



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL 21 2015

The Honorable Joseph R. Biden, Jr.
President of the Senate
United States Senate
Washington, DC 20510

Dear Mr. President:

This letter provides notification as required by section 652 of title 10, United States Code, that the Department of Defense (DoD) intends to assign women to previously closed positions in the Army. The enclosure provides a detailed description of the intended changes and the required analysis of their impact on the constitutionality of the application of the Military Selective Service Act to males only. Additionally, the position descriptions for these Military Occupational Specialties and course to award a skill identifier are enclosed. DoD will implement changes to units and occupations listed in the enclosure at the end of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date this notification is received.

The Department of the Army intends to open 19,716 positions to women in two formerly closed occupations along with one skill identifier in the Active and Reserve Components.

These occupations and positions were previously closed due to the now-rescinded 1994 Direct Ground Combat Definition and Assignment Rule. The Department of the Army reviewed the occupational standards associated with these positions and determined they are gender-neutral. The performance of women in these positions will help inform future policy decisions regarding the assignment of women to all positions by January 1, 2016.

The DoD appreciates your continued support of the extraordinary men and women serving our Nation. A similar letter is being sent to the Speaker of the House and the Chairmen of the congressional defense committees.

Sincerely,

Brad Carson
Acting

Enclosures:
As stated



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL 21 2015

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

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WASHINGTON, D.C. 20301-4000

JUL 21 2015

The Honorable Thad Cochran
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

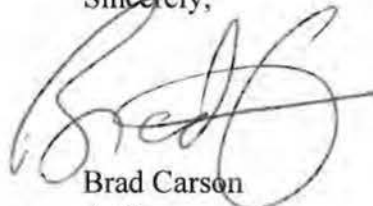
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Sincerely,



Brad Carson
Acting

Enclosures:
As stated

cc:
The Honorable Barbara A. Mikulski
Vice Chairwoman



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL 21 2015

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

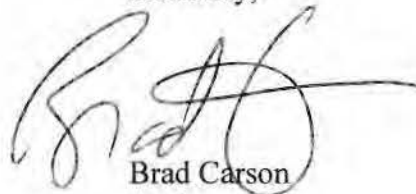
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Sincerely,



Brad Carson
Acting

Enclosures:
As stated

cc:
The Honorable Jack Reed
Ranking Member



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL 27 2015

The Honorable Harold Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Sincerely,

Brad Carson
Acting

Enclosures:
As stated

cc:
The Honorable Nita M. Lowey
Ranking Member



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL 21 2015

The Honorable William M. "Mac" Thornberry
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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As stated

cc:
The Honorable Adam Smith
Ranking Member

Closed Enlisted Military Occupational Specialties

MOS 13B Cannon Crewmember

The cannon crewmember leads, supervises or serves as a member of a field artillery cannon section or ammunition section. The cannon crewmember serves on multiple digitized indirect fire weapon systems that are located within the U.S. Army's Field Artillery Battalions. The cannon crewmember delivers precision and non-precision munitions and utilizes a digitized fire control system that displays gun location, pointing, navigation, digitized communication and emplacement/displacement aid capability. The cannon crewmember provides the supported commander at all echelons with the precise, timely, and responsive artillery fires achieving devastating lethal and non-lethal effects. In addition, serves on staffs at battalion, brigade and division level.

MOS 13D Field Artillery Automated Tactical Data System Specialist

The field artillery automated tactical data systems (FAATDS) specialist leads, supervises, or serves as a member of an activity operating FAATDS in a field artillery cannon battalion, battery, platoon or higher. The FAATDS specialist establishes, maintains and operates communications systems. Assists in preparation of computer center for operation and shutdown. Prepares FAATDS for operation to include cabling, installation, and removal procedures. Inputs initialization data and data base information to FAATDS. Constructs and maintains observed or surveyed firing charts. Operates and performs operator maintenance on FAATDS equipment, section vehicles, and generators associated with FAATDS. Performs crew maintenance and participates in organizational maintenance of section equipment.

Closed Skill Identifier

U6 – Field Artillery Weapons Maintenance

The Field Artillery Weapons Maintenance course is designed to train and educate Soldiers on Shop Safety, Maintenance publications, the Army Maintenance Management Systems, Maintenance of Firing Components, Fire Control Equipment and subsystems of the M119A3 and M777A2 howitzers.

Detailed Legal Analysis

Section 652 of title 10, United States Code, requires that notifications provided under this section include a detailed analysis of the legal implications of the proposed change with respect to the constitutionality of the application of the Military Selective Service Act (50 App. U.S.C. 451 et seq.) (MSAA or Act) to males only. *See* 10 U.S.C. § 652(a)(3)(B). The congressional requirement for a detailed legal analysis seeks to address the question of whether the different treatment of men and women with regard to draft registration under the MSSA constitutes unconstitutional discrimination against women in violation of the Due Process Clause of the Fifth Amendment. *See Frontiero v. Richardson*, 411 U.S. 677 (1973) (requiring female members to prove the dependency of their husbands, whereas spouses of male members were considered dependents, violated the due process clause of the Fifth Amendment).

Supreme Court precedent on gender discrimination establishes that a party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an “exceedingly persuasive justification” for the classification. *Virginia v. United States*, 518 U.S. 515, 533 (1996); *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981); *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 273 (1979). The government must show that the challenged classification “serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Virginia*, 518 U.S. at 533 (internal quotation marks omitted).

The MSAA requires the registration for possible military service of males but not females. The purpose of the registration is to facilitate induction and training in the Armed Forces. The Act states in pertinent part:

[I]t shall be duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and places or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

50 U.S.C. app. § 453(a).

In *Rostker v. Goldberg*, 453 U.S. 57 (1981), the United States Supreme Court considered the constitutionality of the male-only draft under the Act and upheld the Act. The Court held that the Act’s male-only registration provisions did not violate the Fifth Amendment to the United States Constitution because women, who were excluded from combat by statute or military policy, were not similarly situated to men for the purpose of a draft or registration, and that Congress acted within its constitutional authority to raise and regulate armies and navies when it authorized the registration of men and not women. The Court stated that its “most recent teachings in the field of equal protection cannot be read in isolation from its opinions giving

great deference to the judgment of Congress and military commanders in dealing [with] the management of military forces and the requirements of military discipline.” *Id.* at 69.

In *Rostker*, the Court recognized that the decision by Congress to exclude women from the registration requirement was not the “accidental by-product of a traditional way of thinking about females” but rather was the subject of considerable national attention and public debate, and was extensively considered by Congress in hearings, floor debates, and in committee. *Id.* at 71. The Court deferred to Congress’ explanation that “[i]f mobilization were to be ordered in a wartime scenario, the primary manpower need would be for combat replacements.” The Court noted that women were not similarly situated to men for purposes of the Act because of their exclusion from assignments to certain units whose primary mission is to engage in direct combat on the ground. In reaching its conclusion, the *Rostker* court noted:

None of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs. In that area, as any other, Congress remains subject to the limitations of the Due Process Clause, ... but the tests and limitations to be applied may differ because of the military context.... [T]he Constitution itself requires such deference to congressional choice. See *Columbia Broadcasting System Inc., v. Democratic National Committee*¹, 412 U.S., at 103, 93 S.Ct., at 2087.

453 U.S. at 67.

Undoubtedly, the landscape on the assignment of women has changed since *Rostker* was decided. Since the *Rostker* decision, sections 8539 and 6015, of title 10, U.S.C. (prohibiting the assignment of women to aircraft engaged in combat and vessels engaged in combat, respectively), have been repealed. On February 8, 2012, the Department rescinded its co-location restriction on the assignment of women, and approved an exception to the 1994 Direct Ground Combat Definition and Assignment Rule that allowed the assignment of women to select direct ground combat units in specific occupations at the battalion level and above. And on January 24, 2013, the Department rescinded its 1994 Direct Ground Combat Definition and Assignment Rule, which prohibited the assignment of women to certain units and positions. The rescission of the policy did not automatically open all previously closed positions to women, but rather effectively removed the last policy barrier to the assignment of women to ground combat positions and units. In rescinding the 1994 policy, the Department established a way forward, using the guiding principles and milestones developed by the Joint Chiefs of Staff, to integrate women into all currently closed positions as expeditiously as possible, considering good order and judicious use of fiscal resources, no later than January 1, 2016.

Throughout this process, the Department has kept Congress abreast of its changes through briefings and required notifications. As the Department continues its deliberate and thoughtful review and develops detailed implementation plans, previously closed positions will

¹ 412 U.S. 94, 102 (1973).

open unless an exception is granted to keep an occupational specialty or position closed. Opening all positions without a deliberate and thoughtful approach could be detrimental to mission accomplishment and impede the ability of men and women to succeed in their positions.

At this juncture, we do not believe that the particular notification provided herein—relating to the opening of cannon crewmember and field artillery automated tactical data system specialist military occupational specialties and the Field Artillery Weapons Maintenance skill identifier—has any material implications with respect to the constitutionality of the application of the MSSA to males only. At this time, a significant number of other combat positions remain closed to women and, for this reason, men and women continue not to be “similarly situated for purposes of a draft or registration for a draft.” *Rostker*, 453 U.S. at 78. Over time, however, the opening of additional combat positions to women may further alter the factual backdrop to the Court’s decision in *Rostker*. Should the constitutionality of the MSSA be challenged at a later date, the reasoning behind the exclusion of women from registration may need to be reexamined. The Court in *Rostker* did not consider whether other rationales underlying the statute would be sufficient to limit the application of the MSSA to men.