

108TH CONGRESS
2D SESSION

H. R. 5354

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2004

Ms. HOOLEY of Oregon (for herself, Mr. HOLDEN, Mr. CAPUANO, Mr. SANDLIN, Mr. SCOTT of Georgia, Ms. CARSON of Indiana, Mr. PAYNE, Mr. RUPPERSBERGER, Mr. DEFazio, Mr. HOLT, Mr. KILDEE, Mr. STARK, Mr. STUPAK, Ms. ESHOO, Mr. GRIJALVA, Mr. BISHOP of Georgia, Mrs. CAPPS, Mr. BERRY, Mr. BELL, Mr. LUCAS of Kentucky, Ms. KILPATRICK, Mr. CARDOZA, Mr. ROSS, Mr. SCOTT of Virginia, Ms. LINDA T. SÁNCHEZ of California, Mr. BISHOP of New York, Mr. McNULTY, Mr. WU, Mr. DAVIS of Tennessee, Mr. HONDA, Mr. LARSEN of Washington, Mr. SMITH of Washington, Ms. DEGETTE, Mr. PASTOR, Mr. KIND, Mr. FRANK of Massachusetts, Ms. JACKSON-LEE of Texas, Mr. MCGOVERN, Mr. KENNEDY of Rhode Island, Mr. STENHOLM, Mr. SERRANO, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Energy and Commerce, Education and the Workforce, Ways and Means, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Guard and
5 Reserve Bill of Rights Act of 2004”.

6 **SEC. 2. PERIODS OF DEPLOYMENTS OF RESERVES OVER-**
7 **SEAS.**

8 (a) UNITED STATES CENTRAL COMMAND DEPLOY-
9 MENTS.—

10 (1) LIMITATION.—During a period when there
11 is in effect a policy of assigning units or members
12 of one or more of the active components of the
13 Armed Forces to duty in the area of responsibility
14 of the United States Central Command for a speci-
15 fied period of time of not less than one year, the
16 Secretary of Defense shall provide that the length of
17 such an assignment in the case of members of the
18 reserve components of the Armed Forces may not
19 exceed the length of such period for the cor-
20 responding active component reduced by the period
21 of time between the date of entry of the reserve com-
22 ponent members onto active duty and the date of the
23 deployment of such members for such assignment.

24 (2) TRANSITION.—Paragraph (1) applies to
25 members of reserve components assigned to duty in

1 the area of responsibility of the United States Cen-
2 tral Command on or after the date of the enactment
3 of this Act and to such members assigned to such
4 duty before such date who as of the date of the en-
5 actment of this Act have more than 90 days remain-
6 ing in such assignment.

7 (b) COMMUNICATION OF LENGTHS OF DEPLOYMENT
8 PERIODS TO RESERVES IN OPERATION IRAQI FREE-
9 DOM.—

10 (1) FINDINGS.—Congress makes the following
11 findings:

12 (A) Members of all components of the
13 Armed Forces, active and reserve, exhibit a re-
14 markable commitment and willingness to serve
15 their country in Iraq and Afghanistan, and
16 other United States military efforts around the
17 world and, in doing so, frequently face grave
18 risks and difficulties.

19 (B) While the members of the Armed
20 Forces have clearly and consistently dem-
21 onstrated their dedication to duty, much uncer-
22 tainty has arisen among them about the lengths
23 of their deployments and when they will be re-
24 turned to their loved ones. This confusion im-
25 pairs our troops' morale and places undue

1 strain on their families and their civilian em-
2 ployers.

3 (C) Fairness to the men and women of the
4 Armed Forces deployed overseas requires that
5 the Department of Defense—

6 (i) have clear policies regarding
7 lengths of deployment periods; and

8 (ii) communicate these policies and
9 other deployment-related information to
10 them and their families.

11 (D) While many military units were de-
12 ployed months before Operation Iraqi Freedom
13 was launched on March 19, 2003, the Depart-
14 ment of Defense did not announce a policy
15 about the length of deployments until August
16 2003.

17 (E) Even after the Department of Defense
18 issued its so-called “one year boots-on-the-
19 ground” policy regarding lengths of deployment
20 periods, many of the members of units deployed
21 overseas in Operation Iraqi Freedom learned
22 shortly before their scheduled return dates that
23 their deployments would be extended for
24 months beyond the one-year period provided
25 under that policy.

1 (2) REPORT.—

2 (A) REQUIREMENT FOR REPORT.—Not
3 later than March 1, 2005, the Secretary of De-
4 fense shall submit to the Committees on Armed
5 Services of the Senate and the House of Rep-
6 resentatives a report on Department of Defense
7 policies governing the length of deployment pe-
8 riods applicable to members of reserve compo-
9 nents of the Armed Forces in connection with
10 Operation Iraqi Freedom, and on the commu-
11 nication between the Department of Defense
12 and reserve component personnel and their
13 families regarding the length of the deployment
14 periods.

15 (B) CONSULTATION REQUIREMENT.—In
16 preparing the report under this section the Sec-
17 retary shall consult with the Chairman and
18 other members of the Joint Chiefs of Staff and
19 with such other officials as the Secretary con-
20 siders appropriate.

21 (C) CONTENT.—The report under this
22 paragraph shall contain a discussion of the
23 matters described in subparagraph (A), includ-
24 ing the following matters:

1 (i) The process by which the Depart-
2 ment of Defense determined its policy re-
3 garding the length of deployment periods.

4 (ii) The reason that no such policy
5 was in place before Operation Iraqi Free-
6 dom began.

7 (iii) A comparison of the policy during
8 Operation Iraqi Freedom with Department
9 of Defense deployment policies that applied
10 to previous contingency operations.

11 (iv) The timeliness of the process for
12 notifying reserve component units for acti-
13 vation.

14 (v) The process for communicating
15 with activated reserve component members
16 and their families about demobilization
17 schedules.

18 (vi) The family support programs pro-
19 vided by the National Guard and other re-
20 serve components for families of activated
21 Reserves.

22 (vii) An assessment of lessons learned
23 about how the increased operations tempo
24 of the National Guard and other reserve
25 components can be expected to affect read-

1 iness, recruitment and retention, civilian
2 employers of Reserves, and equipment and
3 supply resources of the National Guard
4 and the other reserve components.

5 (D) MATTERS FOR PARTICULAR EMPHA-
6 SIS.—In the discussion of the matters included
7 in the report under this subsection, the Sec-
8 retary of Defense shall place particular empha-
9 sis on—

10 (i) lessons learned, including defi-
11 ciencies identified; and

12 (ii) near-term and long-term correc-
13 tive actions to address the identified defi-
14 ciencies.

15 (E) FORM OF REPORT.—The report shall
16 be submitted in unclassified form, but may in-
17 clude a classified annex.

18 **SEC. 3. MILITARY PAY.**

19 (a) CORRECTION OF PAY PROBLEMS FOR ACTIVATED
20 RESERVE COMPONENT PERSONNEL.—

21 (1) REQUIREMENT FOR SENIOR LEVEL AC-
22 TION.—The Secretary of the Army shall designate a
23 senior level official of the Department of the Army
24 to implement—

1 (A) the recommendations for executive ac-
2 tion set forth in the report of the Comptroller
3 General of the United States entitled “Military
4 Pay, Army National Guard Personnel Mobilized
5 to Active Duty Experienced Significant Pay
6 Problems”, dated November 2003; and

7 (B) the recommendations for executive ac-
8 tion set forth in the report of the Comptroller
9 General of the United States entitled “Military
10 Pay, Army Reserve Soldiers Mobilized to Active
11 Duty Experienced Significant Pay Problems”,
12 dated August 2004.

13 (2) SUPERVISION BY COMPTROLLER OF DE-
14 PARTMENT OF DEFENSE.—The official designated
15 under paragraph (1) shall report directly to, and be
16 subject to the direction of, the Under Secretary of
17 Defense (Comptroller) regarding performance of the
18 duties that the official is designated to carry out
19 under such paragraph.

20 (3) TERMINATION OF REQUIREMENT.—The
21 designation under paragraph (1) shall terminate
22 upon the certification of the Under Secretary of De-
23 fense (Comptroller) to Congress that all rec-
24 ommendations referred to in such paragraph have
25 been implemented.

1 (b) REENLISTMENT BONUS FOR SELECTED RE-
2 SERVE.—

3 (1) EXPANDED ELIGIBILITY.—Subsection (a)(1)
4 of section 308b of title 37, United States Code, is
5 amended by striking “14 years” and inserting “17
6 years”.

7 (2) INCREASED MAXIMUM AMOUNT.—Sub-
8 section (b) of such section is amended by striking
9 “(b) BONUS AMOUNT; PAYMENT.—(1) The amount
10 of a bonus under this section may not exceed—”
11 and all that follows through the end of paragraph
12 (1) and inserting the following:

13 “(b) BONUS AMOUNT.—The amount of a bonus
14 under this section may not exceed \$10,000.”.

15 (3) OPTION TO RECEIVE LUMP-SUM PAY-
16 MENT.—Section 308b of title 37, United States
17 Code, is further amended—

18 (A) by striking paragraphs (1) and (2) of
19 subsection (c); and

20 (B) in paragraph (2) of subsection (b)—

21 (i) by striking “(2) Any bonus payable
22 under this section” and inserting the fol-
23 lowing:

24 “(c) PAYMENT IN LUMP SUM OR INSTALLMENTS.—

25 (1) A bonus payable to a member under this section shall

1 be paid, upon the election of the member, in one lump
 2 sum or in partial payments under paragraph (2).

3 “(2) Any bonus payable in partial payments under
 4 this section”.

5 (4) REDESIGNATION OF PROVISIONS.—Such
 6 section is further amended—

7 (A) by redesignating subsections (d), (e),
 8 and (f), as subsections (e), (f), and (g), respec-
 9 tively; and

10 (B) in subsection (c)(3)—

11 (i) by striking “(3) In the case of”
 12 and inserting “(d) PERSONNEL IN CER-
 13 TAIN CONTINGENCY OPERATIONS.—In the
 14 case of”; and

15 (ii) by striking “paragraph (1)(B)
 16 or”.

17 **SEC. 4. TRICARE FOR RESERVE COMPONENT PERSONNEL.**

18 (a) EXPANDED ELIGIBILITY OF READY RESERVE
 19 MEMBERS UNDER TRICARE PROGRAM.—

20 (1) UNCONDITIONAL ELIGIBILITY.—Subsection

21 (a) of section 1076b of title 10, United States Code,
 22 is amended by striking “is eligible, subject to sub-
 23 section (h), to enroll in TRICARE” and all that fol-
 24 lows through “an employer-sponsored health benefits
 25 plan” and inserting “, except for a member who is

1 enrolled or is eligible to enroll in a health benefits
 2 plan under chapter 89 of title 5, is eligible to enroll
 3 in TRICARE, subject to subsection (h)’’.

4 (2) PERMANENT AUTHORITY.—Subsection (l) of
 5 such section is repealed.

6 (3) CONFORMING REPEAL OF OBSOLETE PROVI-
 7 SIONS.—Such section is further amended—

8 (A) by striking subsections (i) and (j); and

9 (B) by redesignating subsection (k) as sub-
 10 section (i).

11 (b) CONTINUATION OF NON-TRICARE HEALTH
 12 BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES
 13 CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DE-
 14 PENDENTS.—

15 (1) REQUIRED CONTINUATION.—

16 (A) REQUIREMENT.—Chapter 55 of title
 17 10, United States Code, is amended by insert-
 18 ing after section 1078a the following new sec-
 19 tion:

20 **“§ 1078b. Continuation of non-TRICARE health bene-**
 21 **fits plan coverage for dependents of cer-**
 22 **tain Reserves called or ordered to active**
 23 **duty**

24 “(a) PAYMENT OF PREMIUMS.—The Secretary con-
 25 cerned shall pay the applicable premium to continue in

1 force any qualified health benefits plan coverage for the
2 members of the family of an eligible reserve component
3 member for the benefits coverage continuation period if
4 timely elected by the member in accordance with regula-
5 tions prescribed under subsection (j).

6 “(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A
7 member of a reserve component is eligible for payment of
8 the applicable premium for continuation of qualified
9 health benefits plan coverage under subsection (a) while
10 serving on active duty pursuant to a call or order issued
11 under a provision of law referred to in section
12 101(a)(13)(B) of this title during a war or national emer-
13 gency declared by the President or Congress.

14 “(2) For the purposes of this section, the members
15 of the family of an eligible reserve component member in-
16 clude only the member’s dependents described in subpara-
17 graphs (A), (D), and (I) of section 1072(2) of this title.

18 “(c) QUALIFIED HEALTH BENEFITS PLAN COV-
19 ERAGE.—For the purposes of this section, health benefits
20 plan coverage for the members of the family of a reserve
21 component member called or ordered to active duty is
22 qualified health benefits plan coverage if—

23 “(1) the coverage was in force on the date on
24 which the Secretary notified the reserve component
25 member that issuance of the call or order was pend-

1 ing or, if no such notification was provided, the date
2 of the call or order;

3 “(2) on such date, the coverage applied to the
4 reserve component member and members of the fam-
5 ily of the reserve component member; and

6 “(3) the coverage has not lapsed.

7 “(d) APPLICABLE PREMIUM.—The applicable pre-
8 mium payable under this section for continuation of health
9 benefits plan coverage for the family members of a reserve
10 component member is the amount of the premium payable
11 by the member for the coverage of the family members.

12 “(e) MAXIMUM AMOUNT.—The total amount that the
13 Department of Defense may pay for the applicable pre-
14 mium of a health benefits plan for the family members
15 of a reserve component member under this section in a
16 fiscal year may not exceed the amount determined by mul-
17 tiplying—

18 “(1) the sum of one plus the number of the
19 family members covered by the health benefits plan,
20 by

21 “(2) the per capita cost of providing TRICARE
22 coverage and benefits for dependents under this
23 chapter for such fiscal year, as determined by the
24 Secretary of Defense.

1 “(f) BENEFITS COVERAGE CONTINUATION PE-
 2 RIOD.—The benefits coverage continuation period under
 3 this section for qualified health benefits plan coverage for
 4 the family members of an eligible reserve component mem-
 5 ber called or ordered to active duty is the period that—

6 “(1) begins on the date of the call or order; and

7 “(2) ends on the earlier of—

8 “(A) the date on which the reserve compo-
 9 nent member’s eligibility for transitional health
 10 care under section 1145(a) of this title termi-
 11 nates under paragraph (3) of such section; or

12 “(B) the date on which the reserve compo-
 13 nent member elects to terminate the continued
 14 qualified health benefits plan coverage of the
 15 member’s family members.

16 “(g) EXTENSION OF PERIOD OF COBRA COV-
 17 ERAGE.—Notwithstanding any other provision of law—

18 “(1) any period of coverage under a COBRA
 19 continuation provision (as defined in section
 20 9832(d)(1) of the Internal Revenue Code of 1986)
 21 for an eligible reserve component member under this
 22 section shall be deemed to be equal to the benefits
 23 coverage continuation period for such member under
 24 this section; and

1 “(2) with respect to the election of any period
2 of coverage under a COBRA continuation provision
3 (as so defined), rules similar to the rules under sec-
4 tion 4980B(f)(5)(C) of such Code shall apply.

5 “(h) NONDUPLICATION OF BENEFITS.—A member of
6 the family of a reserve component member who is eligible
7 for benefits under qualified health benefits plan coverage
8 paid on behalf of the reserve component member by the
9 Secretary concerned under this section is not eligible for
10 benefits under the TRICARE program during a period of
11 the coverage for which so paid.

12 “(i) REVOCABILITY OF ELECTION.—A reserve com-
13 ponent member who makes an election under subsection
14 (a) may revoke the election. Upon such a revocation, the
15 member’s family members shall become eligible for bene-
16 fits under the TRICARE program as provided for under
17 this chapter.

18 “(j) REGULATIONS.—The Secretary of Defense shall
19 prescribe regulations for carrying out this section. The
20 regulations shall include such requirements for making an
21 election of payment of applicable premiums as the Sec-
22 retary considers appropriate.”.

23 (B) CLERICAL AMENDMENT.—The table of
24 sections at the beginning of such chapter is

1 amended by inserting after the item relating to
2 section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty.”.

3 (2) APPLICABILITY.—Section 1078b of title 10,
4 United States Code (as added by paragraph (1)),
5 shall apply with respect to calls or orders of mem-
6 bers of reserve components of the Armed Forces to
7 active duty as described in subsection (b) of such
8 section, that are issued by the Secretary of a military
9 department before, on, or after the date of the enact-
10 ment of this Act, but only with respect to qualified
11 health benefits plan coverage (as described in sub-
12 section (c) of such section) that is in effect on or after
13 the date of the enactment of this Act.

14 **SEC. 5. CHILD CARE FOR CHILDREN OF MEMBERS OF**
15 **ARMED FORCES ON ACTIVE DUTY FOR OPER-**
16 **ATION ENDURING FREEDOM OR OPERATION**
17 **IRAQI FREEDOM.**

18 (a) CHILD CARE FOR CHILDREN WITHOUT ACCESS
19 TO MILITARY CHILD CARE.—

20 (1) AUTHORITY.—In any case where the chil-
21 dren of a covered member of the Armed Forces are
22 geographically dispersed and do not have practical
23 access to a military child development center, the
24 Secretary of Defense may, to the extent funds are

1 available for such purpose, provide such funds as are
2 necessary permit the member's family to secure ac-
3 cess for such children to State licensed child care
4 and development programs and activities in the pri-
5 vate sector that are similar in scope and quality to
6 the child care and development programs and activi-
7 ties the Secretary would otherwise provide access to
8 under subchapter II of chapter 88 of title 10, United
9 States Code, and other applicable provisions of law.

10 (2) PROCEDURES.—Funds may be provided
11 under paragraph (1) in accordance with the provi-
12 sions of section 1798 of title 10, United States
13 Code, or by such other mechanism as the Secretary
14 considers appropriate.

15 (3) PRIORITIES.—The Secretary shall prescribe
16 in regulations priorities for the allocation of funds
17 for the provision of access to child care under para-
18 graph (1) in circumstances where funds are inad-
19 equate to provide all children described in that para-
20 graph with access to child care as described in that
21 paragraph.

22 (b) PRESERVATION OF SERVICES AND PROGRAMS.—
23 The Secretary shall provide for the attendance and partici-
24 pation of children in military child development centers
25 and child care and development programs and activities

1 under subsection (a) in a manner that preserves the scope
2 and quality of child care and development programs and
3 activities otherwise provided by the Secretary.

4 (c) FUNDING.—Amounts otherwise available to the
5 Department of Defense and the military departments
6 under this Act may be available for purposes of providing
7 access to child care under subsection (a).

8 (d) DEFINITIONS.—In this section:

9 (1) COVERED MEMBERS OF THE ARMED
10 FORCES.—The term “covered members of the Armed
11 Forces” means members of the Armed Forces on ac-
12 tive duty, including members of the Reserves who
13 are called or ordered to active duty under a provi-
14 sion of law referred to in section 101(a)(13)(B) of
15 title 10, United States Code, for Operation Endur-
16 ing Freedom or Operation Iraqi Freedom.

17 (2) MILITARY CHILD DEVELOPMENT CENTER.—
18 The term “military child development center” has
19 the meaning given such term in section 1800(1) of
20 title 10, United States Code.

21 **SEC. 6. RIGHTS AND DUTIES UNDER USERRA.**

22 (a) REQUIREMENT FOR EMPLOYERS TO PROVIDE
23 NOTICE OF RIGHTS AND DUTIES UNDER USERRA.—

24 (1) NOTICE.—

1 (A) REQUIREMENT FOR NOTICE.—Chapter
2 43 of title 38, United States Code, is amended
3 by adding at the end the following new section:

4 **“§ 4334. Notice of rights and duties**

5 “(a) REQUIREMENT TO PROVIDE NOTICE.—Each
6 employer shall provide to persons entitled to rights and
7 benefits under this chapter a notice of the rights, benefits,
8 and obligations of such persons and such employers under
9 this chapter. The requirement for the provision of notice
10 under this section may be met by the posting of the notice
11 where employers customarily place notices for employees.

12 “(b) CONTENT OF NOTICE.—The Secretary shall
13 provide to employers the text of the notice to be provided
14 under this section.”.

15 (B) CLERICAL AMENDMENT.—The table of
16 sections at the beginning of such chapter is
17 amended by adding at the end the following
18 new item:

“4334. Notice of rights and duties.”.

19 (2) IMPLEMENTATION.—

20 (A) REQUIREMENT.—Not later than the
21 date that is 90 days after the date of the enact-
22 ment of this Act, the Secretary of Labor shall
23 make available to employers the notice required
24 under section 4334 of title 38, United States
25 Code, as added by paragraph (1).

1 (B) APPLICABILITY.—The amendments
2 made by this subsection shall apply to employ-
3 ers under chapter 43 of such title on and after
4 the first date referred to in subparagraph (A).

5 (b) DEMONSTRATION PROJECT FOR REFERRAL OF
6 USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE
7 OFFICE OF SPECIAL COUNSEL.—

8 (1) ESTABLISHMENT OF PROJECT.—The Sec-
9 retary of Labor and the Office of Special Counsel
10 shall carry out a demonstration project under which
11 certain claims against Federal executive agencies
12 under the Uniformed Services Employment and Re-
13 employment Rights Act under chapter 43 of title 38,
14 United States Code, are referred to, or otherwise re-
15 ceived by, the Office of Special Counsel for assist-
16 ance, including investigation and resolution of the
17 claim as well as enforcement of rights with respect
18 to the claim.

19 (2) REFERRAL OF ALL PROHIBITED PER-
20 SONNEL ACTION CLAIMS TO THE OFFICE OF SPE-
21 CIAL.—

22 (A) COVERED CLAIMS.—Under the dem-
23 onstration project, the Office of Special Counsel
24 shall receive and investigate all claims under
25 the Uniformed Services Employment and Reem-

1 ployment Rights Act with respect to Federal ex-
2 ecutive agencies in cases where the Office of
3 Special Counsel has jurisdiction over related
4 claims pursuant to section 1212 of title 5,
5 United States Code.

6 (B) RELATED CLAIMS.—For purposes of
7 subparagraph (A), a related claim is a claim in-
8 volving the same Federal executive agency and
9 the same or similar factual allegations or legal
10 issues as those being pursued under a claim
11 under the Uniformed Services Employment and
12 Reemployment Rights Act.

13 (3) REFERRAL OF OTHER CLAIMS AGAINST
14 FEDERAL EXECUTIVE.—

15 (A) OTHER CLAIMS.—Under the dem-
16 onstration project, the Secretary—

17 (i) shall refer to the Office of Special
18 Counsel all claims described in subpara-
19 graph (B) made during the period of the
20 demonstration project; and

21 (ii) may refer any claim described in
22 subparagraph (B) filed before the dem-
23 onstration project that is pending before
24 the Secretary at the beginning of the dem-
25 onstration project.

1 (B) COVERED CLAIMS.—A claim referred
2 to in subparagraph (A) is a claim under chapter
3 43 of title 38, United States Code, against a
4 Federal executive agency by a claimant with a
5 social security account number with an odd
6 number as its terminal digit, or, in the case of
7 a claim that does not contain a social security
8 account number, a case number assigned to the
9 claim with an odd number as its terminal digit.

10 (4) ADMINISTRATION OF DEMONSTRATION —

11 (A) OFFICE OF SPECIAL COUNSEL.—The
12 Office of Special Counsel shall administer the
13 demonstration project. The Secretary shall co-
14 operate with the Office of Special Counsel in
15 carrying out the demonstration project.

16 (B) LAW ADMINISTERED BY THE SEC-
17 RETARY OF VETERANS AFFAIRS.—In the case of
18 any claim referred to, or otherwise received by,
19 the Office of Special Counsel under the dem-
20 onstration project, any reference to the “Sec-
21 retary” in sections 4321, 4322, and 4326 of
22 title 38, United States Code, is deemed a ref-
23 erence to the “Office of Special Counsel”.

24 (C) RETENTION OF JURISDICTION OVER
25 REFERRED CLAIMS.—In the case of any claim

1 referred to, or otherwise received by, the Office
2 of Special Counsel under the demonstration
3 project, the Office of Special Counsel shall re-
4 tain administrative jurisdiction over the claim.

5 (5) PERIOD OF PROJECT.—The demonstration
6 project shall be carried out during the period begin-
7 ning on the date that is 60 days after the date of
8 the enactment of this Act, and ending on September
9 30, 2007.

10 (6) PERIODIC EVALUATIONS.—The Comptroller
11 General of the United States shall conduct periodic
12 evaluations of the demonstration project under this
13 subsection.

14 (7) REPORT ON EVALUATIONS.—Not later than
15 April 1, 2007, the Comptroller General shall submit
16 to Congress a report on the evaluations conducted
17 under paragraph (6). The report shall include the
18 following information and recommendations:

19 (A) A description of the operation and re-
20 sults of the demonstration program, includ-
21 ing—

22 (i) the number of claims described in
23 paragraph (3) referred to, or otherwise re-
24 ceived by, the Office of Special Counsel

1 and the number of such claims referred to
2 the Secretary of Labor; and

3 (ii) for each Federal executive agency,
4 the number of claims resolved, the type of
5 corrective action obtained, the period of
6 time for final resolution of the claim, and
7 the results obtained.

8 (B) An assessment of whether referral to
9 the Office of Special Counsel of claims under
10 the demonstration project—

11 (i) improved services to
12 servicemembers and veterans; or

13 (ii) significantly reduced or eliminated
14 duplication of effort and unintended delays
15 in resolving meritorious claims of those
16 servicemembers and veterans.

17 (C) An assessment of the feasibility and
18 advisability of referring all claims under chapter
19 43 of title 38, United States Code, against Fed-
20 eral executive agencies to the Office of Special
21 Counsel for investigation and resolution.

22 (D) Such other recommendations for ad-
23 ministrative action or legislation as the Comp-
24 troller General determines appropriate.

25 (8) DEFINITIONS.—In this subsection:

1 (A) OFFICE OF SPECIAL COUNSEL.—The
2 term “Office of Special Counsel” means the Of-
3 fice of Special Counsel established by section
4 1211 of title 5, United States Code.

5 (B) SECRETARY.—The term “Secretary”
6 means the Secretary of Labor.

7 (C) FEDERAL EXECUTIVE AGENCY.—The
8 term “Federal executive agency” has the mean-
9 ing given that term in section 4303(5) of title
10 38, United States Code.

11 (c) USERRA IMPLEMENTING REGULATIONS.—

12 (1) REQUIREMENT FOR REGULATIONS.—Sub-
13 sections (a) and (b)(1) of section 4331 of title 38,
14 United States Code, are amended by striking “may
15 prescribe” and inserting “shall prescribe”.

16 (2) CLARIFICATION OF RIGHT TO MERIT PAY
17 INCREASES.—The regulations prescribed for the im-
18 plementation of chapter 43 of title 38, United States
19 Code, under section 4331 of such title shall include
20 regulations that clarify that the entitlement of per-
21 sons returning to employment under such chapter to
22 receive pay increases under merit pay systems of
23 employers may not be denied on the basis of lack of
24 work performance evaluations for periods of absence
25 for active duty in the uniformed services.

1 **SEC. 7. IMPROVED EDUCATIONAL ASSISTANCE BENEFITS**
2 **FOR MEMBERS OF THE SELECTED RESERVE.**

3 (a) INCREASE IN AMOUNT OF BASIC EDUCATIONAL
4 ASSISTANCE.—

5 (1) IN GENERAL.—Section 16131(b) of title 10,
6 United States Code, is amended to read as follows:

7 “(b) Except as provided in subsections (d) through
8 (f), each educational assistance program established under
9 subsection (a) shall provide for payment by the Secretary
10 concerned, through the Secretary of Veterans Affairs, to
11 each person entitled to educational assistance under this
12 chapter who is pursuing a program of education of an edu-
13 cational assistance allowance at the following monthly
14 rates:

15 “(1) For such a program of education pursued
16 on a full-time basis, at the monthly rate equal to the
17 applicable percentage (as defined in paragraph (3))
18 of the rate that applies for the month under section
19 3015(a)(1) of title 38.

20 “(2)(A) Subject to subparagraph (B), for such
21 a program of education pursued on less than a full-
22 time basis, at an appropriately reduced rate, as de-
23 termined under regulations which the Secretaries
24 concerned shall prescribe.

25 “(B) No payment may be made to a person for
26 less than half-time pursuit of such a program of

1 education if tuition assistance is otherwise available
 2 to the person for such pursuit from the military de-
 3 partment concerned.

4 “(3) In this subsection, the term ‘applicable
 5 percentage’ means, with respect to months occurring
 6 during—

7 “(A) fiscal year 2005, 33 percent;

8 “(B) fiscal year 2006, 37 percent;

9 “(C) fiscal year 2007, 41 percent;

10 “(D) fiscal year 2008, 45 percent; and

11 “(E) fiscal year 2009, and each subsequent
 12 fiscal year, 50 percent.”.

13 (2) EFFECTIVE DATE.—The amendments made
 14 by paragraph (1) shall take effect on October 1,
 15 2004, and shall apply with respect to educational as-
 16 sistance allowances under section 16131(b) of such
 17 title paid for months after September 2004.

18 (b) EXPANSION OF ELIGIBILITY REQUIREMENTS FOR
 19 MEMBERS OF THE SELECTED RESERVE HAVING SERVED
 20 ON ACTIVE DUTY FOR A PERIOD OF 24 NON-CONSECU-
 21 TIVE MONTHS UNDER CHAPTER 30 OF TITLE 38,
 22 UNITED STATES CODE.—

23 (1) CREDIT FOR 24 MONTHS OF ACTIVE DUTY
 24 SERVICE OVER A PERIOD OF 5 YEARS.—Subsection
 25 3012(a) of title 38, United States Code, is amended

1 in paragraphs (1)(A)(i), (1)(B)(i), and (1)(C)(iii)(I)
 2 by striking “two years of continuous active duty”
 3 each place it appears and inserting “a cumulative pe-
 4 riod of 24 months during any 5-year period”.

5 (2) CONFORMING AMENDMENT.—Subsection (b)
 6 of section 3012 of such title is amended in para-
 7 graph (1) by striking “during such two years” and
 8 inserting “at any time during such 5-year period”.

9 (3) EFFECTIVE DATE.—The amendments made
 10 by this subsection shall apply on or after October 1,
 11 2005.

12 **SEC. 8. REDUCTION IN AGE FOR RECEIPT OF MILITARY RE-**
 13 **TIRED PAY FOR NONREGULAR SERVICE.**

14 (a) REDUCTION IN AGE.—Section 12731(a)(1) of
 15 title 10, United States Code, is amended by striking “at
 16 least 60 years of age” and inserting “at least 55 years
 17 of age”.

18 (b) APPLICATION TO EXISTING PROVISIONS OF LAW
 19 OR POLICY.—With respect to any provision of law, or of
 20 any policy, regulation, or directive of the executive branch,
 21 that refers to a member or former member of the uni-
 22 formed services as being eligible for, or entitled to, retired
 23 pay under chapter 1223 of title 10, United States Code,
 24 but for the fact that the member or former member is
 25 under 60 years of age, such provision shall be carried out

1 with respect to that member or former member by sub-
 2 stituting for the reference to being 60 years of age a ref-
 3 erence to the age in effect for qualification for such retired
 4 pay under section 12731(a) of title 10, United States
 5 Code, as amended by subsection (a).

6 (c) EFFECTIVE DATE.—The amendment made by
 7 subsection (a) shall take effect on the first day of the first
 8 month beginning on or after the date of the enactment
 9 of this Act and shall apply to retired pay payable for that
 10 month and subsequent months.

11 **SEC. 9. DEPUTY UNDER SECRETARY OF DEFENSE FOR PER-**
 12 **SONNEL AND READINESS (RESERVE AF-**
 13 **FAIRS).**

14 (a) ESTABLISHMENT OF POSITION.—

15 (1) POSITION AND DUTIES.—Chapter 4 of title
 16 10, United States Code, is amended by inserting
 17 after section 136a the following new section:

18 **“§ 136b. Deputy Under Secretary of Defense for Per-**
 19 **sonnel and Readiness (Reserve Affairs)**

20 “(a) There is a Deputy Under Secretary of Defense
 21 for Personnel and Readiness (Reserve Affairs), appointed
 22 from civilian life by the President, by and with the advice
 23 and consent of the Senate.

24 “(b) The Deputy Under Secretary of Defense for Per-
 25 sonnel and Readiness (Reserve Affairs) shall have as his

1 principal duty the overall supervision of reserve component
 2 affairs of the Department of Defense.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
 4 tions at the beginning of such chapter is amended
 5 by inserting after the item relating to section 136a
 6 the following new item:

“136b. Deputy Under Secretary of Defense for Personnel and Readiness (Re-
 serve Affairs).”.

7 (b) EXECUTIVE LEVEL IV.—Section 5315 of title 5,
 8 United States Code, is amended by inserting after “Dep-
 9 uty Under Secretary of Defense for Personnel and Readiness.” the following:

11 “Deputy Under Secretary of Defense for Per-
 12 sonnel and Readiness (Reserve Affairs).”.

13 (c) ELIMINATION OF POSITION OF ASSISTANT SEC-
 14 RETARY OF DEFENSE FOR RESERVE AFFAIRS.—

15 (1) REPEAL OF REQUIREMENT FOR POSI-
 16 TION.—Subsection (b) of section 138 of title 10,
 17 United States Code, is amended—

18 (A) by striking paragraph (2); and

19 (B) by redesignating paragraphs (3), (4),
 20 and (5), as paragraphs (2), (3), and (4), re-
 21 spectively.

22 (2) REDUCTION IN TOTAL NUMBER OF ASSIST-
 23 ANT SECRETARIES OF DEFENSE.—

1 (A) AUTHORIZED NUMBER.—Subsection
2 (a) of such section is amended by striking
3 “nine” and inserting “eight”.

4 (B) CONFORMING AMENDMENT.—Section
5 5315 of title 5, United States Code, is amended
6 by striking “(9)” after “Assistant Secretaries of
7 Defense” and inserting “(8)”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 subsection (c) shall take effect on the date on which a
10 person is first appointed as Deputy Under Secretary of
11 Defense for Personnel and Readiness (Reserve Affairs).

○