

GAO

Report to the Ranking Minority Member,
Subcommittee on Readiness, Committee
on Armed Services, U.S. Senate

June 1998

GENDER ISSUES

Changes Would Be Needed to Expand Selective Service Registration to Women





**United States
General Accounting Office
Washington, D.C. 20548**

**National Security and
International Affairs Division**

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June 30, 1998

The Honorable Charles S. Robb
Ranking Minority Member
Subcommittee on Readiness
Committee on Armed Services
United States Senate

Dear Senator Robb:

In your letter of June 20, 1997, concerning a variety of questions related to gender equity in the military, you raised the issue of whether men and women might both need to register with the Selective Service System (SSS) to provide an adequate pool of potential military personnel in the event the United States had to deal with a prolonged conflict. As agreed, this report identifies the legal, staffing, and funding changes that would be needed if SSS were given the mandate to expand registration to include women. The question you raised concerning whether the United States' ability to engage in a prolonged conflict would be affected by restrictions on women participating in ground combat will be addressed in a later report.

Results in Brief

Selective Service System could register women if its authorizing legislation, the Military Selective Service Act, were amended to provide for registering women. Currently, the act only obligates males to register. Selective Service estimates that it would need 17 to 23 additional staff and about \$4.6 million to \$5.2 million in added funding to carry out such a mandate.

Background

Until 1973, the U.S. military relied on a mix of draftees and volunteers to fill its ranks. In 1973, the draft ended and the military became an all-volunteer force. Currently, the Military Selective Service Act (MSSA)¹ requires that males between the ages of 18 and 26 register under procedures established by a presidential proclamation² and other rules and regulations.

SSS is an independent agency within the executive branch of the federal government. Its missions are to (1) provide untrained manpower to the

¹50 U.S.C. app. 451-471a.

²Proclamation No. 4771, 45 Fed. Reg. 45247 (1980) issued by President Carter following the Soviet invasion of Afghanistan.

Department of Defense (DOD) for military service in the event of a national emergency declared by the Congress or the President, (2) administer a program of alternative service for conscientious objectors in the event of a draft, and (3) maintain the capability to register and forward for induction health care personnel if so authorized and directed in a future crisis. SSS carries out its function with an authorized staff of 180 civilians (170 on board as of May 1998); 15 active military personnel; 745 part-time reservists; 56 part-time state directors (one in each state, territory, the District of Columbia, and New York City); and 10,605 uncompensated civilian volunteer members of local, review, and various appeal boards. Currently, the boards receive periodic training in classifying registrants in the event the draft is reinstated. The fiscal year 1998 budget for SSS is about \$23.4 million. Its registration database of men between the ages of 18 and 26 contained about 13 million names as of March 1998.

Currently, SSS operates as a backup for recruiting shortfalls in the all-volunteer armed forces or major expansion in military force structure. DOD does not foresee a military crisis of a magnitude that would require immediate reinstatement of the draft, but continues to support registration for all men between the ages of 18 and 26. If the draft were reinstated, current DOD requirements are for the first inductees to arrive 193 days after mobilization notification and the first 100,000 inductees by day 210. First medical personnel (doctors, nurses, and others) inductees are slated to report on day 222. DOD based these requirements on the expectation that existing active and reserve forces would be sufficient to respond to perceived threats, thereby mitigating the need for an immediate infusion of inductees. According to DOD, the current requirements maintain an adequate margin of safety and provide time for expanding military training capabilities to handle a large influx of recruits.

DOD's view regarding maintaining an all male registration is contained in a November 16, 1994, memorandum from the Assistant Secretary of Defense, Force Management, to the SSS Director updating mobilization requirements. DOD views the exemption of women from registration as being consistent with its policy of restricting women from direct ground combat. DOD also cites a 1981 decision of the U.S. Supreme Court that upheld the exemption of women from registration as additional support for this view. *Rostker v. Goldberg*, 453 U.S. 57 (1981). Appendix I provides historical information on the issue of registering women for a draft.

Registration of Women Would Require Legislative Action and Operational and Budgetary Changes

Under article I, section 8 of the Constitution, the Congress has broad and sweeping authority to raise and support armies and to make all laws necessary to that end.³ Pursuant to this power, the Congress enacted MSSA. MSSA does not provide for the registration of women. Section 3 of MSSA (50 U.S.C. app. 453) requires that only male citizens and residents between the ages of 18 and 26, unless exempted, register with sss. The Congress' primary reason for not requiring women to register was DOD's policy of excluding women from combat assignments.⁴ Requiring the registration of men but not women was upheld as constitutional by the Supreme Court in 1981 in the Rostker case.

Registering women would require the Congress to amend MSSA.⁵ Since other federal and state laws and regulations currently deny benefits (including educational assistance and employment eligibility) to males who fail to register for the draft, amending MSSA may require other legislative or regulatory changes.

sss officials estimate that the agency would need 17 to 23 more staff over its fiscal year 1998 authorized staff level and about \$4.6 million to \$5.2 million over its fiscal year 1998 budget if it were required to register women in addition to men. The funds would be needed to cover costs for personnel, printing, program contracts, U.S. Postal Service reimbursement, postage, procurement of state Division of Motor Vehicles lists of names and addresses, awareness materials, equipment, supplies, and services. The sss estimates vary depending on the timeframe available to register women and to build up the database of names and addresses and on two scenarios. The two scenarios are (1) a nonemergency registration and database buildup characterized by lower increases in resources and at least a full year's time to complete and (2) an emergency registration and database buildup characterized by higher increases in resources and a usable database in only 42 days. Registering women would add approximately 14.4 million names and addresses to the estimated 13 million men's names and addresses in the sss database. Table 1 shows the current operations and the estimated effects of

³U.S. v. O'Brien, 391 U.S. 367 (1968); Selective Draft Law Cases, 245 U.S. 366 (1918).

⁴At the time, women were excluded from combat by law and DOD policy, but some changes took place in 1991 and 1993, respectively. The fiscal year 1992-1993 National Defense Authorization Act, P.L. 102-190 (Dec. 5, 1991) lifted the ban on the assignment of women to combat aircraft. The fiscal year 1994 National Defense Authorization Act, P.L. 103-160 (Nov. 30, 1993) lifted the ban on the assignment of women to combat ships. Currently, the DOD policy is to exclude women from assignments below the brigade level whose primary mission is to engage in direct combat on the ground.

⁵At 50 U.S.C. app. 453, 456, 466.

registering women under these two scenarios, nonemergency and emergency registrations.

Table 1: Estimated Effects of a New Mandate for SSS to Register Women

Effect	Current operations fiscal year 1998	Nonemergency registration	Emergency registration
Legal			
Military Selective Service Act	No change	Amended for gender	Amended for gender
Operational			
Authorized civilian personnel	180	197	203
Time to register and build up lists of names and addresses	No change	365 or more days	42 days
Total number of names registered	13 million men	27.4 million men and women	27.4 million men and women
Budget			
Funding	\$23.4 million	\$28.0 million	\$28.6 million

Note: Some figures rounded to nearest hundred thousand.

Source: SSS estimates.

Agency Comments

DOD and the Director, SSS, reviewed a draft of this report and provided technical comments, which we incorporated as appropriate.

Scope and Methodology

To identify the legal, staffing, and funding changes that would be needed if SSS were given the mandate to expand registration to include women, we reviewed applicable laws, congressional committee reports, and the U.S. Supreme Court decision in *Rostker v. Goldberg*, 453 U.S. 57 (1981). We drew from our previously issued report entitled *Selective Service: Cost and Implications of Two Alternatives to the Present System* (GAO/NSIAD-97-225, Sept. 10, 1997) and obtained additional information from SSS officials who estimated the additional staffing and funding that would be needed if SSS were to register women in addition to men. We did not verify these SSS estimates, but we judged their reasonableness through discussions with officials and by reviewing previously obtained budget and staffing information. We reviewed DOD documents to obtain DOD's position on registering and drafting women. We also reviewed a November 1992 Presidential Commission report on the Assignment of Women in the Armed Forces for the commission's position on registering and drafting

women. We did not review the policy implications of registering women for a possible draft.

We conducted our review from April to June 1998 in accordance with generally accepted government auditing standards.

We are sending copies of this report to other interested congressional committees and Members of Congress, the Secretary of Defense, and the Director of the Selective Service System. We will also make copies of the report available to others on request.

If you or your staff have any questions concerning this report, please call me on (202) 512-5140. Major contributors to this report are listed in appendix II.

Sincerely yours,



Mark E. Gebicke
Director, Military Operations
and Capabilities Issues

Historical Perspectives on Women and the Draft

The United States' change from a military force based on a mix of volunteers and draftees to an all-volunteer force ended the draft in 1973. In 1975, President Ford terminated registration under the Military Selective Service Act (MSSA) by revoking several presidential proclamations.¹ However, in July 1980 President Carter reactivated the registration process for men in response to the Soviet invasion of Afghanistan.

Discussions about registering and conscripting women have periodically taken place. Section 811 of the Department of Defense Authorization Act, 1980 (P.L. 96-107, Nov. 9, 1979) required the President to send to the Congress a plan for reforming the law providing for the registration and induction of persons for military service. The President sent to the Congress his recommendations for Selective Service System reform in a report dated February 11, 1980. This report included a recommendation that the act be amended to provide presidential authority to register, classify, and examine women for service in the armed forces. Although women would become part of the personnel inventory for the services to draw from, their use would be based on the needs and missions of the services. Department of Defense (DOD) policy, which was not to assign women to positions involving close combat, would continue. In response to these recommendations, the Congress agreed to reactivate registration, but declined to amend the act to permit the registration of women. Specifically, in the legislative history for the Department of Defense Authorization Act, 1981, the Senate Armed Services Committee report stated that the primary reason for not expanding registration to include women was DOD's policy of not using women in combat. (S. Rept. No. 96-342, at 157 (1980)). Additional reasons cited in the report included agreement by both civilian and military leadership that there was no military need to draft women and congressional concerns about the societal impact of the registration and possible induction of women.²

The exclusion of women from the registration process has been challenged in the courts. In 1980, a lawsuit brought by several men resulted in a decision by the U.S. District Court for the Eastern District of Pennsylvania that the MSSA exclusion of women from registration violated the due process clause of the Fifth Amendment and the District Court enjoined registration under the act. On appeal, the Supreme Court reversed the District Court's decision and upheld the constitutionality of the exclusion, ruling that there was no violation of the due process clause

¹Proclamation No. 4360, 40 Fed. Reg. 14567 (1975).

²The conference report for the Authorization Act endorsed the findings on registration of women contained in the Senate report. See H.R. CONF. REP. NO. 96-1222, at 104 (1980).

of the Fifth Amendment. (Rostker v. Goldberg, 453 U.S. 57 (1981)). The court based its decision largely on DOD's policy of excluding women from combat. The court reasoned that since the purpose of registration was to create a pool of potential inductees for combat, males and females could be treated differently. The court also noted its inclination to defer to the Congress since draft registration requirements are enacted by the Congress under its constitutional authority to raise armies and navies and observed that the Congress had in 1980 considered, but rejected, a proposal to expand registration to women.

In 1992, a Presidential Commission on the Assignment of Women in the Armed Forces reexamined the issue of registration and conscription of women. In its November 1992 report, by a vote of 11 to 3, the Commission recommended that women not be required to register for or be subject to conscription. The Commission cited the 1981 Supreme Court decision in Rostker upholding the exclusion of women from registration as the basis for its recommendation. The Commission also discussed enacting existing ground combat specialties exclusion policies into law to provide an additional barrier to any amendment of MSSA to provide for the conscription of women. However, an appendix to its report suggests that public opinion was divided on the issue. This appendix, which included the results of a random telephone survey of 1,500 adults, showed that in the event of a draft for a national emergency or threat of war (and assuming an ample pool of young men exists), 52 percent of respondents indicated women should be drafted, about 39 percent of respondents indicated women should not be drafted, and 10 percent responded they did not know.

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