

# Women and the Selective Service

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On December 3, 2015, Secretary of Defense Ashton Carter ordered the military to open all combat jobs to women with no exceptions. Some have questioned the implications of this policy change for the Military Selective Service Act (MSSA). This law requires males to register but exempts females. [By law](#), the Secretary of Defense is required to report to Congress within 30 calendar days of implementing any proposed changes opening units or positions that were previously closed to women. The Secretary's report is required to include justification for the proposed change and analysis of the implications for the MSSA.

## Current Law and Regulations

Conscription (the draft) has been used to help meet military manpower requirements at various times in U.S. history since the Civil War era. While men have been required to register for induction into military service, women in the United States have never been subject to the draft. On January 27, 1973, then-Secretary of Defense Melvin R. Laird announced the creation of an all-volunteer force and the end of the need for military conscription. The last man inducted through the draft entered into the Army on June 30, 1973; however, the requirement for male U.S. citizens to register for Selective Service continues today.

The MSSA requiring all male citizens between the ages of 18 and 26 to register for the draft was first enacted as the "[Selective Service Act of 1948](#)". The Act has been subsequently amended a number of times. Today the [current law states](#),

(a) Except as otherwise provided in this title [...] it shall be the 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...

Potential consequences for failing to register for the Selective Service include both criminal penalties and ineligibility for certain federal aid or employment:

- If indicted, imprisonment of not more than 5 years and/or fine of not more than \$10,000 ([50 U.S.C. §462](#)).
- Ineligibility for Federal student aid ([50 U.S.C. §462\(f\)\(1\)](#) and [C.F.R. §668.37](#))
- Ineligibility for appointment to a position in an executive agency ([5 U.S.C. §3328](#) and [5 C.F.R. 300.704 – Considering individuals for appointment](#))

Women are currently not required to register for the Selective Service. [Federal regulations state](#) that, "No person who is

not required by selective service law or the Proclamation of the President to register shall be registered."

## Background

The Selective Service registration requirement was terminated between 1975 and 1980, but was reestablished in 1980 following the Soviet Union's invasion of Afghanistan. At that time President Jimmy Carter recommended that Congress amend the MSSA to permit the registration and conscription of women. Congress rejected the Administration proposal in 1980, with an explanation under Title VIII of S. Rept. 96-826,

[T]he starting point for any discussion of the appropriateness of registering women for the draft is the question of the proper role of women in combat. The principle that women should not intentionally and routinely engage in combat is fundamental, and enjoys wide support among our people. It is universally supported by military leaders who have testified before the committee, and forms the linchpin for any analysis of this problem. [...] Current law and policy exclude women from being assigned to combat in our military forces, and the committee reaffirms this policy. The policy precluding the use of women in combat is, in the committee's view, the most important reason for not including women in a registration system.

In 1981, a challenge to the exception for women to register for Selective Service was heard by the Supreme Court in *Rostker v. Goldberg* (453 U.S. 57). The court held that the practice of only registering men for the draft was constitutional. In the majority opinion, Justice William Rehnquist wrote:

[t]he existence of the combat restrictions clearly indicates the basis for Congress' decision to exempt women from registration. The purpose of registration was to prepare for a draft of combat troops. Since women are excluded from combat, Congress concluded that they would not be needed in the event of a draft, and therefore decided not to register them.

There are at least two challenges to the current law that have been raised. One lawsuit has been brought by the [National Coalition for Men](#) who contend that the male-only draft is unconstitutional. This case is being considered by the 9<sup>th</sup> Circuit Court. The other is a [class-action lawsuit](#) brought by the mother of a female New Jersey teen, claiming that the exclusion of women from the draft is unfair discrimination.

## Options for Congress

Some contend that women cannot be equal in society as long as they are barred from full participation in all levels of the national security system and thus should be *allowed to* register for Selective Service. Others believe that equal access to combat jobs should *oblige* women to take equal responsibility for registering for selective service and potentially being assigned to combat roles should the draft be reinstated. They contend that the current exemption for women is unfair to men. Others suggest that women should be allowed to enroll in the selective service system but not be forced into combat roles in the occasion of a draft.

Congress has a number of options to address this issue. Congress has the authority to change draft registration laws to include women. In this case, Congress may need to provide additional resources to the Selective Service Agency. It has also been suggested that this issue can be made moot by terminating the Selective Service registration requirement for all citizens. Another option for Congress might be to keep the draft registration laws unchanged, only requiring males to register.