



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

JUN 9 2014

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 title 10, U.S.C., section 652, that the Department of Defense (DoD) intends to assign women to previously closed positions in the Navy. 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 description for this special qualification identifier is enclosed. DoD will implement the changes 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 Navy intends to open 24 Joint Terminal Attack Controller enlisted positions in the Navy Coastal Riverine Force. These positions were previously closed due to the now-rescinded 1994 Direct Ground Combat Definition and Assignment Rule. The Joint Staff and the Department of the Navy reviewed the 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.

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 Chairpersons of the congressional defense committees.

Sincerely,


Jessica L. Wright
Acting

Enclosures:
As stated



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JUN 9 2014

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

Dear Mr. Speaker:

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The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

JUN 9 2014


Dear Mr. Chairman:

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Jessica L. Wright
Acting

Enclosures:
As stated

cc:
The Honorable James M. Inhofe
Ranking Member



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

JUN 9 2014

The Honorable Howard P. "Buck" McKeon
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Jessica L. Wright
Acting

Enclosures:
As stated

cc:
The Honorable Adam Smith
Ranking Member



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4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUN 9 2014

The Honorable Barbara A. Mikulski
Chairwoman
Committee on Appropriations
United States Senate
Washington, DC 20510

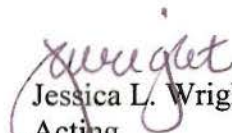
Dear Madam Chairwoman:

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As stated

cc:
The Honorable Richard C. Shelby
Vice Chairman



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WASHINGTON, D.C. 20301-4000

JUN 9 2014

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


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cc:
The Honorable Nita M. Lowey
Ranking Member

Joint Terminal Attack Controller (JTAC)

A qualified (certified) service member who, from a forward position, directs the action of combat aircraft engaged in Close Air Support (CAS) and other offensive air operations. A qualified and current JTAC will be recognized across DoD as capable and authorized to perform terminal attack control. CAS is an element of joint fire support. Synchronizing CAS in time, space, and purpose with supported maneuver forces increases the effectiveness of the joint force. CAS is air action by fixed and rotary-wing aircraft against hostile targets that are in close proximity to friendly forces and that require detailed integration of each air mission with fire and movement of those forces. CAS assist land, maritime, amphibious, and Special Operations Forces (SOF) to move, maneuver, and control territory, populations, and key waters. The support commander establishes the priority, timing, and effects of CAS fires within the boundaries of the land, maritime, SOF, or amphibious force's area of operations. SOF may also need CAS and other joint fire, support at locations well beyond land, maritime, and amphibious operations force commanders' areas of operations.

Unit: U.S. Navy Coastal Riverine Force

Number Requested to Open: 24

Grades:

E-7 (Chief Petty Officer): 2

E-6 (Petty Officer First Class): 22

Detailed Legal Analysis

This notification informs Congress of the Department's intent to open the Joint Terminal Attack Controller (JTAC) special qualification identifier and specifically opens 24 enlisted JTAC positions in the Coastal Riverine Force. The positions identified in this notification were closed to the assignment of women by the now rescinded 1994 Direct Ground Combat Definition and Assignment Rule (DGCR).

The DGCR prohibited the assignment of women to certain units whose primary mission was to engage in direct combat on the ground. The DGCR also provided the Services with the option of imposing further limitations on assignment of women based on prohibitive costs for berthing and privacy arrangements, co-location, long range reconnaissance operations or special operations forces missions, or physical requirements.

Military Selective Service Act to males only.

The Military Selective Service Act (Act), 50 U.S.C. App. 451 *et seq.*, 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.

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 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." Additionally, 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.

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 January 24, 2013, the Department rescinded the DGCR 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 DGCR, 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. As the Department undertakes a deliberate and thoughtful review and develops detailed implementation plans, previously closed positions will 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.

While the notification opens the JTAC special qualification identifier to women, other JTAC positions remain closed as the Department continues its ongoing review of opening positions to women. Although the Navy earlier announced the opening of some CRF positions, these Coastal Riverine Force positions remained closed because the JTAC identifier was still closed, and having the identifier was a requisite for the assignment. With the opening of the JTAC special qualification identifier, all CRF positions will be open to women.

Although these developments may alter the factual backdrop to the Court's decision in *Rostker*, it remains the case that certain occupational specialties, such as infantry, still remain closed to women. Moreover, the Court in *Rostker* did not consider whether other rationales underlying the statute are sufficient to limit the application of the Military Selective Service Act to men.