

THE WHITE HOUSE

WASHINGTON

June 29, 2016

MEMORANDUM FOR

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Office of the Vice President

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Executive Secretary
Department of Defense

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Special Assistant for
Interagency Affairs (J-5)
Joint Chiefs of Staff

MR. LAWRENCE G. ROMO
Director
Selective Service System

SUBJECT: Deputies Small Group Meeting on Female Selective
Service

There will be a Deputies Small Group meeting on Female Selective Service on Friday, July 1, 2016, from 2:30 - 4:00 p.m. in the White House Situation Room. An agenda is attached at Tab A. A discussion paper is attached at Tab B. Additional background material is attached at Tab C. **Please pass the attached to Deputies (to include plus one, if applicable).** If you have any questions, please contact Jennifer Hay at (202) 456-9195.



Suzanne A. George
Executive Secretary

Attachments

Tab A Agenda

Tab B Discussion Paper on Female Selective Service (NSC)

Tab C Press Guidance on Selective Service - Women (NSC)

Tab A

DEPUTIES SMALL GROUP MEETING ON FEMALE SELECTIVE SERVICE

DATE: July 1, 2016
LOCATION: White House Situation Room
TIME: 2:30 - 4:00 p.m.

AGENDA

- I. Legislative Overview NSC
- II. Legal Backdrop DOJ
- III. Resource Implications SSS
- IV. Administration Position All
- V. Public Messaging All

Tab B

DISCUSSION PAPER FOR
DEPUTIES SMALL GROUP MEETING ON FEMALE SELECTIVE SERVICE

Deputies will decide whether to recommend that the Administration adopt a public position on requiring women to register with the Selective Service System (SSS) and, if so, what that position should be. Deputies also will provide guidance on a proposed messaging plan.

Legislative Overview

Since the Department of Defense (DOD) lifted the ban on women serving in combat positions, many press outlets and the Congress have debated the appropriateness of women now being required to register with the SSS. The Administration, however, has not taken a position on this issue. As the Senate and House begin to conference on the National Defense Authorization Act (NDAA), it is likely the Administration will be asked for its stance.

On June 14, 2016, the U.S. Senate approved the Fiscal Year (FY) 2017 NDAA by a vote of 85-13. The bill includes a provision that requires women who turn 18 on or after January 1, 2018, to register for Selective Service. The provision was included initially in the NDAA by Senate Armed Services Committee (SASC) Chairman McCain, with strong support from SASC Ranking Member Reed.

During the SASC Committee consideration of the bill, there was an effort to strike the provision requiring women to register; however, the amendment failed by a vote of 7-19. As a result of the strong vote in Committee, opponents of the provision did not attempt to strip the provision during the full Senate consideration in June. The Senate bill is at odds with the House version of the NDAA, which includes no such provision in the version passed in mid-May. During consideration of the NDAA in the House Armed Services Committee, an opponent of the change, offered an amendment to force women to register to demonstrate the strong opposition to the policy change. His effort, however, backfired when the provision actually passed by a vote of 32-30. House leadership utilized a procedural tactic to strip the provision during floor consideration and replaced it with a requirement for DOD to conduct a study on the need for a registration system and the impact of expanding it.

The differing bills will have to be negotiated between the House and the Senate, and this could be a particularly divisive issue,

given strong feelings on all sides. Additionally, the House and Senate Defense and Financial Services appropriations bills (which fund SSS) are silent on the issue. The House approved the FY 2017 Defense Appropriations Act on June 16. The Senate is expected to consider the FY 2017 Defense Appropriations Act on the floor in July. The Financial Services bill is similarly in process.

Deputies will be briefed on the status and timing of legislative efforts to require women to register with the SSS.

Legal Backdrop

By statute, in advance of changes that would open units or positions previously closed to women, the Secretary of Defense was required to provide a report to the Congress that analyzed the legal implications for the Military Selective Service Act (MSSA). In December 2015, in connection with the announcement of the decision to open all direct ground combat positions to women, DOD advised the Congress that the impending change "further alters the factual backdrop" underpinning *Rostker v. Golberg*, the 1981 Supreme Court case that upheld the constitutionality of the male-only registration requirement in the MSSA. In *Rostker*, the Supreme Court reasoned that the male-only registration requirement did not violate the Constitution because men and women were not similarly situated for purposes of a draft or registration, in that women were excluded from combat by statute and military policy. Noting the Supreme Court's analysis in *Rostker* did not expressly consider "whether other rationales underlying the statute would be sufficient to limit the application of the MSSA to men," the notification emphasized DOD would continue to consult the Department of Justice as appropriate on legal issues raised by the decision. There is already pending litigation challenging the constitutionality of the male-only registration requirement, and it is expected that additional lawsuits will likely be filed seeking resolution of this question in the absence of a legislative change.

Deputies will be briefed on the status of pending litigation challenging the male-only registration requirement, the legal framework in which such challenges arise, and how the Administration's position with respect to the pending legislation could impact the pending litigation.

Resource Implications

The Selective Service is an independent civilian agency that has a staff of 124 full-time, primarily civilian, employees. It is supported by 150 National Guard and Reserve officers who are assigned to the Selective Service for their monthly drills and 2-week active duty training sessions. The current annual budget is almost \$23 million.

Initial estimates by the SSS and the Office of Management and Budget indicate that expanding the SSS Draft Registration system to include women would require an additional 40 full-time staff members and approximately \$9.8 million in the first year and approximately \$7 million for the next 4 years during a 5-year phased implementation process. This would equal an approximately \$38 million increase over 5 years. SSS also estimates it will need a topline increase to its current budget when it has reached steady-state operations, but has not fully conducted its analysis on the estimate.

Deputies will be briefed on the SSS's proposed implementation plan and additional resources that would be required if the registration system were expanded to include women.

Recruiting Advantages and Other Considerations

The SSS provides a hedge against a catastrophe that the country does not anticipate. In addition, the SSS serves as a means to sustain the legacy of public service by reminding the Nation's youth that public service is a valued part of American citizenship. National registration information has important application for military recruiting, the naturalization process, student loan processing, and Federal employment.

Due to agreements with the SSS, DOD receives a recruiting advantage from the SSS which provides names, address, and telephone numbers of new SSS registrants to DOD to be used as recruiting leads. In addition, SSS inserts a lead generation card developed by the DOD in the SSS registration packet that generates approximately 75,000-80,000 male leads annually. As DOD expands the number of females recruited, the leads generated by the SSS could be a significant boost to military recruiters. In addition, DOD currently pays third-party vendors to generate female leads. This would no longer be required, thus achieving a small cost savings to DOD.

On the other hand, expanding registration to require women has significant implementation challenges. In addition to policy modifications and information technology upgrades, the SSS has approximately 75 memorandums of agreement with various state and Federal government agencies (e.g., SSS has agreements with over 40 states to register men when they get a driver's license). As these agreements are updated and it becomes public as to how SSS information is used throughout the government, states may restrict or rescind SSS information sharing agreements. This could potentially result in the SSS not reaching its benchmark of 90 percent of adult males aged 18-25 registering and DOD losing a valuable recruiting resource.

Educating the public, specifically the new female registrants, on the second-order effects of registering/not registering would be required. SSS registration is required for Federal financial aid, Federal employment, and U.S. citizenship.

Deputies will decide whether to recommend that the Administration adopt a position on requiring women to register with the SSS.

Public Messaging

After an increase in public interest on this topic following the opening up of all military positions to women, that interest has died down, and the White House Press Secretary has not been asked about this issue for several weeks (the last time was on April 28, 2016). However, press interest may be renewed as the Congress debates this issue during the NDAA conference discussions.

An Administration position on the Senate provision was not included in the Statement of Administration Policy for NDAA.

The Secretary of Defense has stated publicly that this is a matter for the Congress to determine and that a draft in today's climate does not make sense. However, Air Force Secretary Deborah James, Army Chief of Staff General Mark Milley, and Marine Corps Commandant General Robert Neller have all stated publicly that all eligible and qualified men and women should register for the draft.

The current White House press guidance (Tab C) focuses on the value that the President places on all Americans who want to serve in the All-Volunteer force and the positive changes the Administration has made to increase gender equality. However,

it does not specifically state an Administration position on women registering for the SSS.

~~Deputies will discuss recommended changes to the attached press guidance and how best to convey to the public the Administration's position.~~

Tab C

PRESS GUIDANCE ON SELECTIVE SERVICE - WOMEN

The Administration believes our military is strongest when we draw from a pool of all eligible recruits.

The President highly values the service of men and women who comprise our All-Volunteer force and have proven their mettle in our missions worldwide, including operations in Afghanistan and Iraq.

In April, the Administration opened all military occupational specialties, including so-called "combat jobs" to women. In the past year, we have seen women graduate from the Army's elite Ranger school; serve on submarines; finish Marine Corps Artillery officer's training; and with Gen. Lori Richardson, we have the first-ever female Combatant Commander. These are just a few examples of the high-caliber women we already have serving in uniform.

Q. Does the President believe that the Selective Service Act should be modified to require women to register for the draft?

- The President highly values the service of men and women who comprise our All-Volunteer force and have proven their mettle in our missions worldwide, including operations in Afghanistan and Iraq.
- Since February 2012, this Administration has supported women in the military by opening 13,000 new positions and duty locations for women.
- The Administration's commitment to recruiting our All-Volunteer force from across the eligible pool of candidates has guided all of our personnel decisions to date and will continue to guide future decisionmaking as the legislative process moves forward with respect to this issue.

IF PRESSED:

Q. Isn't there an ongoing lawsuit regarding Selective Service?

- Yes, there are two pending lawsuits at the moment. We refer you to the Department of Justice for information on those cases.

Q. What happens if a court in one of the two pending lawsuits determines that the Selective Service Act is unconstitutional?

- I refer you to the Department of Justice.

QUOTES FROM DEPARTMENT OF DEFENSE LEADERSHIP

Secretary Carter (March 1, 2016)

Q: There's been some discussion about whether women should register for the draft and so, who makes that decision? How will --

Secretary Carter: It's not made, and I don't want to speak for it because there's a separate part of the government that does Selective Service. And by the way, it's all prescribed in law. I mean, it stands to reason that Congress would reconsider that, given that women are now - qualified women-qualified women who can meet the standards are allowed to compete for any position in the U.S. military and it would stand to reason that they would look at the Selective Service law.

I just want to say one thing. As secretary of defense, I don't want a draft, for the reason I just told you. I don't - I want to pick people. I don't want to be given people because sad to say, half of the young people in America don't meet our physical standards. Ten percent of them have law enforcement records that prevent them entering our military.

About a third of them don't have a high school diploma and almost everybody we recruit in the military has a high school - well, 99 percent have a high school diploma. And so, we want all volunteer force. That's our strength.

Air Force Secretary Deborah Lee James: "I see no reason why not to have that requirement (registration) for men and women."

Gen. Mark Milley, Chief of Staff of the U.S. Army: "I think that all eligible and qualified men and women should register for the draft."

Gen. Robert Neller, Marine Corps Commandant: "Now that the restrictions that exempted women from [combat jobs] don't exist, then you're a citizen of a United States, it doesn't mean you're going to serve, but you go register."