app. §§ 521, 522 and 524

Examples of SCRA protections for servicemembers include reduction to a 6% cap on pre-mobilization debt (if their income is materially affected), relief from outstanding credit card debt, pending trials, taxes, bankruptcy, and terminations of leases.<sup>77</sup>

While the SCRA has proven itself to be a significant piece of legislation, especially in the pre-deployment debt obligations, there are some areas of concern. One area in particular is that the SCRA has limited value and protection for small business owners.<sup>78</sup> The majority of small businesses operate under some form of debt financing and long deployments make it difficult for reservists to meet their financial obligations to their lenders.<sup>79</sup> The 6% cap of interest rates is invaluable to many service members during their deployment, but it's often not enough for the small business owners. "When a business owner loses a significant part of ongoing revenues due to his or her deployment, even a 6% cap is not sufficient to keep that business afloat".<sup>80</sup> In addition, many commercial lenders are not aware that SCRA does not differentiate between business loans and consumer loans, which cause confusion and problems with small business owners.

Another area of concern with the SCRA is mortgage foreclosure. While the SCRA postpones a deployed servicemember's threat of foreclosure for 90 days, this is often not enough time for a member to deal with all the stressors of post-deployment.<sup>81</sup>

## Recommendations

Maintaining an employer's continued support of RC employees is critical to retaining experienced reservists in the future. The research in this paper leads to the following recommendations:

### 112<sup>th</sup> Congressional Issues to Address

- Reward small business employers of RC members with tax credits and/or direct payments to offset costs for training of temporary replacements
- Support tax credits or employer incentives for employers that hire returning veterans
- Provide or subsidize call-up insurance for deployed small business owners
- Support incentives permitting deployed small business owners to keep their businesses
- Amend the SCRA post-deployment relief from foreclosure timeline to 6 months (from 90 days)
- Amend the SCRA to forbid discrimination based on membership in the RC or the possibility of future utilization of SCRA rights
- Make a single entity accountable for overseeing the USERRA complaint resolution process
- Amend the USERRA law (38 U.S.C. 4323 and 4324) to authorize punitive damages for willful and egregious USERRA violations

### Recommendations for DoD, DOL & DOJ

- Implement outreach education programs and activities that explicitly target small business employers

- Establish measures of effectiveness for the DoD and DOL employer support outreach programs
- Establish DoD forms that inform employers of potential skills veterans gain throughout their military service
- Increase outreach and education efforts to commercial lenders regarding SCRA so they understand the rights of servicemembers who own their own businesses
- Create a working group to develop a process to maintain and manage the USERRA files electronically so they can be effectively passed between the service member and the various agencies

### Conclusion

As discussed in this research paper, the decade of global operations has significantly strained the Guard and Reserve and their employers. As reserve activations have increased over the years, so too have the costs to their employers. This especially holds true with small businesses. While much has been done by DoD, ESGR, SBA, VETS, DOJ and DOL to protect reservists and their employers, the recommendations set forth in this paper will go further towards enhancing the viability of the Reserve Component and the workforce that employs them. Maintaining employer's continued support of Reserve Component employees is critical to retaining experienced reservists for the future.

## Endnotes

<sup>1</sup> OSD (RA) Briefing, “The Seven Reserve Components: 3<sup>rd</sup> Qtr 2010; RC Utilization Status,” briefing slides. May 18, 2010.  
<http://ra.defense.gov/documents/The%207%20Reserve%20Components.pdf>, 23 (accessed Dec 2, 2010).

<sup>2</sup> Ibid.

<sup>3</sup> The term “Reservist(s)” refers to all members of the Reserve Component; Army National Guard, Army Reserve, Air National Guard, Air Force Reserve, Marine Corps Reserve, Navy Reserve.

<sup>4</sup> OSD (RA) Briefing, “The Seven Reserve Components,” 23.

<sup>5</sup> An exception to this includes the Army Individual Ready Reserve (IRR). The IRR is “a pool of trained, experienced Soldiers who have fulfilled part of their statutory Military Service Obligation by serving on Active Duty or in the Selected Reserve. They are transferred into the IRR to fulfill the remainder of their obligation. They can be involuntarily mobilized. Each IRR Soldier meets minimum annual requirements that include updating personal contact information, attending muster duty, updating a readiness screening questionnaire online, and responding to official military correspondence”. Ref: Army Human Resource Website accessed 15 Feb, 2011: <https://www.hrc.army.mil/site/media/factsheets/irr.htm>.

<sup>6</sup> Ibid.

<sup>7</sup> Lawrence Kapp, *Reserve Component Personnel Issues: Questions and Answers*, Congressional Research Service Report for Congress. RL30802. Jan 18, 2006, 8.

<sup>8</sup> The term “activation” refers to RC members voluntarily or involuntarily mobilized for a specific mission/contingency.

<sup>9</sup> OSD (RA) Briefing, “The Seven Reserve Components,” 23.

<sup>10</sup> Defense Manpower Requirements Report to Congress for Fiscal Year 2009, <http://prhome.defense.gov/RSI/REQUIREMENTS/docs/DMRR%20Fiscal%20Year%202009,%200August%202009.pdf>, 3 (accessed Nov 27, 2010).

<sup>11</sup> John Hope, Douglas Christmas & Patrick Mackin, *An Analysis of the Effect of Reserve Activation on Small Business*, Small Business Association Office of Advocacy, Oct 2009. (Data taken from DoD’s Defense Manpower Data Center (DMDC)), 13.

<sup>12</sup> Ibid.

<sup>13</sup> OSD (RA) Briefing, “The Seven Reserve Components,”

<sup>14</sup> Ibid.

<sup>15</sup> Elaine Wilson, “Balancing Act Stresses Reserve Component Forces, General Says”. American Forces Press Service, (Dec 14, 2009) linked from the Army National Guard Website

<http://www.arng.army.mil/News/Pages/%E2%80%98BalancingAct%E2%80%99StressesReservists,GeneralSays.aspx> (accessed Dec 6, 2010).

<sup>16</sup> National Defense Authorization Act for FY2006, P.L. 109-163, section 614, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess (January 6, 2006).

<sup>17</sup> Ibid.

<sup>18</sup> Reserve Officers Association Statement for the Congressional Record, “Status of Reserve Employers”, Subcommittee on Economic Opportunity House Veterans Affairs Committee, United States Congress, House, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess (Apr 15, 2010).

<sup>19</sup> Defense Manpower Data Center, *Status of Forces Survey of Reserve Component Members 2006*, Department of Defense Briefing, 4.

<sup>20</sup> Ibid, 4.

<sup>21</sup> Ibid, 83.

<sup>22</sup> Ibid, 15.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Congressional Budget Office Testimony, Statement of Heidi Golding before the Commission on the National Guard and Reserves, *The Effects of Reserve Call-Ups on Civilian Employers* (May 17, 2007), 2.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid, 3.

<sup>29</sup> 580,000 reservists mobilized as of CBO testimony date of May 2007.

<sup>30</sup> CBO Testimony, *The Effects of Reserve Call-Ups on Civilian Employers*, 3.

<sup>31</sup> Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness Working Group Interim Report to Congress, *Special Working Group on Transition to Civilian Employment of National Guard and Reserve Members Returning from Deployment in Operation Iraqi Freedom and Operation Enduring Freedom*, (Washington D.C.), Nov, 2007.

<sup>32</sup> Herb Lawrence, Center Director of Arkansas State University Small Business Development Center, Statement to the House Veterans Affairs Committee, 110<sup>th</sup> Congress, 2<sup>nd</sup> sess. (Aug 18, 2008), 20.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Arkansas Adjutant General William D. Wofford, "Veteran's Re-Employment", testimony to the House Veterans Affairs Committee, 110<sup>th</sup> Cong. 2<sup>nd</sup> sess, (Aug 18, 2008).

<sup>36</sup> Elizabeth Manning, "Fortune 500 Survey: Industry leader's motives for supporting Reserve Component employees range from patriotic to pragmatic", *The Officer* (Dec 2006), 69.

<sup>37</sup> General William D. Wofford, "Veteran's Re-Employment".

<sup>38</sup> Ibid.

<sup>39</sup> CBO Testimony, *The Effects of Reserve Call-Ups on Civilian Employers*, 3.

<sup>40</sup> Elizabeth Manning, "Fortune 500 Survey," 69.

<sup>41</sup> Ibid.

<sup>42</sup> Kimberly Hefling, "The Unemployment Rate for Vets Hits 21%," *Associated Press* (Washington D.C.) Mar 12, 2010, linked from *The Army Times* website, [http://www.armytimes.com/news/2010/03/ap\\_military\\_young\\_vets\\_unemployment\\_031210/](http://www.armytimes.com/news/2010/03/ap_military_young_vets_unemployment_031210/) (accessed Dec 3, 2010).

<sup>43</sup> Marshall Hanson (CAPT, USNR-Ret.), Director of Legislative and Military Policy for the ROA, Statement to the House Committee on Veteran's Affairs, Subcommittee on Economic Opportunity, 2011<sup>th</sup> Cong. 2<sup>nd</sup> sess. (Apr 15, 2010).

<sup>44</sup> Ilya Leybovich, "Job opportunities for Military Veterans," *Thomas Net News: Industry Marketing Trends*, Nov 17, 2009, <http://news.thomasnet.com/IMT/archives/2009/11/job-opportunities-for-united-states-military-veterans.html> (accessed Nov 15, 2010).

<sup>45</sup> Ibid.

<sup>46</sup> Marshall Hanson, Statement to House VA Committee.

<sup>47</sup> U.S. Department of Labor, *USERRA Fiscal Year 2009 Annual Report to Congress* (Washington D.C.), Oct 2010.

<sup>48</sup> Ibid, 1.

<sup>49</sup> Ibid.

<sup>50</sup> U.S. Department of Labor VETS Homepage, <http://www.dol.gov/vets/> (accessed Dec 9, 2010).

<sup>51</sup> U.S. Department of Labor's Assistant Secretary for the Veterans' Employment and Training Services (Charles Ciccolella) testimony to the Senate Committee on Health, Education, Labor, and Pensions, 2010<sup>th</sup> Cong., 1<sup>st</sup> sess, Nov 8, 2007.

<sup>52</sup> U.S. Department of Defense Directive 1250.01, *National Committee for Employer Support of the Guard and Reserve* (Washington D.C.), Apr 13, 2004.

<sup>53</sup> Ibid.



<sup>54</sup> U.S. DOL, *USERRA Fiscal Year 2009 Annual Report to Congress*, 2.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> U.S. Government Accountability Office Report to Congress, *Military Personnel: Improvements Needed to Increase Effectiveness of DoD's Programs to Promote Positive Working Relationships between the Reservists and their Employers*, GAO-08-981R (Washington, D.C., August 15, 2008), 5.

<sup>58</sup> *Ibid.*, 5.

<sup>59</sup> U.S. Office of Special Counsel website, *About USERRA: Brief Overview*, Jan 1, 2010, [Http://www.osc.gov/userraOverview.htm](http://www.osc.gov/userraOverview.htm). (accessed Dec 9, 2010)

<sup>60</sup> U.S. DOL, *USERRA Fiscal Year 2009 Annual Report to Congress*, 1.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Reserve Officers Association Statement for the Congressional Record, "Status of Reserve Employers", Subcommittee on Economic Opportunity House Veterans Affairs Committee, United States Congress, House. (Apr 15, 2010).

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> While the law provides for "liquidated" damages, it does not provide for punitive damages for willful and egregious USERRA violation.

<sup>69</sup> 38 U.S.C. § 4323.

<sup>70</sup> U.S. DOL, *USERRA Fiscal Year 2009 Annual Report to Congress*, 1.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, 38.

<sup>74</sup> Commission on the National Guard and Reserve (CNGR), "Final Report to Congress and the Secretary of Defense", (Washington, D.C., Jan 2008) 37.

<sup>75</sup> Servicemembers Civil Relief Act Website, “Whom does the act protect”, <http://www.servicememberscivilreliefact.com/faq/index.php#20> (accessed Nov 15, 2010).

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Herb Lawrence, Center Director of Arkansas State University Small Business Development Center, Statement to the House Veterans Affairs Committee, 110<sup>th</sup> Cong, 2<sup>nd</sup> sess, Aug 18, 2008.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> CNGR, “Report to Congress and the Secretary of Defense”, 38.